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and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOE FIGUEROA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

A-1 DELIVERY CO.; and DOES 1 through
20, inclusive,

Defendants.

Case No. CIVDS2002347

*Assigned for all Purposes to the:
Hon. David Cohn
Dept. S-26*

JOINT STIPULATION OF SETTLEMENT

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval
2 of the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiff Joe Figueroa (“Named
7 Plaintiff”) and the Class Members, on the one hand, and Defendant A-1 Delivery Co.
8 (“Defendant”), on the other hand. Named Plaintiff and Defendant collectively are referred to in
9 this Agreement as “the Parties.”

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay the settlement amount of Seven Hundred Thousand
12 Dollars (\$700,000.00) as provided in Section 3.07(a) below (“Gross Settlement Amount”)
13 pursuant to the terms and conditions of this Agreement and for the consideration set forth herein,
14 including but not limited to, a release of all claims by Named Plaintiff and the Class Members as
15 set forth herein.

16 **ARTICLE I**

17 **DEFINITIONS**

18 Unless otherwise defined herein, the following terms used in this Agreement shall have
19 the meanings ascribed to them as set forth below:

20 a. “Action” means the action described as follows: *Figueroa v. A-1 Delivery Co.*,
21 Case No. CIVDS2002347 commenced on January 23, 2020, in the Superior Court of the State of
22 California for the County of San Bernardino.

23 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
24 Exhibit(s).

25 c. “Class” means all current and former non-exempt employees who are or were
26 employed by Defendant in California at any time during the Class Period.

27 d. “Class Counsel” means the attorneys for the Class and the Class Members, who
28 are:

1 AEGIS LAW FIRM, PC
2 Kashif Haque
3 Samuel A. Wong
4 Jessica L. Campbell
5 Kristy R. Connolly
6 9811 Irvine Center Drive, Suite 100
Irvine, California 92618
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Facsimile: (949) 379-6251

7 e. "Class List" means a list based on Defendant's business records that identifies
8 each Class Member's name, last known home or mailing address, Social Security number or, as
9 applicable, other taxpayer identification number, the number of Qualifying Workweeks worked
10 during the Class Period, and the number of Qualifying Pay Periods during the PAGA Period.

11 f. "Class Member(s)" means all members of the Class.

12 g. "Class Period" means January 23, 2016 through the earlier of (i) the date the court
13 enters an order granting preliminary approval of the Settlement or (ii) 90 days from the date of
14 mediation (June 16, 2021).

15 h. "Court" means the California Superior Court for the County of San Bernardino,
16 where the Action is currently pending.

17 i. "Date of Finality" means the later of the following: (1) the date the Final Order is
18 signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no
19 appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or
20 other judicial review is taken from the Court's overruling of objections to the settlement, ten (10)
21 days after the appeal is withdrawn or after an appellate decision affirming the Final Order
22 becomes final.

23 j. "Defendant" means Defendant A-1 Delivery Co.

24 k. "Defense Counsel" means counsel for Defendant:

25 FISHER & PHILLIPS LLP
26 Spencer W. Waldron,
Jonathan Russell Blakey
27 2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
28 Facsimile: (949) 851-0152

1 l. “Disposition” means the method by which the Court approves the terms of the
2 Settlement and retains jurisdiction over its enforcement, implementation, construction,
3 administration, and interpretation.

4 m. “Enhancement Award” means a monetary amount of up to Seven Thousand Five
5 Hundred Dollars (\$7,500.00) for Named Plaintiff, subject to Court approval, in recognition of his
6 effort and work in prosecuting the Action on behalf of Class Members, and for his general release
7 of claims.

8 n. “Final Order Approving Settlement of Class Action” or “Final Order” means the
9 final formal court order signed by the Court following the Final Fairness and Approval Hearing
10 in accordance with the terms herein, approving this Agreement.

11 o. “Gross Settlement Amount” means Seven Hundred Thousand Dollars and Zero
12 Cents (\$700,000.00) to be paid by Defendant as provided by this Agreement to settle this Action.
13 All claims of the Class and all administration costs, attorney’s fees and costs, LWDA Payment,
14 and Enhancement Award, pursuant to Section 3.07(a) below, shall be paid out of the Gross
15 Settlement Amount. The employer’s share of payroll taxes arising from the payments made under
16 this settlement shall be paid by Defendant separate from and in addition to the Gross Settlement
17 Amount. The Gross Settlement Amount is subject to a pro rata increase pursuant to Section
18 3.04(e) below. No part of the Gross Settlement Amount shall revert to Defendant.

19 p. “Individual Settlement Payment(s)” means each Participating Class Member’s
20 respective share of the Net Settlement Amount. Individual Settlement Payments will be
21 determined by the calculations provided in this Agreement.

22 q. “LWDA” means The State of California Labor and Workforce Development
23 Agency.

24 r. “LWDA Payment” means 75% of the \$40,000 allocated to the settlement of
25 PAGA claims which, subject to Court approval, will be paid to the LWDA pursuant to Section
26 3.07(e) of this Agreement, as provided for below.

27 s. “Motion for Final Approval” means Plaintiff’s submission of a written motion,
28 including any evidence as may be required for the Court to conduct an inquiry into the fairness of

1 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing,
2 and to enter a Final Order in this Action.

3 t. "Motion for Preliminary Approval" means Plaintiff's submission of a written
4 motion, including any evidence as may be required for the Court to grant preliminary approval of
5 the Settlement as required by Rule 3.769 of the California Rules of Court.

6 u. "Named Plaintiff" means Joe Figueroa.

7 v. "Net Settlement Amount" means the Gross Settlement Amount less Court-
8 approved administration costs, Class Counsel's attorney's fees and costs, Enhancement Award,
9 and LWDA Payment, pursuant to Section 3.07(a)-(f) below.

10 w. "Non-Participating Class Member(s)" means any Class Member(s) who submit to
11 the Settlement Administrator a valid and timely written request to be excluded from the Class
12 pursuant to Section 3.04(b) below.

13 x. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form
14 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

15 y. "PAGA" means the California Private Attorneys General Act of 2004, which is
16 codified in California Labor Code §§ 2698 *et seq.*

17 z. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
18 allocated to the resolution of Class Members' claims arising under PAGA. The Parties have
19 agreed that the PAGA Settlement Amount is Forty Thousand Dollars (\$40,000), subject to Court
20 approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and
21 the remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
22 Members.

23 aa. "PAGA Group Members" means all current and former non-exempt employees
24 who are or were employed by Defendant in California at any time during the PAGA Period.

25 bb. PAGA Period means at any time between January 23, 2019 through the earlier of
26 (i) the date the court enters an order granting preliminary approval of the Settlement or (ii) 90
27 days from the date of mediation (June 16, 2021).

1 cc. "Participating Class Member(s)" is defined as a Class Member who does not
2 timely exclude himself or herself from the Settlement and will therefore receive his or her share
3 of the Net Settlement Amount automatically without the need to return a claim form. Each
4 Participating Class Member will be paid his/her Individual Settlement Payment.

5 dd. "Preliminary Approval Date" means the date the Court preliminarily approves the
6 Settlement embodied in this Agreement.

7 ee. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of
8 Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
9 Administrator for the benefit of Participating Class Members.

10 ff. "Qualifying Workweeks" means the number of weeks that Class Members worked
11 for Defendant as non-exempt employees during the Class Period.

12 gg. "Qualifying Pay Periods" means the number of pay periods that PAGA Group
13 Members worked for Defendant as non-exempt employees during the PAGA Period.

14 hh. "Released Parties" means Defendant and its current and former officers, directors,
15 employees, and agents, and the predecessors, successors and assigns.

16 ii. "Response Deadline" means the deadline by which Class Members must postmark
17 or fax to the Settlement Administrator requests for exclusion or notices of objection. The
18 Response Deadline will be forty-five (45) calendar days after the initial mailing of the Notice
19 Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a
20 Sunday or federal holiday, in which case the Response Deadline will be extended to the next day
21 on which the U.S. Postal Service is open. The Response Deadline will be extended as set forth
22 herein if there is a re-mailing.

23 jj. "Settlement Administration Costs" means all costs incurred by the Settlement
24 Administrator in administration of the Settlement, including, but not limited to, mailing of notice
25 to the class, calculation of Individual Settlement Payments, generation of Individual Settlement
26 Payment checks and related tax reporting forms, administration of unclaimed checks, and
27 generation of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiff for his
28

1 Enhancement Award, and to the LWDA. The Settlement Administration Costs shall be paid from
2 the Gross Settlement Amount.

3 kk. "Settlement Administrator" means Phoenix Settlement Administrators which the
4 Parties have agreed will be responsible for the administration of the Individual Settlement
5 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
6 this Agreement.

7 **ARTICLE II**

8 **CONTINGENT NATURE OF THE AGREEMENT**

9 **Section 2.01: Stipulation of Class Certification for Settlement Purposes**

10 Because the Parties have stipulated to the certification of the Class with respect to all
11 causes of action alleged in the Action for settlement purposes only, this Agreement requires
12 preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement
13 on a conditional basis. This Agreement is contingent upon the approval and certification by the
14 Court. If the Date of Finality does not occur, the fact that the Parties were willing to stipulate for
15 the purposes of this Agreement to a Class shall have no bearing on, nor be admissible in
16 connection with, the issue of certification of the Class with respect to all causes of action alleged
17 in the Action. Defendant does not consent to certification of the Class for any purpose other than
18 to effectuate settlement of the Action. If the Date of Finality does not occur, or if Disposition of
19 this Action is not effectuated, any certification of the Class as to Defendant will be vacated and
20 Named Plaintiff, Defendant, and the Class will be returned to their positions with respect to the
21 Action as if the Agreement had not been entered into. In the event that the Date of Finality does
22 not occur: (a) any Court orders preliminarily or finally approving certification of any class
23 contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited
24 thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement,
25 the fact that Defendant did not oppose the certification of a Class under this Agreement, or that
26 the Court preliminarily approved the certification of the Class, shall not be used or cited thereafter
27 by any person or entity, including in any manner whatsoever, including without limitation any
28 contested proceeding relating to the certification of any class. If the Date of Finality does not

1 occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever,
2 and shall not be referred to or used for any purpose whatsoever. Defendant expressly reserves the
3 right to challenge the propriety of class certification in the Action for any purpose, if the Date of
4 Finality does not occur.

5 The Parties and their respective counsel shall take all steps that may be requested by the
6 Court relating to the approval and implementation of this Agreement and shall otherwise use their
7 respective best efforts to obtain Court approval and implement this Agreement. If the Court does
8 not grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties
9 agree to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
10 resolution, the Parties agree to seek the assistance of mediator Jill Sperber to resolve the dispute.

11 **ARTICLE III**

12 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

13 The procedure for obtaining Court approval of and implementing this Agreement shall be
14 as follows:

15 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

16 Named Plaintiff will bring a motion before the Court for an order conditionally certifying
17 the Class to include all claims pled in the Action based on the preliminary approval of this
18 Agreement. The date that the Court grants preliminary approval of this Agreement will be the
19 "Preliminary Approval Date."

20 **Section 3.02: The Settlement Administrator**

21 The Parties have chosen Phoenix Settlement Administrators to administer this Settlement
22 and to act as the Settlement Administrator, including but not limited to distributing and
23 responding to inquiries about the Notice Packet, determining the validity of exclusions/opt-outs,
24 calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the
25 Individual Settlement Payment checks and distributing them to Participating Class Members,
26 establishing and maintaining the QSF, and issuing the payment to Class Counsel for attorneys'
27 fees and costs, the Enhancement Award check to Named Plaintiff, and the employer payroll taxes
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1 to the appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of
2 the terms and conditions of this Agreement.

3 All costs of administering the Settlement, including but not limited to all costs and fees
4 associated with preparing, issuing and mailing any and all notices to Class Members and/or
5 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
6 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any
7 tax returns and any other filings required by any governmental taxing authority or agency, all
8 costs and fees associated with preparing any other checks, notices, reports, or filings to be
9 prepared in the course of administering disbursements from the Net Settlement Amount, and any
10 other costs and fees incurred and/or charged by the Settlement Administrator in connection with
11 the execution of its duties under this Agreement (“Settlement Administration Costs”), shall be
12 paid to the Settlement Administrator from the Gross Settlement Amount.

13 **Section 3.03: Notice to Class Members**

14 No later than ten (10) business days after the Preliminary Approval Date, Defendant will
15 provide the Settlement Administrator with a “Class List” in electronic format based on its
16 business records, identifying the names of the Class Members, their last known home addresses,
17 Social Security numbers or, as applicable, other taxpayer identification number, their dates of
18 employment, weeks worked during the Class Period, and pay periods worked during the PAGA
19 Period.

20 Within ten (10) business days of receiving a Class List from Defendant, the Settlement
21 Administrator will send Class Members, by first-class mail, at their last known address, the Court
22 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of
23 the Settlement Class. The Notice Packet will include a calculation of the Class Member’s
24 approximate share of the Net Settlement Amount. Class Members will have forty-five (45) days
25 from the date of mailing in which to postmark objections or requests for exclusion. Prior to the
26 initial mailing, the Settlement Administrator will check all Class Member addresses against the
27 National Change of Address database and shall update any addresses before mailing. The
28 Settlement Administrator will skip trace and re-mail all returned, undelivered mail within five (5)

1 days of receiving notice that a Notice Packet was undeliverable. If a Class Member's notice is re-
2 mailed, the Class Member shall have fifteen (15) calendar days from the re-mailing, or forty-five
3 (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark
4 objections or requests for exclusion. Class Members shall not be required to submit claim forms
5 in order to receive a proportional share of the Net Settlement Amount.

6 If the Notice Packet is returned with a forwarding address, the Settlement Administrator
7 shall re-mail the Notice Packet to the forwarding address. With respect to those Class Members
8 whose Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
9 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
10 or mass search on LexisNexis or comparable databases based on set criteria and, if another
11 address is identified, shall mail the Notice Packet to the newly identified address. It is the intent
12 of the Parties that reasonable means be used to locate Class Members and that the Settlement
13 Administrator be given discretion to take steps in order to facilitate notice of the Settlement and
14 delivery of the Individual Settlement Payments to all Participating Class Members.

15 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own
16 records and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part
17 of a weekly status report provided to the Parties.

18 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar
19 days after the Notice Packet was initially mailed, the Settlement Administrator will not mail the
20 Class Member's Individual Settlement Payment. The Settlement Administrator will hold the
21 Class Member's Individual Settlement Payment during the check cashing period on behalf of the
22 Class Member. If at the conclusion of the check cashing period the Class Member's Notice
23 Packet and Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed,
24 the Settlement Administrator will distribute the funds from unclaimed/uncashed checks in
25 accordance with the procedures set forth in Section 3.07(g) below.

26 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
27 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
28 attesting to completion of the notice process, including any attempts to obtain valid mailing

addresses for and re-sending of any returned Notice Packets, as well as the number of valid requests for exclusion and objections that the Settlement Administrator received.

Section 3.04: Responses to Notice

a. Class Member Disputes

If any Class Member disagrees with Defendant's records as to his or her Qualifying Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period and submit such writing to the Settlement Administrator by the Response Deadline, along with any supporting documentation. The Notice will also provide a method for the Class Member to challenge the employment data on which his or her Individual Settlement Payment is based. The Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on the information provided to it.

b. Requests for Exclusion from Class

In order for any Class Member to validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class Member or his or her authorized representative, and must be sent to the Settlement Administrator, postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall contain instructions on how to validly exclude himself or herself from the Class and this Settlement (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Class Member who timely and validly requests exclusion from the Class and this Settlement will not be entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this Agreement, and will not have any right to object, appeal, or comment thereon.

1 Any Class Member who fails to timely submit a request for exclusion shall automatically
2 be deemed a Class Member whose rights and claims with respect to the issues raised in the Action
3 are determined by the Court's Final Order Approving Settlement of Class Action, and by the
4 other rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the
5 Action and/or released in this Agreement will be extinguished.

6 **c. Objections to Settlement**

7 For any Class Member to object to this Agreement, or any term of it, the person making
8 the objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to
9 the Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen
10 (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever
11 is later), a written statement of the grounds of objection, signed by the objecting Class Member or
12 his or her attorney, along with all supporting papers. The date of the initial mailing of the Notice
13 Packet, and the date the signed objection was postmarked, shall be conclusively determined
14 according to the records of the Settlement Administrator. The Settlement Administrator shall send
15 any objections it receives to Defense Counsel and Class Counsel within three (3) business days of
16 receipt. Class Members may also appear at the final approval hearing to object. The Court retains
17 final authority with respect to the consideration and admissibility of any Class Member
18 objections.

19 **d. Encouragement of Class Members**

20 The Parties to this Agreement and the counsel representing such Parties shall not, directly
21 or indirectly, through any person, encourage or solicit any Class Member to exclude him or
22 herself from this Settlement (opt out), or to object to it. However, Class Counsel may respond to
23 inquiries from Class Members.

24 **e. Right of Plaintiff to Adjust Gross Settlement Amount**

25 Defendant has estimated that as of March 18, 2021, there are no more than 18,648
26 workweeks worked during the Class Period by Class Members. In the event the actual total
27 number of workweeks working during the Class Period increases by more than 10% (*i.e.* 20,512
28 workweeks) the Gross Settlement Amount shall be increased by the same number of percentage

1 points above 10%. For example, if the actual number of workweeks is determined to be 12%
2 higher than 18,648, the Gross Settlement Amount shall be increased by 2%. As an alternative to
3 paying an increased Gross Settlement Amount, Defendant may select an earlier end date for the
4 Settlement Period which brings the total workweeks below 20,512 workweeks.

5 **Section 3.05: Final Fairness and Approval Hearing**

6 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
7 Fairness and Approval Hearing shall be held before the Court in order to (1) review this
8 Agreement and determine whether the Court should give it final approval, and (2) consider any
9 objections made and all responses by the Parties to such objections. At the Final Fairness and
10 Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement and
11 shall submit to the Court a Proposed Final Order Approving Settlement of Class Action.

12 **Section 3.06: Settlement Payment Procedures**

13 **a. Funding the Gross Settlement Amount**

14 In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay
15 the Gross Settlement Amount in the amount of Seven Hundred Thousand Dollars (\$700,000.00),
16 subject to a pro rata increase under the condition set forth in Section 3.04(e). The Gross
17 Settlement Amount includes all Individual Settlement Amounts to Participating Class Members,
18 all administration costs, Class Counsel's attorney's fees and costs, the Enhancement Award, and
19 the LWDA payment for the PAGA claim. The employer's share of payroll taxes and withholding
20 associated with each Class Member's Individual Settlement Payment will be paid separate from
21 and in addition to the Gross Settlement Amount.

22 Defendant will pay to the Settlement Administrator the Gross Settlement Amount and
23 employer taxes in full no later than April 1, 2022. These payments are due to the settlement
24 administrator regardless of whether preliminary or final approval has been granted and will be
25 held by the administrator in a low-risk interest bearing account, until distribution following Final
26 Approval. Any accrued interest will be applied to the Gross Settlement Amount. If, for any
27 reason, preliminary or final approval is not granted, all sums deposited with the settlement
28

1 administrator, including interest, will revert back to Defendant. Further, Defendant shall have the
2 right to fund the GSA early at its discretion.

3 Within ten (10) court days after receiving Defendant's final payment, funding the Gross
4 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement
5 Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA
6 Payment, the Enhancement Award, and employer and employee tax withholdings applicable to
7 the Net Settlement Amount allocated to wages. Prior to this distribution, the Settlement
8 Administrator will perform a search based on the National Change of Address Database to update
9 and correct for any known or identifiable address changes.

10 **b. Payment of Attorneys' Fees and Costs**

11 Class Counsel shall submit an application for an award of attorneys' fees of up to one-
12 third of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is
13 Two Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three
14 Cents (\$233,333.33). Class Counsel shall submit an application for an award of costs not to
15 exceed Thirteen Thousand Dollars (\$13,000.00). Such application for attorneys' fees and costs
16 shall be heard by the Court at the Final Fairness and Approval Hearing. Defendant shall not
17 object to or oppose any such application in these amounts. Class Counsel shall serve Defendant
18 with copies of all documents submitted in support of their application for an award of attorneys'
19 fees and costs.

20 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from
21 the Gross Settlement Amount and shall not constitute payment to any Class Member(s). The
22 attorneys' fees and costs for Class Counsel approved by the Court shall encompass all work
23 performed, costs, and expenses related to the investigation, prosecution, and settlement of the
24 Action incurred through the Date of Finality. To the extent that the Court approves less than the
25 amount of attorney's fees and/or costs that Class Counsel requests, the difference between the
26 requested and awarded amounts will be reallocated to the Net Settlement Amount.

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1 **c. Payment of Settlement Administration Costs**

2 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount
3 and shall not constitute payment to any Participating Class Member(s). The amount shall not
4 exceed Nine Thousand Dollars (\$9,000.00).

5 **d. Payment of Incentive Award to Named Plaintiff**

6 Subject to Court approval, the Named Plaintiff shall receive an Enhancement Award of up
7 to Seven Thousand Five Hundred Dollars (\$7,500.00), the request for which Defendant will not
8 object to or oppose. The Enhancement Award shall be paid out of the Gross Settlement Amount
9 and shall not constitute payment to any Participating Class Member(s) other than Named
10 Plaintiff. To the extent that the Court approves less than the amount of incentive award that Class
11 Counsel request, the difference between the requested and awarded amounts will be reallocated to
12 the Net Settlement Amount.

13 Because it is the intent of the Parties that the Enhancement Award represent payment to
14 Named Plaintiff for their service to the Class Members, and not wages, the Settlement
15 Administrator will not withhold any taxes from the Enhancement Award. The Enhancement
16 Award will be reported on a Form 1099, which the Settlement Administrator will provide to
17 Named Plaintiffs and to the pertinent taxing authorities as required by law.

18 **e. Payment to the Labor and Workforce Development Agency**

19 In consideration of claims made under PAGA, Class Counsel will request that the Court
20 approve allocation of Forty Thousand Dollars (\$40,000) of the Gross Settlement Amount to these
21 claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
22 Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be
23 paid to the Net Settlement Amount for distribution. Defendant will not oppose this request. The
24 entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount. The Court's
25 adjustment, if any, of the amount allocated to Named Plaintiff's PAGA claim in the Action, will
26 not invalidate this Agreement.

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f. Payment of Individual Settlement Payments to Participating Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member and in proportion to the number of individual Qualifying Pay Periods for each PAGA Group Member. To calculate the minimum amount each Class Member will receive based on their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. The same procedure will be used in calculating the individual payments to PAGA Group Members based on their number of Qualifying PAGA Pay Periods. Each Class Member's approximate Individual Settlement Payment amount will be included in his or her Notice Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period by each Participating Class Member. The PAGA Group Members will receive their portion of the PAGA Payment regardless of whether they opt out.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 20% allocated to wages; 80% allocated to penalties and interest. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

No later than ten (10) business days after receiving the Gross Settlement Amount from Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual

1 Settlement Payments to Participating Class Members. Individual Settlement Payments paid from
2 the Net Settlement Amount allocated to wages will be reduced by applicable employer and
3 employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage
4 portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form
5 1099 to the extent required by law for the interest and penalty portions of the Individual
6 Settlement Payments. Participating Class Members shall have 180 days from the date their
7 Individual Settlement Payment checks are dated to cash their Settlement checks. Any checks that
8 are not cashed upon the expiration of that 180-day time period will be void, and the uncashed
9 funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class
10 Member for whom the funds are designated.

11 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
12 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
13 or a mass search on LexisNexis or a comparable database based on set criteria and, if another
14 address is identified, the Settlement Administrator shall mail the check to the newly identified
15 address. If the Settlement Administrator is unable to obtain a valid mailing address through this
16 process, the Settlement Administrator will tender the funds from the undeliverable checks to the
17 State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds
18 are designated.

19 **g. Default on Payment.**

20 In the event Defendant makes a late payment or does not pay any portion of the Gross
21 Settlement Amount, it shall be considered a default. In the event Defendant fails to fund the Gross
22 Settlement Amount on the date it is due, under Section 3.07(a), the Settlement Administrator will
23 provide notice to Class Counsel and Defendant's counsel within three (3) business days of the
24 missed payment. Thereafter, Defendant will have seven (7) days to cure the default and tender
25 payment to the Settlement Administrator. In the event Defendant fails to cure the default within
26 the times set forth herein, Named Plaintiff may elect to enter judgment against Defendant, on an
27 ex parte basis, for the balance of the unpaid Gross Settlement Amount to date, and Named
28

1 Plaintiff will be entitled to recover interest at ten percent (10%) per year from the due date for
2 such payment and reasonable attorneys' fees and costs.

3 **h. No Credit Toward Benefit Plans.**

4 The Individual Settlement Payments made to Participating Class Members under this
5 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized
6 to calculate any additional benefits under any benefit plans to which any Class Members may be
7 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
8 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it
9 is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to
10 which any Class Members may be entitled under any benefit plans.

11 **ARTICLE IV**

12 **LIMITATIONS ON USE OF THIS SETTLEMENT**

13 **Section 4.01: No Admission**

14 Defendant disputes the allegations in the Action and disputes that, but for this Settlement,
15 a Class should not have been certified in the Action. This Agreement is entered into solely for the
16 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
17 construed as an admission of liability or wrongdoing by Defendant.

18 **Section 4.02: Non-Evidentiary Use**

19 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms,
20 nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as,
21 or deemed to be evidence for any purpose adverse to Defendant or any other of the Released
22 Parties, including but not limited to, evidence of a presumption, concession, indication, or
23 admission by any of the Released Parties of any liability, fault, wrongdoing, omission,
24 concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the
25 Released Parties in any further proceeding in the Action, except for the purposes of effectuating
26 the Settlement pursuant to this Agreement or for Defendant to establish that a Class Member has
27 resolved any of his or her claims released through this Agreement.

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1 **Section 4.03: Nullification**

2 The Parties have agreed to the certification of the Class encompassing all claims alleged
3 in the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any
4 reason fail to certify this Class for settlement, or (b) the Court should for any reason fail to
5 approve this Settlement, or (c) the Court should for any reason fail to enter the Final Order, or
6 (d) the Final Order is reversed, or declared or rendered void, or (e) the Court should for any
7 reason fail to dispose of the Action in its entirety, then (i) this Agreement shall be considered null
8 and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of
9 any force or effect; (iii) all Parties to this Agreement shall stand in the same position, without
10 prejudice, as if the Agreement had been neither entered into nor filed with the Court; and (iv) the
11 fact that the Parties were willing to stipulate to class certification of all causes of action pled in
12 the Action as part of the Settlement will have no bearing on, and will not be admissible in
13 connection with, the issue of whether the Class should be certified by the Court in a non-
14 settlement context in this Action or any other action, and in any of those events, Defendant
15 expressly reserves the right to oppose certification of the Class.

16 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and
17 the Gross Settlement Amount shall not be distributed pending the completion of the appeal.

18 **ARTICLE V**

19 **RELEASES**

20 **Section 5.01: Released Claims by Class Members**

21 Upon the Date of Finality, Named Plaintiff and Participating Class Members who do not
22 opt out of the Settlement, release the Released Parties from any and all claims arising from the
23 claims pled in the Action, and any claims that could have been pled in the Action based on facts
24 alleged in the Operative Complaint, including all claims based on failure to pay minimum wages,
25 failure to pay overtime wages, failure to provide meal periods, failure to authorize or permit rest
26 periods, failure to pay wages upon separation of employment and within the required time, failure
27 to provide accurate itemized wage statements, violation of California Business and Professions
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Code §§17200, *et seq.* and any claims asserted under the Private Attorney General Act, based on the preceding claims (“Released Claims”).

Section 5.02: Named Plaintiff’s Release of Unknown Claims

Upon the Date of Finality, Named Plaintiff, waive, release, acquit, and forever discharge the Released Parties from any and all claims, actions, charges, complaints, grievances, and causes of action, of any nature arising from Named Plaintiff’s employment with Defendant, whether known or unknown, which exist or may exist as of the Parties’ execution of this Agreement.

Section 1542 of the California Civil Code 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.”

Plaintiff’s general release provided herein is made with an express waiver and relinquishment of any claim, right, or benefit under California Civil Code § 1542.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.01: Amendments or Modification

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

Section 6.02: Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

1 **Section 6.03: Governing Law**

2 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
3 shall be determined, in accordance with the laws of the State of California, without regard to
4 conflicts of laws.

5 **Section 6.04: Entire Agreement**

6 This Agreement, including the Exhibits referred to herein, which form an integral part
7 hereof, contains the entire understanding of the Parties with respect to the subject matter
8 contained herein. In case of any conflict between text contained in Articles I through VI of this
9 Agreement and text contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I
10 through VI) shall be controlling, unless the Exhibits are changed by or in response to a Court
11 order. There are no restrictions, promises, representations, warranties, covenants, or undertakings
12 governing the subject matter of this Agreement other than those expressly set forth or referred to
13 herein. This Agreement supersedes all prior agreements and understandings among the Parties
14 with respect to the settlement of the Action, including correspondence between Class Counsel and
15 Defense Counsel and drafts of prior agreements or proposals.

16 **Section 6.05: Waiver of Compliance**

17 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
18 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly
19 waived in writing, to the extent permitted under applicable law, by the Party or Parties and their
20 respective counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A
21 waiver or failure to insist upon strict compliance with any representation, warranty, covenant,
22 agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any
23 subsequent or other failure.

24 **Section 6.06: Counterparts and Fax/PDF Signatures**

25 This Agreement, and any amendments hereto, may be executed in any number of
26 counterparts and any Party and/or their respective counsel may execute any such counterpart,
27 each of which when executed and delivered shall be deemed to be an original. All counterparts
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1 taken together shall constitute one instrument. A fax or PDF signature on this Agreement shall be
2 as valid as an original signature.

3 **Section 6.07: Meet and Confer Regarding Disputes**

4 Should any dispute arise among the Parties or their respective counsel regarding the
5 implementation or interpretation of this Agreement, a representative of Class Counsel and a
6 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes
7 prior to submitting such disputes to the Court.

8 **Section 6.08: Agreement Binding on Successors**

9 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
10 of each of the Parties.

11 **Section 6.09: Cooperation in Drafting**

12 The Parties have cooperated in the negotiation and preparation of this Agreement. This
13 Agreement will not be construed against any Party on the basis that the Party, or the Party's
14 counsel, was the drafter or participated in the drafting of this Agreement.

15 **Section 6.10: Fair and Reasonable Settlement**

16 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement
17 of the Action and have arrived at this Agreement through arm's-length negotiation and in the
18 context of adversarial litigation, taking into account all relevant factors, current and potential. The
19 Parties further believe that the Settlement is and is consistent with public policy, and fully
20 complies with applicable law.

21 **Section 6.11: Headings**

22 The descriptive heading of any section or paragraph of this Agreement is inserted for
23 convenience of reference only and does not constitute a part of this Agreement and shall not be
24 considered in interpreting this Agreement.

25 **Section 6.12: Notice**

26 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
27 communications under this Agreement must be in writing and addressed as follows:

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To Named Plaintiff and the Class:

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Kristy R. Connolly
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

And

To Defendant:

FISHER & PHILLIPS LLP
Spencer W. Waldron,
Jonathan Russell Blakey
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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1 **Section 6.14: Mutual Full Cooperation**

2 The Parties agree fully to cooperate with each other to accomplish the terms of this
3 Agreement, including but not limited to the execution of such documents, and the taking of such
4 other action, as may reasonably be necessary to implement the terms of this Agreement. The
5 Parties to this Agreement shall use their best efforts, to effectuate and implement this Agreement
6 and its terms. In the event the Parties are unable to reach agreement on the form or content of any
7 document needed to implement the Settlement, or on any supplemental provisions that may
8 become necessary to effectuate the terms of the Settlement, the Parties agree to seek the
9 assistance of the Court.

10 **Section 6.15: Authorization to Act**

11 Class Counsel warrants and represents that they are authorized by Named Plaintiff, and
12 Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action
13 required to effectuate the terms of this Agreement, except for signing documents, including but
14 not limited to this Agreement, that are required to be signed by the Parties themselves. Defendant
15 represents and warrants that the individual executing this Agreement on its behalf has the full
16 right, power, and authority to enter into this Agreement and to carry out the transactions
17 contemplated herein.

18 **Section 6.16: No Reliance on Representations**

19 The Parties have made such investigation of the facts and the law pertaining to the matters
20 described herein and to this Agreement as they deem necessary, and have not relied, and do not
21 rely, on any statement, promise, or representation of fact or law, made by any of the other parties,
22 or any of their agents, employees, attorneys, or representatives, with regard to any of their rights
23 or asserted rights, or with regard to the advisability of entering into and executing this Agreement,
24 or with respect to any other matters. No representations, warranties, or inducements, except as
25 expressly set forth herein, have been made to any party concerning this Agreement.

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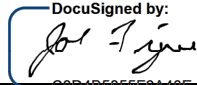
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EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

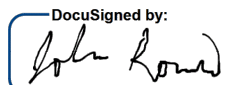
Dated: 5/28/2021

JOE FIGUEROA

By: 
 DocuSigned by: C8D465855F6A40E...
Joe Figueroa

Dated: 5/27/2021

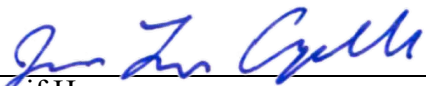
A-1 DELIVERY CO

By: 
 DocuSigned by: 89F8CE129477448...
(Signature)
John Romine
(Printed Name)
President
(Title)

Approved as to form:

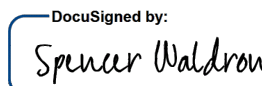
Dated: 05/28/2021

AEGIS LAW FIRM, PC

By: 
Kamif Haque
Samuel A. Wong
Jessica L. Campbell
Kristy R. Connolly
Attorneys for Plaintiff Joe Figueroa

Dated: 5/27/2021

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By: 
Spencer Waldron
Jonathan Russell Blakey
Attorneys for Defendants A-1 Delivery
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