

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between named Plaintiffs Don Lucas, Marlon Oliva, and Lana Love Nguyen (“Plaintiffs” or “Class Representatives”) and defendants GiveSmart US, Inc. (“GiveSmart”) Benjamin O’Shea (“O’Shea”), and 501 Auctions, LLC (“501 Auctions”), (collectively, “Defendants”). The Agreement refers to the Class and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “501 Auctions” means named Defendant 501 Auctions, LLC.
- 1.2. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against Defendants captioned *Lucas, et al. v. GiveSmart US, Inc., et al.*, initiated on January 13, 2020, and pending in Superior Court of the State of California, County of Los Angeles.
- 1.3. “Administrator” or “Settlement Administrator” means CPT Group, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.4. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.5. “Aggrieved Employee” means a Class Member who worked for Defendants in California who worked at least one Event for Defendants during the GiveSmart PAGA Period or 501 Auctions PAGA Period.
- 1.6. “Class Claim Form” means the form attached as Exhibit B to this Agreement and/or as approved by the Court, that Class Members must complete and postmark by the Response deadline to receive their share of the Net Settlement Amount in the form of an Individual Class Payment.
- 1.7. “Class” means all individuals (a) who have not released their claims against Defendants prior to the date of the execution of this Agreement and (b) who worked in California at any time commencing four (4) years prior to the filing of this action (or, as to 501 Auctions, commencing October 27, 2016) and the date of certification of the class for settlement purposes, as: (1) a customer service representative (“CSR”) or the equivalent directly employed by a Defendant; and/or (2) as an event specialist (“ES”) of any type for one of the Defendants who was not salaried (including but not limited to those with titles of Assistant Event Specialist, Event Specialist, and Senior Event Specialist), and including all such individuals who were classified as independent contractors.
- 1.8. “Class Counsel” means the law firm of Nassiri & Jung LLP.
- 1.9. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

- 1.10. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, and number of GiveSmart and 501 Auctions Class Period Events and GiveSmart and 501 Auctions PAGA Pay Periods worked by the Class Member.
- 1.11. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member.
- 1.12. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.13. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation, if applicable in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.14. “GiveSmart Class Period” means the period from January 13, 2016, to the date of Preliminary Approval of Settlement and “501 Auctions Class Period” means the period from October 27, 2016 to the date of Preliminary Approval of Settlement.
- 1.15. “Class Representatives” means the named Plaintiffs in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.16. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.17. “Court” means the Superior Court of California, County of Los Angeles.
- 1.18. “Cy Pres Recipient” means Legal Aid at Work.
- 1.19. “Defense Counsel” means the law firms of Seyfarth Shaw LLP.
- 1.20. “Deposed Class Members” shall mean Meredith De Blois, Helia Sadeghi, Hailley Field, and Kenneth Malec.
- 1.21. “Deposed Class Members’ Service Payments” shall have the meaning set forth in section 3.1.2 herein.
- 1.22. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final after the period for filing any appeal, writ, or other appellate proceeding opposing Final Approval and judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed, i.e., 60 days from the date the court grants final approval and enters judgment; or, if any appeal, writ, or other appellate proceeding opposing Final Approval has been filed within that timeframe; five (5) business days after any appeal, writ, or other appellate proceedings

opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief. No funding of the Settlement shall occur until at least ten (10) calendar days after the Effective Date.

- 1.23. “Event” means an event worked by a Class Member for or on behalf of GiveSmart during the GiveSmart Class Period or 501 Auctions during the 501 Auctions Class Period.
- 1.24. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.25. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.26. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.27. “GiveSmart” means named Defendant GiveSmart US, Inc.
- 1.28. “Gross Settlement Amount” means \$1,500,000.00, which is the total amount Defendants agree to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, PAGA Penalties, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments, Deposed Class Members’ Service Payments, the Administrator’s Expenses, and any other amounts whatsoever.
- 1.29. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to section 3.1.5 herein.
- 1.30. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of pay periods worked during the GiveSmart or 501 Auctions PAGA Periods.
- 1.31. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.32. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.33. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.34. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Deposed Class Members’ Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
- 1.35. “Non-Participating Class Member” means any Class Member who either does not submit a timely, valid, and certified Class Claim Form by the Response Deadline in the manner required by this Agreement or opts out of the Settlement by sending the

Administrator a valid and timely Request for Exclusion (“Opt-Out Class Member”).

- 1.36. “Opt-Out Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.37. “O’Shea” means named Defendant Benjamin O’Shea.
- 1.38. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one event during the 501 Auctions PAGA Period or the GiveSmart PAGA Period.
- 1.39. “GiveSmart PAGA Period” means the period from January 13, 2019 to the date of Preliminary Approval.
- 1.40. “501 Auctions PAGA Period” means the period from October 27, 2019 to the date of Preliminary Approval.
- 1.41. “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698 et seq.).
- 1.42. “PAGA Notice” means Plaintiffs’ (including the letter on behalf of Christian Bowman) January 13, 2020 letter to GiveSmart and the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a), and subsequent amended notices.
- 1.43. “PAGA Penalties” means the total amount of PAGA civil penalties (\$40,000) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$10,000) and the 75% to LWDA (\$30,000) in settlement of PAGA claims.
- 1.44. “Participating Class Member” means a Class Member who submits a timely, valid, and certified Class Claim Form by the Response Deadline in the manner required by this Agreement, and who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.45. “Pay Period” means the regular time interval for the payment of wages by Defendants.
- 1.46. “Plaintiffs” means the Class Representatives.
- 1.47. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.48. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.49. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.50. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.51. “Released Parties” means Defendants and each and all of their respective and present

parents, subsidiaries, affiliated companies and corporations, and each and all of the respective former and present directors, officers, managers, employees, contractors, partners, general partners, limited partners, principals, agents, shareholders, owners, members, attorneys, advisors, accountants, representatives, legal representatives, insurers, reinsurers, predecessors, successors, assigns, divisions, joint venturers, related entities, subsidiaries, and affiliates, in their corporate and individual capacities.

- 1.52. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.53. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email or mail a Class Claim Form; (b) fax, email or mail Requests for Exclusion from the Settlement; or (c) fax, email or mail his, her, or their Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.54. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

- 2.1. On January 13, 2020, Plaintiffs initiated this Action by filing a Complaint against GiveSmart, Community Brands, O’Shea, and Does 1 through 100, for (1) Failure to Pay All Wages Due; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Timely Pay All Wages Earned; (6) Failure to Furnish Accurate Itemized Wage Statements; (7) Failure to Keep Required Payroll Records; (8) Failure to Pay All Wages Upon Termination; (9) Violation of California Business & Professions Code section 17200 *et seq.*; and (10) Violation of California Labor Code section 2698 *et seq.*
- 2.2. On September 29, 2020, Plaintiffs amended the operative complaint to add violations of the PAGA.
- 2.3. On October 27, 2020, Plaintiffs amended the operative complaint to add 501 Auctions as a named defendant, and added allegations relating to independent contractor misclassification.
- 2.4. On March 16, 2021, Plaintiffs amended the complaint to add multiple staffing agencies as defendants, four of which remain in the case – Headway Workforce Solutions, Inc., Employer Solutions Staffing Group II, LLC, ShiftgigX, LLC, Agatha and Thomas Belway (on behalf of TAB Consulting, Inc.) (the “Staffing Agencies”) – that supplied temporary workers to provide services at GiveSmart and 501 Auctions events on a joint-employer theory.
- 2.5. In 2022, Plaintiffs entered into a global settlement agreement with the Staffing Agencies. Following the global settlement agreement, at the direction of the Court, on

November 29, 2022, the parties entered into a stipulation reflecting that, once the Court grants final approval of the global settlement agreement with the Staffing Agencies, Plaintiffs will dismiss with prejudice their claims on behalf of the Staffing Agency CSRs against the Staffing Agencies and Defendants in their capacities as Staffing Agency CSRs. Accordingly, in the Sixth Amended Complaint, Plaintiffs omitted Staffing Agency CSRs from the putative class definition.

- 2.6. On February 24, 2023, Plaintiffs filed a Sixth Amended Complaint alleging causes of action against Defendants and Does 1 through 100 for (1) Failure to Pay All Wages Due; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Timely Pay All Wages Earned; (6) Failure to Furnish Accurate Itemized Wage Statements; (7) Failure to Keep Required Payroll Records; Failure to Pay All Wages Upon Termination; (8) Violation of Labor Code section 2802, (9) Violation of California Business & Professions Code section 17200 *et seq.*; and (10) Violation of California Labor Code section 2698 *et seq.* The Sixth Amended Complaint is the operative complaint in the Action (the “Operative Complaint”).
- 2.7. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint and deny any and all liability for the causes of action alleged. Nothing in this Agreement, nor the fact of the Agreement itself, shall be construed or deemed to be an admission of liability, culpability, negligence, or wrongdoing of any kind on the part of Defendants with respect to the claims alleged in the Operative Complaint, and Defendants deny all claims and contentions alleged in the Operative Complaint.
- 2.8. Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.9. On March 16, 2023, Plaintiffs filed their Class Certification Motion, in response to which Defendants filed their Opposition on August 15, 2023. Shortly thereafter, the parties agreed to, and notified the Court of, the upcoming mediation and plan to request a stay of all proceedings. On October 2, 2023, Judge Freeman signed that proposed order.
- 2.10. On November 14, 2023, the Parties participated in an all-day mediation presided over by David R. Rotman, which led to this Agreement to settle the Action.
- 2.11. Prior to mediation, the Parties each conducted significant investigation and discovery of the facts and law. Plaintiffs obtained more than 5,800 documents; deposed or defended the depositions of 12 fact witnesses; served four sets of Requests for Admission; and 10 sets of Interrogatories. Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.12. The Court has not granted class certification.

- 2.13. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. The Settlement is a common fund settlement. Except as otherwise provided by Paragraph 8 below, Defendants promise to pay \$1,500,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. None of the Gross Settlement Amount will revert to Defendants.
- 3.1.1. To Class Representatives: Service Payment to the Class Representatives of not more than \$10,000 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiffs' request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.1.2. To Deposed Class Members: Service Payment to the Deposed Class of not more than \$5,000 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Deposed Class Member is entitled to receive as a Participating Class Member) (such payments, the "Deposed Class Members' Service Payments"). Defendants will not oppose Plaintiffs' request for a Deposed Class Member Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments and Deposed Class Member Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment and/or Deposed Class Member Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments and Deposed Class Member Payments using IRS Form 1099. Deposed Class Members assume full responsibility and liability for employee taxes owed on the Deposed Class Members' Service Payments.
- 3.1.3. To Class Counsel: A Class Counsel Fees Payment of not more than 45% of the Gross Settlement Amount, and a Class Counsel Litigation Expenses Payment of not more than \$80,000. Defendants will not oppose requests for these payments

provided that they do not exceed the amounts set forth in the preceding sentence. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

- 3.1.4. To the Administrator: An Administrator Expenses Payment not to exceed \$15,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$15,500, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.1.5. For Each Participating Class Member: The Net Settlement Amount will be used to satisfy Individual Class Payments. Individual Class Payments shall be calculated by (a) dividing each Participating Class Member's Events by the total number of Events worked by all Participating Class Members during the GiveSmart and 501 Auctions Class Periods and (b) multiplying the result by Net Settlement Amount.
 - 3.1.5.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - 3.1.5.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members.
- 3.1.6. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$40,000 to be paid from the Gross Settlement Amount, with 75% (\$30,000) allocated to the LWDA PAGA Payment and 25% (\$10,000) allocated to the Individual PAGA Payments.

- 3.1.6.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000) by the total number of GiveSmart or 501 Auctions PAGA Period Pay Periods worked by all Aggrieved Employees during the GiveSmart or 501 Auctions PAGA Period and (b) multiplying the result by each Aggrieved Employee's GiveSmart or 501 Auctions PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
- 3.1.6.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than 15 days after the Effective Date. The payment of Class Payments and PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
- 4.2. Class Members. Based on a review of its records to date, Defendants estimate there are approximately 194 Class Members.
- 4.3. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

5. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

- 5.1. Plaintiffs' Release. Plaintiffs and his, her, or their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally,

release and discharge Released Parties from all claims, transactions or occurrences that occurred during the GiveSmart and 501 Auctions Class Periods, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint; (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notice, or ascertained during the Action and released under 5.2; and (c) any and all claims they have or may have had arising or in any way connected with their employment or separation from employment during the GiveSmart and 501 Auctions Class Periods with any of the Released Parties, whether such causes of action are in tort, contract, or pursuant to a statutory remedy, including (a) any such claims under California Labor Code Sections 201, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 2802, 2698 et seq., the applicable Industrial Welfare Commission Wage Orders, and all implementing regulations and interpreting guidance; (b) any other causes of action that are based on or reasonably related to any alleged failure to pay all wages due, failure to provide overtime, failure to provide meal periods, failure to provide rest periods, failure to timely pay all wages earned, failure to furnish accurate itemized wage statements, failure to keep required payroll records, failure to pay all wages upon termination, PAGA penalties based on these alleged violations, or unfair or unlawful business practices based on these alleged violations (including under Business & Professions Code Section 17200 et. seq.), including related to premiums, penalties, interest, punitive damages, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting; and (c) claims in equity or law for personal injury, defamation, mental anguish, injury to health and reputation, claims under federal, state or local laws prohibiting discrimination on account of age, national origin, race, sex, disability, religion or similar classifications, claims under the Civil Rights Act of 1866, the Americans with Disabilities Act, the Family and Medical Leave Act, the Civil Rights Act of 1964, Title VII, as amended, the Civil Rights Act of 1991, the Employee Retirement Income Security Act of 1974, as amended, the Equal Pay Act, the Worker Adjustment and Retraining Notification Act, the California Civil Code, the California Labor Code, the California Constitution, the California Family Rights Act, or any other federal, state or local law relating to employment or discrimination in employment, or otherwise ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the GiveSmart and 501 Auctions Class Periods. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now knows or believes to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them. Plaintiffs' Release is intended to be a release of any and all claims to the fullest extent permissible by law.

- 5.1.1. Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release,

and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2. Release by Class Members Who Do Not Opt Out: All Class Members who do not opt out of the Settlement by sending the Administrator a valid and timely Request for Exclusion, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and ascertained in the course of the Action, including but not limited to claims for (1) Failure to Pay All Wages Due; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Timely Pay All Wages Earned; (6) Failure to Furnish Accurate Itemized Wage Statements; (7) Failure to Keep Required Payroll Records; Failure to Pay All Wages Upon Termination; (8) Violation of Labor Code section 2802, (9) Violation of California Business & Professions Code section 17200 *et seq.*; and (10) Violation of California Labor Code section 2698 *et seq.*, and claims under the Fair Labor Standards Act of 1938, as amended 29 U.S.C. 201, *et seq.*, and claims under California Labor Code §§ 201-203, 204, 210, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1182.12, 1194, 1198, 2802 (as laid out in the Operative Complaint and PAGA Notice), and the applicable Wage Order. Except as set forth in Section 5.3 of this Agreement, in which Class Members release, to the extent permitted by law, all claims for PAGA penalties as stated in section 5.3, Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the GiveSmart and 501 Auctions Class Periods. The release contained herein is intended to be a release of any and all claims to the fullest extent permissible by law.

5.3. Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the GiveSmart or 501 Auctions PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action, including but not limited to claims for (1) Failure to Pay All Wages Due; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Timely Pay All Wages Earned; (6) Failure to Furnish Accurate Itemized Wage Statements; (7) Failure to Keep Required Payroll Records; Failure to Pay All Wages Upon Termination; (8) Violation of Labor Code section 2802, (9) Violation of California Business & Professions Code section 17200 *et seq.*; and (10) Violation of California Labor Code section 2698 *et seq.*, and claims under California Labor Code §§ 201-203, 204, 210, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1182.12, 1194, 1198, 2802 (as laid out in the Operative Complaint and PAGA Notice), and the applicable Wage Order. The release contained herein is intended to be a release of any and all claims to the fullest extent permissible by law.

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the

Court's current checklist for Preliminary Approvals.

- 6.1. Defendants' Declaration in Support of Preliminary Approval. Within 21 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and/or the proposed Cy Pres Recipient; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator, and/or the proposed Cy Pres Recipient; (vi) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code, § 2699.3, subd. (a))), Operative Complaint (Lab. Code, § 2699, subd. (l)(1)), this Agreement (Lab. Code, § 2699, subd. (l)(2)); (vii) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 45 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change

to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1. Settlement Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.
- 7.2. Selection of Administrator. The Parties have jointly selected CPT Group to serve as the Administrator and verified that, as a condition of appointment, agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.3. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.4. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.5. Notice to Class Members.
 - 7.5.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Events and Pay Periods in the Class Data.
 - 7.5.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A and a Class Claim Form, substantially in the form attached to this Agreement as Exhibit B. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Events and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
 - 7.5.3. Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not

provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

- 7.5.4. The deadlines for Class Members' written objections, Challenges to Events and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.5.5. If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.6. Class Claim Form Procedures.

- 7.6.1. To receive an Individual Class Payment, Class Members are required to submit a timely and valid Class Claim Form to the Settlement Administrator. All Class Claim Forms must be signed and returned to the Settlement Administrator online or via email, fax or U.S. mail, and received by email, postmarked or fax-stamped by the Response Deadline. The date of the online submission, email receipt, postmark on the return mailing envelope or fax-stamp will be the exclusive means to determine whether a Class Claim Form has been timely submitted. If any Class Member files a defective Class Claim Form that is submitted online, emailed, postmarked or fax-stamped before the Response Deadline, the Settlement Administrator shall, in that case, send a cure letter ("Cure Letter") to such Class Member, advising that the Class Claim Form previously submitted is defective, stating the nature of the defect and that the defect must be cured to render the Class Claim Form valid. The Settlement Administrator must email or mail (as appropriate) the Cure Letter within three (3) business days of receiving a defective Class Claim Form. The Cure Letter shall state that the Class Member has fifteen (15) calendar days from the date of the Cure Letter or the Response Deadline, whichever date is later, to submit a corrected Class Claim Form. If a Class Member responds to a Cure Letter by filing a defective Class Claim Form, then the Settlement Administrator shall have no further obligation to give notice of a need to cure, and such defective claims will be considered invalid, and if said defective Class Claim Forms are received after the Response Deadline, Class Members will have no right to cure them.
- 7.6.2. For all individuals who submit a valid Class Claim Form and do not opt-out of the Settlement, the Settlement Administrator will issue checks for the Individual Class

Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Settlement Administrator will cancel all checks not cashed by the void date. The Settlement Administrator will send checks for Individual Settlement Payments to all Participating Class Members. The Settlement Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment.

- 7.6.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Cy Pres Recipient. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

7.7. Challenges to Calculation of Events. Each Class Member shall have until the Response Deadline to challenge the number of Class Events and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Events contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Events and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Events and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.8. Requests for Exclusion (Opt-Out Class Members).

- 7.8.1. Class Members who wish to exclude themselves (opt-out of) from the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion by the Response Deadline. A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.8.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to

question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

- 7.8.3. Every Class Member who submits a valid and timely Request for Exclusion shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Class Members who submit a valid and timely Request for Exclusion are still Aggrieved Employees and are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.9. Objections to Settlement.

- 7.9.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- 7.9.2. Participating Class Members may send written objections to the Administrator, by fax, email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline.
- 7.9.3. Non-Participating Class Members and Opt-Out Members have no right to object to any of the class action components of the Settlement.

7.10. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- 7.10.1. Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.10.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion

List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- 7.10.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Events and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.10.4. Events and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Events and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.10.5. Administrator’s Declaration. Not later than 14 days before the date by which Plaintiffs is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 7.10.6. Final Report by Settlement Administrator. Within 15 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator’s declaration in Court.
8. **CLASS SIZE ESTIMATES**. Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, there are approximately 194 Class Members.
9. **DEFENDANTS’ RIGHT TO WITHDRAW**. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties agree that, if

Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of their election to withdraw not later than 14 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL. Not later than 20 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment matters as are permitted by law.

10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel and all Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5. Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the reviewing court vacates, reverses or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission of liability, culpability, negligence or wrongdoing of any kind on the part of Defendants with respect to the allegations in the Operative Complaint; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. Defendants deny all the claims and contentions alleged in the Operative Complaint. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserves the right to contest certification of any class for any reasons, and Defendants reserves all available defenses to the claims in the Action, and Plaintiffs reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency or other entity, including settlement amounts or any of the issues discussed during settlement negotiations or the amounts provided therein, except: (1) to the Parties' attorneys, accountants or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

- 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.
- 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.
- 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.
- 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13. Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14. Publicity and Social Media Restrictions. The Parties have met and conferred in good faith but have been unable to come to an agreement on terms relating to publicity and social media restrictions. If the Parties are unable to reach an agreement on publicity and social media restrictions by the time of the Preliminary Approval hearing, they will submit competing proposals and seek the Court's guidance at that hearing on the appropriate language, if any, for inclusion in the Court's ultimate order.
- 12.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 12.16. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.17. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

- 12.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

Russell Taylor
Nassiri & Jung LLP
1700 Montgomery St., Suite 207
San Francisco, CA 94111

To Defendants:

Gary D. Friedman
Seyfarth Shaw LLP
620 Eighth Avenue
New York, NY 10018

- 12.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the dates indicated below:

CLASS REPRESENTATIVES AND CLASS COUNSEL:

Dated: May ____, 2024

DON LUCAS

By: _____
Individually and on behalf of the Class

Dated: May ____, 2024

MARLON OLIVA

By: _____
Individually and on behalf of the Class

Dated: May ____, 2024

LANA LOVE NGUYEN

By: _____
Individually and on behalf of the Class

Dated: May 22, 2024

NASSIRI & JUNG LLP

By:  _____
Russell Taylor
Counsel for Plaintiffs

DEFENDANTS AND COUNSEL FOR DEFENDANTS:

Dated: May ____, 2024

GIVESMART, U.S. INC.

By: _____

Dated: May ____, 2024

BENJAMIN O'SHEA

By: _____

Dated: May ____, 2024

501 AUCTIONS, LLC

By: _____

Dated: May ____, 2024

SEYFARTH SHAW LLP

By: _____
Gary D. Friedman
Attorney for Defendants