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Attorneys for Plaintiffs GERARDO VALADEZ and MIGUEL DIAZ,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

GERARDO VALADEZ, MIGUEL DIAZ,
LUPE RODRIGUEZ, and ARTHUR
BEBEKYAN, in a Representative capacity
only, and on behalf of other members of the
general public similarly situated,

Plaintiff,

v.

CALIBER HOLDINGS CORP; CALIBER
COLLISION TRANSPORT SERVICES
LLC; and DOES 1-10, inclusive.

Defendants

CASE NO. 37-2020-00015935-CU-OE-CTL

(Representative Action only)

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFFS'
UNOPPOSED EX PARTE APPLICATION
*RE: PAGA SETTLEMENT APPROVAL***

Date: May 17, 2022

Time: 8:30 a.m.

Dept.: C-73

Judge: Hon. Joel R. Wohlfeil

1 I, Eric K. Yaeckel, hereby declare as follows:

2 1. I am an attorney licensed to practice law before this Court and am an employed at the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for Plaintiffs in the
4 above-captioned matter. I make this declaration regarding Plaintiffs' **Unopposed Ex Parte**
5 Request re Settlement Approval.

6 2. I have personal knowledge of the facts set forth in this declaration and, if called to testify as
7 a witness, I could and would do so.

8 **Summary of Application**

9 3. As this is a "PAGA" action only, the Covered Period begins on September 11, 2018. There are
10 a total of approximately **8,175** Representative Action Members and **over 475,000** pay-periods
11 at issue at issue.

12 4. Following the exchange of both formal and informal discovery, analysis of numerous sets of
13 time and wage data, and a Mediation presided over by Lisa Klerman, the parties reached a
14 proposed settlement that includes a settlement payment to the LWDA to resolve the PAGA
15 claims. Attached hereto as **Exhibit 1** is a true and correct copy of the PAGA Representative
16 Action Settlement and Release ("Settlement Agreement").

17 5. As a part of the settlement the parties have submitted via a separate stipulation, a proposed
18 First Amended Consolidated Complaint. This consolidated Complaint contains the claims
19 made in this matter on behalf of GERARDO VALADEZ and MIGUEL DIAZ. It also
20 incorporates in the separate PAGA claims against Defendants filed by LUPE RODRIGUEZ
21 and ARTHUR BEBEKYAN, that were originally pending in the Los Angeles Superior Court,
22 Case No. 21STCV10037. It also incorporates the claims filed by Plaintiff SCOTT WODIN,
23 that were originally pending in the San Diego Superior Court, Case No.
24 37-2021-00045394-CU-OE-CTL

25 6. This Court has previously granted PAGA approval on an *Ex Parte* basis. This application
26 attempts to track exactly the prior applications approved by this Court.

27 7. On **April 25, 2022** Plaintiffs' counsel first notified the LWDA of the settlement proposal. The
28

Settlement terms were uploaded to the LWDA was given notice of the hearing. As with all uploads to this filing portal, Plaintiffs' counsel immediately received an auto-generated email that its submission was received by the LWDA. (*Id.*) On May, 16, 2022, Plaintiffs' counsel again noticed the LWDA's via the electronic filing portal of the instant hearing, and provided copies of this entire ex parte application. To date, no response from the LWDA has been received. If the LWDA contacts Plaintiffs' counsel at any time prior to the hearing, Plaintiffs' counsel will provide an updated declaration to the Court.

8. As is reflected in the Settlement Agreement, the Total Value of the proposed Settlement is **\$3,075,000.00** which is broken down as follows:

- * **\$22,500** Settlement Administrator Fees (not to exceed);
- **\$50,000** Lead Plaintiff Enhancements (\$10,000 each)
- * **\$1,230,000** Attorneys' Fees (40% of total settlement value);
- * **\$17,756.16** Costs of Litigation
- * Remaining PAGA Payment of **\$1,754,734.84**
 - 75% of the PAGA Payment (**\$1,316,051.13**) shall be assigned/paid to the LWDA.
 - 25% of the PAGA Payment (**\$438,683.71**) shall be assigned and disbursed among all PAGA Settlement Employees based on pay periods worked during the PAGA period..

9. Given the above, the Individual Settlement Amount for each Representative Action Member will be determined by multiplying the individual percentage of total Applicable Pay Periods worked by that Representative Action Member by the 25% of the Net Settlement Amount allocated to all Representative Action Members. Based on the above numbers, the "average" PAGA member will receive a share of approximately **\$53.66**. This is an average only, the actual payment will vary based on how many pay periods the PAGA Settlement Employee worked during the PAGA Period.

10. The release of claims is limited to PAGA claims only that are asserted in the First Amended

1 Complaint and the parties pre-lawsuit PAGA letters. Accordingly, all employees retain their
2 rights to any individual wage and hour claims.

3 **Basis for *Ex Parte* Application**

- 4 11. The instant *Ex Parte* request is based on the fact that (1) the PAGA period “Effective (cutoff)
5 Date” is contingent on Court approval, any delay diminishes the amounts received by the
6 impacted employees; and (2) Notice to certain former employees may be adversely impacted
7 by further delay (*i.e.* many of the PAGA Settlement Employees are former employees who may
8 change their mailing address without providing any notice to the employer of a new address
9 and may fail to file a proper “forwarding address”).
- 10 12. An expedient approval of this settlement will provide a direct benefit to the impacted
11 employees at issue. There is no risk of future Labor Code non-compliance and employees and
12 the state receive an immediate monetary benefit. It also allows Defendant the opportunity to
13 move on, and focus on future business.

14 **The Nature And Scope Of The Alleged Violations**

- 15 13. The Complaint in this action alleges Labor Code violations which triggered penalties under the
16 PAGA statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiffs generally alleged that all
17 non-exempt employees were denied compliant meal and rest breaks, minimum wages,
18 overtime compensation, accurate wage statements, reimbursements of business expenses,
19 suffered waiting time violations, did not receive all sick pay owed, were not provided with
20 accurate records and other related wage and hour claims and penalties brought under the
21 PAGA statute. The First Amended Complaint Contains the Claims of all the various Plaintiffs.

22 **Analysis of Potential Liability, On A Representative Basis**

- 23 14. The catalyst of this litigation concerned allegations that Plaintiffs were not correctly paid for
24 all time worked, were forced to work through their breaks and that Defendants failed to keep
25 compliant time and wage records.
- 26 15. Investigations completed by our office revealed some instances of uncompensated work time.
27 However, these investigations also revealed that the "rate of violation" by Defendant was
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1 significantly less than 100%. On many of those occasions, it appears that Defendant did, in
2 fact, comply with the law. Further, Defendant contends that it maintained compliant policies,
3 compensated employees for all time worked, paid meal break premiums, and did not require
4 or permit off the clock work for any reason. Further, Defendant contends that to the extent off
5 the clock work occurred, there is no evidence that it knew or should have known about the
6 alleged off the clock work.

7 16. Our office is aware of the Court's discretion to significantly reduce the award of PAGA
8 penalties pursuant to California Labor Code section 2699(e)(2). To confirm, Plaintiffs'
9 counsel experienced the mitigation of "PAGA" penalties in *Carrington v. Starbucks Corp.*
10 (2018) 30 Cal.App.5th 504. In *Carrington*, Honorable Katherine A. Bacal significantly
11 mitigated PAGA penalties (\$5 per violation), due to the efforts made by the employer to
12 comply with the law.

13 17. Our office agrees with Honorable Katherine A. Bacal, and with the provision of the Labor
14 Code, that penalties should be mitigated where violations are minimal, or where the employer
15 makes significant efforts to comply with the Labor Code.

16 18. As the above exists in this case, it is the opinion of myself and our office that the settlement
17 is fair, adequate, and reasonable. Moreover, upon notice of the potential violations, Defendant
18 immediately stepped up to address the claims and participate in mediation.

19 **Experience of Counsel**

20 19. Plaintiffs' counsel, William B. Sullivan has approximately 27 years of experience in "class
21 action" and representative action litigation, both as plaintiff and defense counsel. Mr. Yaeckel
22 has over 11 years of experience prosecuting class and representative action claims under the
23 California Labor Code. Counsel are the attorneys of record in a matter that was recently (and
24 favorably) decided by the California Supreme Court. See *Donohue v. AMN Services* (2021) 11
25 Cal.5th 58. The *Donohue* matter is a certified class and PAGA action. Plaintiffs' counsel are
26 currently lead counsel on approximately 40 employment "wage and hour" claims with class
27 action and/or representative actions allegations. Based on said experience, it is the opinion of
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1 Plaintiffs' counsel that this settlement represents a fair and adequate payment to resolve these
2 claims.

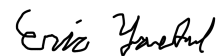
3 20. Defendants, and its counsel, deserve credit for their willingness to consider - and address - the
4 allegations. Specifically, Defense Counsel (who have extensive experience and knowledge in
5 "Wage and Hour" litigation) agreed to produce a substantial amount of documents and
6 information necessary to evaluate the parameters of settlement. Following a full day Mediation
7 and numerous follow up arms-length negotiations, the parties have reached a proposed
8 settlement that includes a settlement payment to resolve claims for penalties under PAGA.

9 21. The only "unique" factor here is the attorney fee request, which is 40 % (forty percent) of the
10 total settlement, and thus higher than Plaintiffs' counsel's "normal" request, of one-third of the
11 settlement. However, this slightly higher fee award was agreed upon by all parties, and
12 specifically factored into the settlement, as it was necessary to provide attorneys fees to four
13 *separate* law firms, representing clients in the three separate PAGA matters.

14 **Ex Parte Notice**

15 22. I gave notice of the ex parte application to Defendants' counsel and counsel for the proposed
16 additional Plaintiffs on May 13, 2022, All Counsel was subsequently provided a draft of the
17 papers on May 15, 2022. There is no opposition to the request.

18
19 I declare under penalty of perjury under the laws of the State of California that the foregoing
20 is true and correct. Executed this 13th day of May, 2022 at San Diego, California.

21 

22
23 _____
ERIC K. YAECKEL

**JOINT STIPULATION OF PAGA REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

This Joint Stipulation of PAGA Representative Action Settlement and Release (hereinafter “Settlement Agreement”) is made and entered into by and between the following parties: Plaintiff Gerardo Valadez, Plaintiff Miguel Diaz, Plaintiff Lupe Rodriguez Plaintiff Arthur Bebekyan, and Plaintiff Scott Wodin (collectively “Plaintiffs”) individually and as a proxy of the State of California and the California Labor and Workforce Development Agency (“LWDA”) on behalf of all other allegedly aggrieved employees, and Defendant Caliber Holdings LLC f/k/a Caliber Holdings Corporation (“Caliber”) (collectively, the “Parties”), and their respective counsel of record. This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court. This Settlement Agreement accurately sets forth the Parties’ PAGA representative action settlement in the total amount of Three Million Seventy-Five Thousand Dollars (\$3,075,000) to resolve all claims, as detailed below.

I. DEFINITIONS

1. “Action” means the action entitled “*Gerardo Valadez v. Caliber Holdings Corporation, et al.*,” Case No. 37-2020-15935, filed in the Superior Court of California in and for the County of San Diego. It is also intended to include the claims made in the *Rodriguez Action* and *Wodin Action*, as defined below, which shall be incorporated via a First Amended Complaint.

2. “Approval Date” means the date the Court approves this Settlement Agreement, and enters the Order Granting Settlement Approval and Judgment to that effect.

3. “Approval Hearing” means the hearing on the Motion for Settlement Approval and Judgment.

4. “Caliber Releasees” means Caliber Holdings LLC and Caliber Collision Transport Services LLC, and all of their current, future, and former parents, subsidiaries, divisions, affiliates, affiliates and subsidiaries under common ownership, owners, shareholders, members, directors, officers, employees, attorneys, insurers, benefit plans, agents and independent contractors, and the predecessors, successors, and assigns of each of them.

5. “Court” means the Superior Court of California in and for the County of San Diego, which presides over the Action.

6. “Covered PAGA Pay Periods” means, as reflected on Caliber’s internal records, pay periods from March 24, 2019 and the Approval Date during which a PAGA Member worked for Caliber as a non-exempt employee in California, excluding any pay periods previously released by a PAGA Member in the *Uribe* Action.

7. “Defendants” means Caliber and Caliber Collision Transport Services LLC.

8. “Defendants’ Counsel” means Morgan, Lewis & Bockius LLP.

9. “Estimated Pay Periods” means the estimate of the pay periods at issue provided by Caliber in connection with the execution of the Parties’ Memorandum of Understanding.

10. “Individual Settlement Amount” means the final gross amount sent and paid to any PAGA Member under this Settlement Agreement.

11. “Individual Settlement Fund” means the twenty-five percent (25%) of the Net Settlement Amount allocated for the Individual Settlement Amount payments to the PAGA Members.

12. “LWDA” means the California Labor and Workforce Development Agency.

13. “Maximum Settlement Amount” is the sum of Three Million Seventy-Five Thousand Dollars (\$3,075,000), which represents the maximum amount payable in this Settlement by Caliber, and includes all attorneys’ fees, litigation costs, the Settlement Administration Expenses, the Service Enhancement to the Plaintiff, and all settlement payments to the LWDA and the PAGA Members.

14. “Net Settlement Amount” equals the Maximum Settlement Amount less Plaintiff’s Counsel’s attorneys’ fees and actual litigation costs, Settlement Administration Expenses, and the Service Enhancements to the Plaintiffs.

15. “Order Granting Settlement Approval and Judgment” means the Order entered by the Court in the Action, *inter alia*: (1) approving the terms and conditions of this Settlement Agreement, including the payments and the release of claims as set forth herein; (2) approving the amount of attorneys’ fees and litigation costs to be awarded to Plaintiff’s Counsel, the Settlement Administration Expenses, and the Service Enhancement to be awarded from the Maximum Settlement Amount; and (3) dismissing the Action with prejudice and entering judgment in the Action pursuant to and consistent with the terms and conditions of this Settlement Agreement.

16. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq.

17. “PAGA Member(s)” means all individuals employed by Caliber as non-exempt employees in California between March 24, 2019 and the Approval Date.

18. “Plaintiffs’ Counsel” collectively means Sullivan & Yaeckel Law Group APC, Lavi & Ebrahimian, LLP, Law Office of Sahag Majarian II and Morello Law, P.C.

19. “Released Claims” means any and all claims, obligations, demands, rights, causes of action, and liabilities against Caliber Releasees, under PAGA that have been asserted or that could have been asserted in the Complaint, the First Amended Complaint, the PAGA letter to the LWDA, the Amended PAGA letter to the LWDA, and any amendments thereto; or that could have been asserted in the Complaint, the First Amended Complaint, the PAGA letter to the LWDA, the Amended PAGA letter to the LWDA, and any amendments thereto, based on the facts, claims and/or allegations pled therein. Released Claims include, but are not limited to, claims for failure to pay minimum wage, failure to pay overtime or pay overtime at the correct rate of pay, failure to pay for all hours worked (off-the-clock work), failure to properly pay for sick and/or vacation time, failure to allow employees to take sick leave at their sole discretion, failure to provide meal periods, failure to provide rest periods, failure to properly compensate employees for rest breaks, failure to pay premiums at the correct rate of pay, failure to timely pay final wages and wages earned during employment including sick leave and vacation pay, failure to provide reimbursement for necessary business-related expenditures, failure to maintain wage-related records and/or furnish accurate wage statements, failure to obtain employees’ voluntary authorizations for payment of wages by direct deposit, improperly restricting employees from lawful conduct occurring during nonworking hours away from the employer’s premises, and requiring employees to enter into invalid restrictive covenants and/or non-compete agreements, and includes all such claims from March 24, 2019 through and including the Approval Date.

20. “Service Enhancement” means the incentive payment paid to each Plaintiff in an amount not to exceed \$10,000, for the Plaintiffs efforts and work in prosecuting the Action.

21. “Settlement Administration Expenses” means all settlement administration fees and costs,

including those for the Settlement Administrator, in effectuating the Settlement and approved by the Court in an amount not to exceed \$22,500.

22. “Settlement Administrator” means CAC Services, LLC, or any other third-party settlement administrator that the Parties jointly select.

23. “Settlement Agreement” or “Settlement” will mean this Joint Stipulation of PAGA Representative Action Settlement and Release.

24. “Settlement Effective Date” means, after the Order Granting Settlement Approval and Judgment has been entered by the Court in the Action, the latter of the following dates: (a) if an appeal, review, or writ is not sought from the Order Granting Settlement Approval and Judgment, the 63rd day after service of notice of entry of the Order Granting Settlement Approval and Judgment; or (b) if an appeal, writ, or review is sought from the Order Granting Settlement Approval and Judgment, the day after the Order Granting Settlement Approval and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Order Granting Settlement Approval and Judgment is no longer subject to any further judicial review.

25. “Rodriguez Action” means the action entitled *Lupe Rodriguez and Arthur Bebekyan v. Caliber Holdings Corporation, et al.*, , Case No. 21STCV10037, filed in the Superior Court of California in and for the County of Los Angeles. The Plaintiffs in the *Rodriguez Action* are represented by Lavi & Ebrahimian, LLP and Law Office of Sahag Majarian II (collectively, “Rodriguez’ Counsel”).

26. “Wodin Action” means the action entitled “*Scott Wodin v. Caliber Holdings Corp, Caliber Holdings LLC*” Case No. 37-2021-00045394-CU-OE-CTL, filed in the Superior Court of California in and for the County of San Diego. The Plaintiff in the *Wodin Action* is represented by Morello Law, P.C. (“Wodin’s Counsel”).

27. “Uribe Action” means the action entitled “*Luis Uribe, et al. v. Caliber Collision Transport Services LLC, et al.*,” Case No. 20STCV09633, filed in the Superior Court of California in and for the County of Los Angeles.

II. LITIGATION BACKGROUND

28. On or about January 2, 2020, Plaintiff Valadez served the LWDA by mail with a PAGA

notice letter which stated that Plaintiff intended to seek civil penalties against Caliber for alleged violations of the California Labor Code. On or about February 18, 2022, Plaintiff Valadez and Diaz served the LWDA by mail with an Amended PAGA notice letter.

29. On May 26, 2020, Plaintiff Valadez filed a representative action under PAGA against Defendants in the Superior Court of California for the County of San Diego.

30. On March 12, 2021, the Plaintiffs in the *Rodriguez* Action served the LWDA by mail with a PAGA notice letter which stated that Plaintiffs intended to seek civil penalties against Caliber for alleged violations of the California Labor Code.

31. On March 15, 2021, the *Rodriguez* Action was filed against Defendants in the Superior Court of California for the County of Los Angeles.

32. On April 9, 2021, the Plaintiff in the *Wodin* Action served the LWDA by mail with a PAGA notice letter which stated that Plaintiff intended to seek civil penalties against Caliber for alleged violations of the California Labor Code.

33. On October 25, 2021, the *Wodin* Action was filed against Defendants in the Superior Court of California for the County of San Diego.

34. Within 3 days of execution of this Settlement Agreement, the Parties will file a stipulation with the Court requesting leave for Plaintiffs to file a proposed First Amended Complaint, as set forth in Section IV.C. The proposed First Amended Complaint shall comport with the scope of the claims and allegations in the PAGA Letter and Amended PAGA letter filed in this action and with the scope of the claims and allegations filed in the *Rodriguez* Action and *Wodin* Action. The Plaintiffs in the *Rodriguez* Action and *Woodin* Action will each dismiss there case, with prejudice, within 14 days after the Court enteres an Order Granting Settlement Approval and Judgment in the isntant matter.

35. Caliber denies Plaintiffs' claims, and asserts that it has complied fully with California's labor laws and wage orders. Consequently, Caliber does not believe that any liability to Plaintiffs, the State of California or the LWDA, or to any other PAGA Member exists, or that Plaintiffs, the State of California or the LWDA, or any other PAGA Member are entitled to any recovery in the Action.

36. On January 25, 2022, counsel for the Parties participated in a mediation with experienced

mediator Lisa Klerman, Esq. With Ms. Klerman's assistance, the Parties negotiated the key terms of a complete settlement of Plaintiffs' claims. Follow up negotiations involving the Plaintiff's from the *Rodriguez* Action and *Wodin* Action continued over several months. The terms of the settlement are now set forth in complete and final form in this Settlement.

37. Neither this Settlement, nor any final judgment pursuant to this Settlement, will constitute an admission of any form of wrongdoing or liability on the part of Caliber or the accuracy of any allegation raised in the Action. This Settlement is entered into in compromise of disputed claims. Plaintiffs and Caliber intend, by their actions pursuant to this Settlement, merely to avoid the expense, delay, uncertainty, and burden of litigation. This Settlement and any related court documents or orders may not be cited or otherwise admitted as evidence of liability. There has been no final determination by any Court as to the merits of the Action.

38. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims against the Caliber Releasees arising from or related to the Action.

39. It is the intention of the Parties that this Settlement Agreement will constitute a full and complete settlement and release of the claims averred in the Action by the Plaintiffs, both individually and as a proxy of the State of California and the LWDA on behalf of all PAGA Members pursuant to PAGA. This release includes in its effect a release of all the Caliber Releasees of the Released Claims.

III. JURISDICTION AND VENUE

40. This Court has jurisdiction over the Parties and the subject matter of this Settlement. This Court will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations provided for herein have been fully executed.

IV. TERMS OF SETTLEMENT

41. NOW, THEREFORE, in consideration of the mutual covenants, promises, and undertakings set forth herein, the Parties agree, subject to the Court's approval, as follows:

A. Non-Admission of Liability

42. Nothing in this Settlement Agreement, or any communications, papers, or orders related to this Settlement Agreement, will be construed to be or deemed an admission by the Caliber Releasees of

any liability, culpability, negligence, or wrongdoing toward the Plaintiff, the PAGA Members, or any other person, and the Caliber Releasees specifically disclaim any liability, culpability, negligence, or wrongdoing toward the Plaintiffs, the PAGA Members, or any other person. Caliber also maintains that, for any purpose other than settlement, the claims alleged in the Action are not suitable or appropriate for representative action treatment and are not manageable pursuant to California Labor Code § 2698 *et seq.*, nor are the claims alleged in the Action suitable or appropriate for class and/or collective action treatment under California Code of Civil Procedure Section 382, the Fair Labor Standards Act, or any other applicable laws or rule(s). Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies, including in the Action. This Settlement Agreement and any communications, papers, or orders related to the Settlement Agreement may not be cited or otherwise admitted as evidence of liability, whether in the Action or elsewhere. There has been no final determination by any Court as to the merits of the claims asserted by Plaintiff against Defendants.

43. Furthermore, nothing in this Settlement Agreement will be considered a form of waiver of any of the alternative dispute resolution provisions contained in Caliber's Arbitration Agreement or any other applicable alternative dispute resolution agreement with Caliber, and Caliber expressly does not waive any right to enforce arbitration agreements and class, collective, and representative action waivers in any other circumstance.

B. Non-Approval By The Court

44. If this Settlement Agreement is not approved by the Court, fails to become effective, is reversed, withdrawn or modified by the Court:

- (a) The Settlement Agreement will have no force or effect, other than the confidentiality and non-disclosure provisions in Section XI and the non-admission provisions in Section IV.A;
- (b) The Settlement Agreement will not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;

- (c) None of the parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments with respect to the merits of Plaintiffs' claims; and
- (d) Caliber does not waive, and instead expressly reserves its right to challenge the propriety of the Action proceeding as a representative action.

C. First Amended Complaint

45. Within 3 days of execution of this Settlement Agreement, the Parties will file a joint stipulation with the Court requesting leave for Plaintiffs to file the proposed First Amended Complaint attached as **Exhibit B**.

D. Settlement Payments

46. Caliber agrees to pay a Maximum Settlement Amount of Three Million Seventy-Five Thousand Dollars (\$3,075,000), inclusive of (a) all PAGA penalty settlement payments to the LWDA and PAGA Members; (b) any award of attorneys' fees and out-of-pocket litigation costs and expenses to Plaintiff's Counsel; (c) any award of a Service Enhancement; and (d) all Settlement Administration Expenses. The Parties specifically agree, subject to Court approval, to the following allocations to be paid from the Maximum Settlement Amount:

- (a) From the Maximum Settlement Amount, Plaintiff's Counsel may seek from the Court attorneys' fees up to \$1,230,000 (40% of the total) and actual litigation costs up to \$17,765.16 for serving as Plaintiffs' Counsel. Of this total, Rodriguez' counsel is seeking \$150,000.00 in attorneys' fees and up to \$3,750 in litigation costs. Sullivan & Yaeckel Law Group, APC is seeking \$980,000 in attorneys' fees and up to \$13,000 in litigation costs. Woodin's counsel is seeking \$100,000.00 in attorneys' fees and up to \$1,015.16 in litigation costs. Caliber takes no position on Plaintiffs' request for fees and costs provided it does not exceed these amounts and Plaintiffs and Plaintiffs' Counsel are not in breach of the Settlement Agreement. A separate fee splitting agreement, in line with the above, has been executed by all Plaintiffs.

- (b) From the Maximum Settlement Amount, Plaintiffs' Counsel may seek from the Court a Service Enhancement award to each Plaintiff not to exceed \$10,000 each, which Caliber will not oppose so long as Plaintiffs and Plaintiffs' Counsel are not in breach of the Settlement Agreement.
- (c) From the Maximum Settlement Amount, Settlement Administration Expenses in a reasonable amount currently estimated at \$22,500.
- (d) From the Net Settlement Amount, settlement payments attributable to PAGA penalties will be allocated and paid to the LWDA and the PAGA Members.
 - (i) Seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA as its share of the Settlement attributable to PAGA penalties.
 - (ii) The remaining twenty-five percent (25%) of the Net Settlement Amount will be the Individual Settlement Fund and will be distributed as Individual Settlement Amounts to the PAGA Members based on their eligible employee service time for Covered PAGA Pay Periods, as reflected on Caliber's internal records. Individual Settlement Amounts will be calculated as follows: the numerator shall be the number of the PAGA Member's individual Covered PAGA Pay Periods; the denominator shall be the total Covered PAGA Pay Periods for all PAGA Members; this fraction shall be multiplied by the Individual Settlement Fund.
- (e) If the Court approves a lesser amount of attorneys' fees and litigation costs and expenses, the Service Enhancement, and Settlement Administrator Expenses, than those sought by Plaintiffs and Plaintiff's Counsel, any amount disallowed by the Court will be added to the Individual Settlement Fund to be distributed in pro rata shares to the PAGA Members. The Parties agree that the Settlement Agreement will remain binding with such modification(s) as ordered by the Court, and its terms will be otherwise unchanged. This Settlement is not conditioned upon the Court's approval of Plaintiff's Counsel's petition for fees and costs or the amount

of any Service Enhancement award.

- (f) The Settlement Administrator will disburse monies from the Net Settlement Amount as and when authorized in this Settlement Agreement and by order of the Court, will file and issue any necessary tax reporting documents, and will inform the Parties and the Court of its fulfillment of the duties imposed by this Settlement Agreement.
- (g) The Settlement Administrator will issue settlement checks to the LWDA and PAGA Members under this Settlement Agreement, as well as the Service Enhancement to the Plaintiff and attorneys' fees and costs awarded to Plaintiff's Counsel, by sending such payments by mail, wire, or other reliable means to the respective recipients as specified below.

E. Estimated Pay Periods

47. In connection with the Parties' execution of the Memorandum of Understanding, Caliber has provided to Plaintiff the number of Estimated Pay Periods. If, as of the end date of the Covered PAGA Pay Periods, the number of Covered PAGA Pay Periods exceeds the Estimated Pay Periods by more than five percent, Caliber shall have the option to (1) increase the Maximum Settlement Amount on a pro rata basis per pay period to cover the number of pay periods above the five percent increase (*e.g.*, for an increase of six percent to the Estimated Pay Periods, Caliber shall add an extra 1% to the Maximum Settlement Amount; for a ten percent increase to the Estimated Pay Periods, Caliber shall add an extra 5% to the Maximum Settlement Amount); or (2) modify the end date for the Covered PAGA Pay Periods and Released Claims to a date earlier than the Approval Date; or (3) withdraw from the Settlement pursuant to Paragraph 76.

F. Released Claims

48. Upon the Settlement Effective Date, Plaintiffs individually, and the State of California, the LWDA, and all PAGA Members, through Plaintiffs acting as a proxy for the State of California and the LWDA and as a Private Attorney General acting on behalf of all other PAGA Members, will be deemed to have fully, finally, and forever released the Caliber Releasees from all Released Claims as set forth in

Section VII.A. With the exception of Plaintiff Scott Wodin, as set forth below, Plaintiffs, in conjunction with the execution of this Settlement Agreement and requesting the Service Enhancements, also will enter into the General Release as set forth in Section VII.B.

G. Waiver of Appeal

49. The Parties expressly acknowledge and agree that approval of this Settlement Agreement, through the Order Granting Settlement Approval and Judgment, effectuates the Releases set forth in Section VII, extinguishes all Released Claims, and dismisses the Action with prejudice. Upon the Approval Date, Plaintiff, Caliber, and their counsel expressly agree to hereby waive and extinguish their right to appeal any order or judgment in the Action, and the judgment entered in the Action will be final.

H. No Right to Exclusion or Objections by PAGA Members

50. Because this Settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as a proxy and as a Private Attorney General of and for the State of California and the LWDA, the Parties agree that no PAGA Member has the right to exclude himself or herself from the Settlement. PAGA Members will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any Individual Settlement Amount payment received as a result of this Settlement. The Parties also agree that no PAGA Member, including Plaintiffs, has the right to object to the terms of the Settlement Agreement and Plaintiffs agree not to object to the Settlement.

I. Motion for Settlement Approval and Entry of Judgment

51. Plaintiffs will file motion for settlement approval and entry of judgment with the Court, in which Plaintiff will request that the Court, among other things, enter an Order Granting Settlement Approval and Judgment in accordance with the terms of this Settlement Agreement. Concurrent with filing the request for settlement approval and entry of judgment, Plaintiff will submit that motion and any supporting papers, including a copy of this Settlement Agreement, to the LWDA pursuant to Labor Code § 2699(I)(2).

V. SETTLEMENT ADMINISTRATION

A. Settlement Administrator Duties

52. Pursuant to the terms of this Settlement Agreement, the Settlement Administrator will be

responsible for and the Settlement Administration Expenses will cover: (a) calculating and determining the LWDA's 75% share of the Net Settlement Amount, and preparing and mailing that payment to the LWDA; (b) preparing a list of all PAGA Members, calculating the Individual Settlement Amounts due to each PAGA Member from the Individual Settlement Fund, and issuing and mailing checks payable to said PAGA Members, including taking appropriate steps to trace, update and locate any PAGA Members whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated; (c) issuing to Plaintiffs, Plaintiffs' Counsel, and PAGA Members any tax forms as may be required by applicable law for all amounts paid pursuant to this Settlement Agreement; (d) forwarding all taxes and penalties to the appropriate government authorities; (e) maintaining the Maximum Settlement Amount account in an interest-bearing account at a federally insured banking institution, as discussed below; (f) preparing and mailing the amount of attorneys' fees and litigation costs awarded to Plaintiff's Counsel from the Maximum Settlement Amount; (g) preparing and mailing the Service Enhancement awarded to Plaintiffs from the Maximum Settlement Amount; (h) reporting to Defendants' Counsel, Plaintiffs' Counsel, and, if necessary, the Court regarding the completion of the tasks identified in this paragraph; and (i) carrying out other related tasks including the proper maintenance of undisbursed Individual Settlement Amounts or uncashed checks in an interest bearing account and any reporting required for that account, in accordance with the terms of this Settlement Agreement.

53. All disputes relating to the Settlement Administrator's ability and need to perform its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully executed.

B. Qualified Settlement Fund

54. The Settlement Administrator will create a Qualified Settlement Fund ("QSF"), to be funded by the Maximum Settlement Amount paid by Caliber and administered by the Settlement Administrator. The Settlement Administrator shall have control over the distribution of funds from the QSF, once funded. With respect to the QSF, the Settlement Administrator shall: (1) satisfy all federal, state and local income and other tax reporting, return, and filing requirements with respect to the QSF and any

interest or other income earned by the QSF; and (2) satisfy out of the QSF all fees, expenses and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and functions as described in this Settlement Agreement. The aforementioned fees, costs and expenses shall be treated as and included in the costs of administering the QSF and as Settlement Administration Expenses. The Parties agree to cooperate with the Settlement Administrator and one another to the extent reasonably necessary to carry out the provisions of this Section. If the Court does not enter the Order Granting Settlement Approval and Judgment, Caliber shall not be obligated to fund the QSF.

C. Calculating and Issuing Payments To PAGA Members

55. The Settlement Administrator shall calculate the Individual Settlement Amount payments to PAGA Members as described in Paragraph 41(d)(ii).

56. In addition to the payments to PAGA Members, Caliber, through the Settlement Administrator, shall also make a payment to the California LWDA as consideration for the release of all PAGA claims that are the subject of the Action on behalf of the State of California. Of the Net Settlement Amount, seventy-five percent (75%) shall be paid to the LWDA.

57. Prior to mailing the Individual Settlement Amount payments to PAGA Members, the Settlement Administrator will update the addresses for the PAGA Members using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. Any returned envelopes from the initial mailing with forwarding addresses will be used by the Settlement Administrator to locate PAGA Members and re-mail the Individual Settlement Amount payments to the correct or updated address. The Settlement Administrator will use appropriate tracing methods, including skip tracing, to ensure that the Individual Settlement Amount payments are received by PAGA Members. The Settlement Administrator will also take reasonable steps, including skip tracing, to locate any PAGA Member whose Individual Settlement Amount payments are returned as undeliverable.

58. The Individual Settlement Amount payments mailed to each PAGA Member will include the notice letter attached to this Settlement Agreement as **Exhibit A** and will provide a payment of each PAGA Member's pro rata share from the Individual Settlement Fund.

59. All settlement payments from the Maximum Settlement Amount, including any payment

to the LWDA, any Individual Settlement Amount payments, and any Service Enhancement approved by the Court, will be treated as civil penalties under PAGA, and will be reported on an IRS Form 1099 without withholdings. The payments to Plaintiff's Counsel for attorneys' fees and litigation costs will be treated as miscellaneous income and will be reported on an IRS Form 1099 without withholdings. The Plaintiff and PAGA Members will be exclusively liable for any and all tax liability, if any. All Parties represent that they have not received, and will not rely on, advice or representations from other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or local law.

D. Settlement Administration Expenses

60. All Settlement Administration Expenses will come out of the Maximum Settlement Amount. If the actual Settlement Administration Expenses are less than the amount approved by the Court, those funds will be added to the Net Settlement Amount.

VI. DISTRIBUTION OF NET SETTLEMENT AMOUNT

A. Process and Deadlines

61. Within thirty (30) days after the Approval Date, Caliber will provide information in an electronic format regarding all PAGA Members, including name(s), last known residence addresses, Social Security numbers, and all Covered PAGA Pay Periods worked, to the Settlement Administrator only, contingent upon the Settlement Administrator's execution of a confidentiality agreement. PAGA Member data will be used by the Settlement Administrator only for the purpose of calculating settlement shares and finding and paying PAGA Members their portion of the Individual Settlement Fund. Data for PAGA Members will be kept confidential by the Settlement Administrator, and will not be disclosed to Plaintiff, Plaintiff's Counsel, the LWDA, or any other PAGA Member without the written consent of Caliber.

62. Within thirty (30) days after the Approval Date, Caliber will provide payment of the Maximum Settlement Amount to the Settlement Administrator to fund the QSF to be created by the Settlement Administrator. It will be considered a material breach of the Settlement Agreement if Caliber does not provide payment of the Maximum Settlement Amount to the Settlement Administrator within thirty (30) days after the Approval Date. If that occurs, Caliber will pay interest on the Court-approved Maximum Settlement Amount for each day that the settlement funding is late at the rate of 15% per annum.

Additionally, in the event of Caliber's failure to send the payment of the Maximum Settlement Amount to the Settlement Administrator within thirty (30) days after the Approval Date, Plaintiffs may immediately petition the Court for settlement enforcement, and will be entitled to an award of all fees and costs incurred in conjunction with that settlement enforcement.

63. Within forty-five (45) days after the Approval Date, the Settlement Administrator will calculate the Net Settlement Amount and will make the calculation of payments from the Net Settlement Amount to be distributed to the LWDA (representing its 75% share under PAGA of the Net Settlement Amount) and to each of the PAGA Members (representing, in the aggregate, their 25% share under PAGA of the Net Settlement Amount). Upon completion of its calculation of payments, and at least seven (7) days prior to the distribution of payments to the LWDA and PAGA Members, the Settlement Administrator will provide Defendants' Counsel with a report listing the amount of all payments to be made to the LWDA and to each PAGA Member from the Net Settlement Amount.

64. Within and no earlier than thirty-one to thirty-three (31-33) days after the QSF has been funded with the Maximum Settlement Amount, and provided that no timely appeal has been filed of the Court's Order Granting Settlement Approval and Judgment, the Settlement Administrator will distribute and pay Individual Settlement Amount checks to all PAGA Members, issue a Settlement check to the LWDA for its payment of PAGA penalties, and pay Plaintiffs the Service Enhancement. The Settlement Administrator will then also issue a payment to itself in the amount approved by the Court for services performed in administering this Settlement. The Administrator may pay out the attorneys fees and costs awarded once the QSF is funded. However if a PAGA Member fails to object to the settlement, but nonetheless files an appeal of the Order and Judgment, William B. Sullivan, of Sullivan & Yaeckel Law Group, APC, and Sullivan & Yaecke Law Group, APC, jointly and severally, agree to act as guarantors on any sums of money paid out by Defendants pursuant to the Final Order and Judgment. Mr. Sullivan and Sullivan Law Group, APC agree that in the event said appeal results in any money that was paid out by Defendants to have to be returned by any recipient, and/or re-allocated, and/or the approval of this Settlement Agreement is not confirmed by the appellate court, (these three events are each "triggering events"), they will act as personal guarantors to Defendants and promise that they will be personally

responsible, and jointly and severally liable, for returning any monies back to Defendants. Mr. Sullivan and Sullivan Law Group, APC further agree to place in an escrow account, within fourteen (14) days of any notice of such appeal, the amounts paid by Defendants and which Mr. Sullivan and Sullivan Law Group, APC are guaranteeing and authorize the distribution of the proceeds of the escrow account, including interest, to Defendants within twenty-one (21) days of any triggering event. In the event that a timely appeal of the Order Granting Settlement Approval and Judgment is filed, the Settlement Administrator will not disburse any other settlement amounts pursuant to this Paragraph until a date approved by all Parties.

B. Uncashed Settlement Checks

65. PAGA Members who are sent Individual Settlement Amount payments will have 90 calendar days after mailing by the Settlement Administrator to cash their settlement checks and will be so advised of such deadline. If PAGA Members do not cash their checks within that period, those checks will become void and the settlement payment amounts will be paid to the State's Unclaimed Wage Fund in the name of the employee.

VII. RELEASE OF CLAIMS

A. Release of Claims by Plaintiff, the LWDA, and All PAGA Members

66. Upon the Approval Date, Plaintiffs, on behalf of himself, the State of California and the LWDA, and all PAGA Members, fully and forever releases and discharges the Caliber Releasees (as defined in Paragraph 4) from the Released Claims as defined in Paragraph 20. The Parties agree that this Settlement Agreement is conditioned upon this release of all Released Claims, both by Plaintiffs individually, and by the State of California, the LWDA, and all PAGA Members through Plaintiffs acting on behalf of, and as a Private Attorney General for, the State of California, the LWDA, and all allegedly aggrieved current and former employees of Caliber. Upon the Settlement Effective Date, Plaintiffs, the LWDA, and each and every PAGA Member will be bound by the terms of this Settlement Agreement and will have recourse exclusively to the benefits, rights, and remedies provided hereunder.

67. The Parties further understand and agree that this Settlement Agreement, in conjunction with the Order Granting Settlement Approval and Judgment, prohibits and enjoins any PAGA Member

(including Plaintiffs), from bringing against the Caliber Releasees any of the Released Claims (including unknown Released Claims) through and including the Approval Date. Upon the Settlement Effective Date, Plaintiffs, on behalf of himself and on behalf of the LWDA and each and every PAGA Member, will be deemed to have, and by operation of the Order Approving Settlement Agreement and Judgment entered by the Court will have fully, finally, and forever released, relinquished, and discharged each and all of the Caliber Releasees from any and all Released Claims (including unknown Released Claims) through the Approval Date.

68. With respect to the Released Claims only, the Parties stipulate and agree that, upon the Settlement Effective Date, the LWDA and PAGA Members will be deemed to have, and by operation of the Order Approving Settlement Agreement and Judgment entered by the Court will have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, which provides:

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.

Plaintiff, the LWDA, and all PAGA Members will be deemed to have acknowledged that this Settlement Agreement is intended to include in its effect all Released Claims that they do not know or suspect to exist in their favor up through the Approval Date.

B. General Release by Plaintiffs

69. For and in accepting the consideration of the Service Enhancement awarded, Plaintiffs will further make a general release as set forth in this Section VII.B (the “General Release”) on behalf of themselves and their heirs, executors, administrators, representatives, successors and assigns, of the Caliber Releasees (as defined in Paragraph 4), to the fullest extent permitted by law, of and from any and all claims, actions, causes of action, lawsuits, attorneys’ fees, costs, debts, dues, sums of money, accounts, reckonings,

bonds, bills, specialties, covenants, contracts, bonuses, controversies, agreements, promises, claims, charges, complaints and demands whatsoever, whether in law, contract, or equity, known and unknown, asserted and unasserted, which against the Caliber Releasees, Plaintiffs (and their heirs, executors, administrators, representatives, successors and assigns) may now have or hereafter later determines that Plaintiffs have or had upon or as of the date of execution of this Settlement Agreement. This includes all of Plaintiffs' claims against the Caliber Releasees related to or arising out of Plaintiffs' employment with the Caliber Releasees, and/or the cessation of employment or purported employment therefrom. These claims expressly include, but are not limited to, claims arising under the Americans With Disabilities Act, the National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as amended, including, but not limited to, breach of fiduciary duty and equitable claims arising under § 1132(a)(3) ("ERISA"), the Worker Adjustment and Retraining Notification Act, as amended, Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, The Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act of 1990, the Civil Rights Acts of 1866, 1871 and 1991, including Section 1981 of the Civil Rights Act, the Family and Medical Leave Act (to the extent permitted by law), the Fair Credit Reporting Act or other federal, state or local laws relating to background checks, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street and Consumer Protection Act, the California Family Rights Act ("CFRA"), California Equal Pay Law, California Whistleblower Protection Laws Cal. Bus. And Prof. Code § 17200 et seq. ("UCL"), the California Fair Employment and Housing Act, and any and all claims related to the following: failure to pay minimum wages; failure to pay overtime wages or pay overtime at the correct rate of pay; failure to pay for all hours worked (off-the-clock work); failure to properly pay for sick and/or vacation time; failure to allow employees to take sick leave at their sole discretion; failure to provide meal periods; failure to provide rest periods; failure to properly compensate employees for rest breaks; failure to pay premiums at the correct rate of pay; failure to timely pay final wages and wages earned during employment including sick leave and vacation pay; failure to provide reimbursement for necessary business-related expenditures; failure to maintain wage-related records; failure to furnish accurate wage statements; failure to obtain employees' voluntary authorizations for

payment of wages by direct deposit; improperly restricting employees from lawful conduct occurring during nonworking hours away from the employer's premises; requiring employees to enter into invalid restrictive covenants and/or non-compete agreements; any alleged violations of the the California Labor Code and the Industrial Welfare Commission Wage Orders; any alleged violation of and/or any remedy provided by the California Civil Code and/or the California Code of Civil Procedure including, but not limited to, section 1021.5; any claims for penalties under the California Labor Code and/or the California Private Attorneys General Act, California Labor Code section 2698 et seq. ("PAGA"); and/or any other federal, state or local human rights, civil rights, wage-hour, pension or labor law, rule, statute, regulation, constitution or ordinance and/or public policy, contract or tort law, or any claim related to whistleblowers or retaliation under such laws, or any claim of breach of any contract (whether express, oral, written or implied from any source), or any claim of intentional or negligent infliction of emotional distress, tortious interference with contractual relations, wrongful or abusive or constructive discharge, defamation, prima facie tort, fraud, negligence, loss of consortium, malpractice, breach of duty of care, breach of fiduciary duty or any action similar thereto against the Caliber Releasees, including any claim for attorneys' fees, expenses or costs based upon any conduct from the beginning of the world up to and including the date of this General Release; provided, however, that Plaintiffs do not waive any right to file an administrative charge with the Equal Employment Opportunity Commission ("EEOC") or the National Labor Relations Board ("NLRB"), subject to the confidentiality provisions of the Settlement Agreement, and subject to the condition that Plaintiffs not seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom and Plaintiffs understand that such limitation does not in any way restrict Plaintiffs' ability to file and pursue such charge consistent with the confidentiality obligations set forth in this Settlement Agreement; and further provided, however, that Plaintiffs do not waive any rights with respect to, or release the Caliber Releasees from, any claims for California Workers' Compensation benefits, unemployment insurance or indemnification provided by state law (except that Plaintiffs hereby release and waive any claims that their termination was to avoid payment of such benefits or payments or that, as a result of their termination, they are entitled to additional benefits or payments); and further provided, however, that Plaintiffs do not release any claim that cannot be released by private contract or for breach of

the terms of the Settlement Agreement, subject to the confidentiality obligations in Section XI below. Plaintiffs' General Release also includes the waiver of any right to bring, maintain, or participate in a class, collective, or representative action against the Caliber Releasees to the maximum extent permitted by law.

70. Thus, for the purpose of implementing a full and complete release and discharge of the Caliber Releasees, Plaintiffs expressly acknowledge that this General Release is intended to include in its effect, without limitation, all claims which Plaintiffs do not know or suspect to exist in Plaintiffs' favor at the time of execution hereof, and that this General Release contemplates the extinguishment of any such claim or claims.

71. In connection with such waiver and relinquishment, Plaintiffs hereby acknowledge that Plaintiffs or their attorneys may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but that they expressly agree to fully, finally and forever settle and release any and all claims, known or unknown, suspected or unsuspected, which exist or may exist on their behalf against the Caliber Releasees at the time of execution of the Settlement Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiffs' employment with the Caliber Releasees or the cessation of that employment. Plaintiffs and Caliber further acknowledge, understand and agree that this representation and commitment is essential to each Party and that this Settlement Agreement would not have been entered into were it not for this representation and commitment.

72. It is further understood and agreed that as a condition of this General Release, and to effect a full and complete general release as described above, Plaintiffs hereby expressly waive and relinquish any and all claims, rights or benefits they may have under California Civil Code Section 1542, which provides as follows:

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.

Plaintiffs warrant that they have read this Settlement Agreement, including the waiver of California

Civil Code section 1542, and that they have each consulted with or had the opportunity to consult with counsel of their choosing and specifically about the waiver of section 1542, that they understand this Agreement and the section 1542 waiver, and that they freely and knowingly enter into this Agreement, this General Release, and the section 1542 waiver.

73. Plaintiffs further agree that, unless required to do so by law, they will not testify, provide documents, or otherwise participate, or request others to participate on their behalf, in any proceeding or litigation that is related to any conduct by any Caliber Releasee as of the date of this Settlement Agreement. Notwithstanding the foregoing, nothing in this General Release will prohibit or restrict Plaintiffs from: (i) providing information to, or otherwise assisting in, an investigation by Congress, the Equal Employment Opportunity Commission or the NLRB, the Securities and Exchange Commission (“SEC”) or any other federal regulatory or law enforcement agency or self-regulatory organization (“SRO”); (ii) testifying, participating, or otherwise assisting in a proceeding relating to an alleged violation of any federal law relating to fraud or any rule or regulation of the SEC or any SRO; or (iii) complying with a lawful subpoena or other legal process, subject to the terms of the Settlement Agreement.

74. If any of the provisions, terms, clauses, waivers or releases of claims and rights contained in this General Release are declared illegal, unenforceable, or ineffective in a legal forum of competent jurisdiction, such provisions, terms, clauses, waivers or releases of claims or rights will be modified, if possible, in order to achieve, to the extent possible, the intentions of the Parties and, if necessary, such provisions, terms clauses, waivers and releases of claims and rights will be deemed severable, such that all other provisions, terms, clauses and waivers and releases of claims and rights contained in this General Release will remain valid and binding upon the Parties, provided, however, that, notwithstanding any other provision of this General Release, if any portion of the waiver or release of claims or rights is held to be unenforceable, Caliber may, at its option, seek modification or severance of such portion, or terminate the Settlement Agreement pursuant to Section X.

75. Plaintiffs further covenant that they will not participate in any other legal actions against the Caliber Releasees, and will opt-out of those actions if they become aware of such actions. Plaintiffs further agree that any other dispute relating to their employment with the Caliber Releasees will be subject

to alternative dispute resolution under Caliber's Arbitration Agreement.

76. Plaintiff Wodin's General Release described in Paragraphs 69 to 75, above, expressly excludes Plaintiff Wodin's individual claims raised in and arising out of the events alleged through his October 25, 2021 Arbitration Demand currently pending in the arbitration entitled Scott Wodin v. Caliber Holdings Corporation, et al., JAMS Ref. No. 5240000024 (the "Arbitration"). Through that Arbitration, Plaintiff Wodin has asserted individual claims under California state law for whistleblower retaliation (Labor Code § 1102.5), wrongful termination in violation of public policy, retaliation under FEHA for requesting disability accommodation for his wife, associational disability discrimination under FEHA based on his wife's disability, failure to prevent discrimination and retaliation under FEHA, failure to pay earned wages at termination (Labor Code §§ 201-203), failure to reimburse business expenses (Labor Code § 2802), and intentional infliction of emotional distress. For the avoidance of doubt, this Release and this Settlement Agreement may not be used or presented, for any purpose, in Plaintiff Wodin's pending Arbitration.

77. Plaintiffs will certify that they have returned all of Caliber's property in Plaintiffs or their attorneys' possession, custody, or control, including without limitation, proprietary or confidential information, equipment, telephones, credit cards, keys, pagers, documents, computers and computer discs, personal data assistants, files and data, other than records related solely to Plaintiffs' own compensation or benefits.

VIII. DUTIES OF THE PARTIES

78. Plaintiffs' Counsel, subject to Caliber's approval, will submit this Settlement Agreement to the Court and a proposed Order Granting Settlement Approval and Judgment.

79. Following entry of the Court's Order Granting Settlement Approval and Judgment, the Parties will each act to assure his or its timely execution and the fulfillment of all provisions in that Order and in this Settlement Agreement, including but not limited to the following:

- (a) Within ten (10) days after the Approval Date, Plaintiff's Counsel will submit a copy of the Order Granting Settlement Approval and Judgment to the LWDA pursuant to Labor Code § 2699(l)(3).

- (b) Within thirty (30) days after the Approval Date, Caliber will provide to the Settlement Administrator: (1) payment of the Maximum Settlement Amount to fund the QSF, and (2) the PAGA Member list and identification and contact information specified in Paragraph 56 above. Caliber will submit this information in electronic format as specified by the Settlement Administrator and will thereafter assist the Settlement Administrator as necessary or as requested to use, correct, or update this information in order to enable the Settlement Administrator to locate and contact PAGA Members, and to provide information needed or requested by the Settlement Administrator in order to make determinations on PAGA Members' challenges.
- (c) Upon entry of the Order Granting Settlement Approval and Judgement, all Parties will waive their right to appeal the judgment and all other court orders in the Action.
- (d) Plaintiffs/ Counsel and Defendants' Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating PAGA Members entitled to payments from the Individual Settlement Fund and assuring delivery of such payments.
- (e) Plaintiffs/ Counsel and Defendants' Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amount of the Individual Settlement Fund for any uncashed checks to the Cy Pres Recipient.

IX. SETTLEMENT APPROVAL PROCEDURES AND TIMELINE FOR COMPLETION OF SETTLEMENT

80. This Settlement Agreement will become final and effective only upon the occurrence of all of the following events:

- (a) Execution of this Settlement Agreement by the Parties and their respective counsel of record.

- (b) Submission of the Settlement Agreement to the Court for approval.
- (c) Plaintiffs submission of the Settlement Agreement to the LWDA.
- (d) Entry by the Court of an Order Approving Settlement Approval and Judgment, which, among other things, must:
 - (i) approve the Settlement and the release of claims set forth herein, adjudging the terms thereof to be fair, adequate, reasonable, and binding on Plaintiff, the LWDA, and all PAGA Members through Plaintiffs acting on behalf of, and as a Private Attorney General for, the State of California, the LWDA, and all PAGA Members, and directing that its terms and provisions be carried out;
 - (ii) approve settlement administration services to be provided by the Settlement Administrator;
 - (iii) permanently enjoin and prohibit Plaintiffs, the LWDA, and all other PAGA Members from pursuing and/or seeking to reopen claims that have been released by this Agreement;
 - (iv) provide that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Settlement and the Court's orders;
 - (v) otherwise incorporate the terms of this Settlement Agreement; and
 - (vi) occurrence of the Settlement Effective Date.

81. The schedule for approval and payment procedures carrying out this Settlement is as follows. The schedule may be modified depending on whether and when the Court grants necessary approvals. In the event of such modification, the Parties will cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

Within 10 days after the Approval Date	Plaintiff's Counsel to submit a copy of the Approval Order and Judgment to the LWDA.
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Within 30 days after the Approval Date	Caliber to (1) send payment of the Maximum Settlement Amount to the Settlement Administrator to be deposited into the QSF; and (2) provide the Settlement Administrator the PAGA Member information, including names, last known residence addresses, social security numbers, and the number of Covered PAGA Pay Periods.
Within 45 days after the Approval Date	Settlement Administrator to make the calculation of payments from the Net Settlement Amount to be distributed to the LWDA and to the PAGA Members and provide Defendants' Counsel with a report listing the amount of all payments to be made to the LWDA and to each PAGA Member. Settlement Administrator to complete any skip trace or other address searches for PAGA Members, including updating any contact information.
Settlement Effective Date	Following entry of the Order Granting Settlement Approval and Judgment, the latter of the following dates: (a) if an appeal, review, or writ is not sought from the Order Granting Settlement Approval and Judgment, the 63rd day after service of notice of entry of the Order Granting Settlement Approval and Judgment; or (b) if an appeal, writ, or review is sought from the Order Granting Settlement Approval and Judgment, the day after the Order Granting Settlement Approval and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Order Granting Settlement Approval and Judgment is no longer subject to further judicial review.
Within 31-33 days after the QSF has been funded with the Maximum Settlement Amount; alternatively, if a timely appeal of the Court's order and judgment is filed, on a date approved by both Parties	Settlement Administrator to distribute and pay Settlement checks to the LWDA and to all PAGA Members from the Net Settlement Amount, pay the Plaintiff his Service Enhancement.
90 days after distribution of settlement checks	Expiration of PAGA Members' settlement checks.
Within 120 days after distribution of settlement checks	Settlement Administrator to calculate and pay any remaining amount from the Net Settlement Amount (due to expired settlement checks) to the State's Unaid Wage Fund.

X. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT

82. Caliber has the right to withdraw from the Settlement at any time prior to the Settlement

Effective Date if: (a) the Settlement is construed by the Court in such a fashion that Caliber is required to pay more than the Maximum Settlement Amount; or (b) the Court denies approval of the Settlement or any material terms thereof (excluding any reduction of Plaintiffs and Plaintiffs' Counsel's requests for attorneys' fees, litigation costs and expenses, and the Service Enhancement); or (c) the Court does not order the release of claims of the PAGA Members set forth in this Settlement Agreement, or otherwise makes an order inconsistent with any of the material terms of this Settlement Agreement; or (d) Plaintiffs or Plaintiffs' counsel breaches this Settlement Agreement; or (e) the number of Covered PAGA Pay Periods exceeds the Estimated Pay Periods by more than five percent.

83. If for any reason the Settlement Agreement is not approved, or the Court fails to enter the Order Granting Settlement Approval and Judgment, or Caliber or Plaintiffs withdraw from the Settlement, this Settlement Agreement and any related settlement documents (including the Parties' memorandum of understanding) will be null and void, other than the confidentiality and non-disclosure provisions in Section XI and the non-admission provisions in Section IV.A. In such an event, neither this Settlement Agreement, nor the parties' memorandum of understanding, nor the settlement documents, nor the negotiations leading to the Settlement, may be used as evidence for any purpose, and Caliber will retain the right to challenge all claims and allegations in the Action and to assert all applicable defenses on all applicable grounds.

84. Other than as specified above, this Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto, and approved by the Court.

XI. CONFIDENTIALITY AND PUBLICITY

85. Names of PAGA Members and their allocation amounts will be kept strictly confidential by the Settlement Administrator, who will not release such information to Plaintiffs or Plaintiffs' Counsel and will only file such information under seal if necessary. Plaintiffs' Counsel agrees that any information they receive or have received in connection with this Settlement, may be used for the purposes of settling the Action only, and may not be used for any purpose or in any other action or proceeding.

86. Plaintiffs and Plaintiffs' Counsel agree to keep this settlement and Settlement Agreement

confidential before the Settlement Agreement is filed with the Court, and after filing not to disclose the terms of this settlement and Settlement Agreement except in court papers or if required by legal process. In the event that Plaintiffs and/or Plaintiffs' Counsel believe they are legally obligated by statutory or regulatory requirements (including compulsory legal process, such as a subpoena) to make disclosures regarding the terms of this settlement or Settlement Agreement, they must notify Defendants' Counsel, Carrie A. Gonell, by email at carrie.gonell@morganlewis.com, within three (3) business days of receiving such notice that gives Plaintiffs and/or Plaintiffs' Counsel reason to believe they are so obligated, and they shall take reasonable steps to maintain the confidentiality of this settlement and Settlement Agreement, including by filing any required disclosures under seal. Neither Plaintiffs nor Plaintiffs' Counsel, directly or indirectly, will issue a press release, hold a press conference, publish information about the settlement on any website, or otherwise publicize the settlement, with the exception that Plaintiff's Counsel may put information available in the public record about the settlement in a description of their experience or the like in order to describe their experience to a court. Plaintiffs and Plaintiffs' Counsel agree not to respond to any press inquiries concerning the settlement except to refer reporters generally to papers filed with the Court.

XII. PARTIES' AUTHORITY

87. The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

XIII. MUTUAL FULL COOPERATION

88. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement will use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiffs' Counsel will, with the assistance and cooperation of Caliber and Defendants' Counsel, take all necessary steps to secure the Court's approval of this Settlement Agreement.

XIV. NOTICES

89. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder will be in writing and will be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiffs' Counsel:

Eric Yaeckel
SULLIVAN & YAECKEL LAW GROUP APC
2330 Third Ave.
San Diego, CA 92101
Tel: (619) 702-6760
Fax: (619) 702-6761
Yaeckel@sullivanlawgroupapc.com

To Defendants' Counsel:

Carrie A. Gonell
MORGAN, LEWIS & BOCKIUS LLP
600 Anton Boulevard, Suite 1800
Costa Mesa, CA 92626
Tel: (714) 830.0600
Fax: (714) 830.0700
carrie.gonell@morganlewis.com

If the identity of the persons to be notified for any Party changes, or their address changes, that Party will notify all other Parties of the change in writing.

XV. MISCELLANEOUS PROVISIONS

A. Captions and Titles

90. Paragraph titles, headings, or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

B. Drafting

91. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the

result of lengthy, intensive arms-length negotiations between the Parties. Neither Party will be considered the “drafter” of the Settlement Agreement for purposes of having terms construed against that Party, and this Settlement Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement.

C. Extensions of Time

92. If a Party cannot reasonably comply with an obligation under this Settlement Agreement by the deadline set forth herein applicable to that obligation, that Party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other Party.

D. Governing Law

93. The rights and obligations of the Parties hereunder will be construed and enforced in accordance with, and will be governed by, the laws of the State of California, without regard to principles of conflict of laws.

E. No Impact on Benefit Plans

94. Neither the Settlement Agreement nor any amounts paid under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Caliber. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Caliber’s sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement will not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of Caliber’s benefit plan, policy, or bonus program. Caliber retains the right to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

F. Integration

95. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

G. No Prior Assignments

96. This Settlement Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

H. Counterparts

97. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. When each Party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Settlement Agreement, which will be binding upon and effective as to all Parties. A facsimile signature or electronic image will have the same force and effect as the original signature.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Gerardo Valadez

PLAINTIFF

Dated: _____

Miguel Diaz

PLAINTIFF

Dated: _____

Lupe Rodriguez

PLAINTIFF

Dated: _____

Arthur Bebekyan

PLAINTIFF

Dated: _____

Scott Wodin

CALIBER HOLDINGS LLC

Dated: _____

Name: _____

Title: _____

APPROVED AS TO FORM

SULLIVAN & YAECKEL LAW GROUP APC

Dated: _____

Eric Yaeckel
Attorneys for Plaintiffs Gerardo Valadez and Miguel
Diaz

LAVI & EBRAHIMIAN, LLP

Dated: _____

Joseph Lavi
Victor Grandberry
Attorneys for Plaintiffs Lupe Rodriguez and Arthur
Bebekyan

MORELLO LAW, P.C.

Dated: _____

Justin Morello
Attorneys for Plaintiff Scott Wodin

MORGAN, LEWIS & BOCKIUS LLP

Dated: _____

Carrie A. Gonell
Attorneys for Defendant Caliber Holdings LLC