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Attorneys for Plaintiff Janai Robinson

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

JANAI ROBINSON, an individual,

Plaintiff,

v.

BUTTERFLY EFFECTS, LLC, a limited
liability company; ADP TOTALSOURCE,
INC., a corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2020-4288

STIPULATION OF SETTLEMENT UNDER
PRIVATE ATTORNEYS GENERAL ACT OF
2004; [PROPOSED] ORDER

The Parties hereto, Plaintiff Janai Robinson ("Plaintiff"), as a proxy for the LWDA, and Defendants Butterfly Effects, LLC and ADP TotalSource, Inc. ("Defendants"), by and through their respective counsel of record, hereby stipulate and agree as follows:

1. WHEREAS, on February 24, 2020, counsel for Plaintiff sent a letter to the California Labor and Workforce Development Agency ("LWDA") and Defendants alleging violations of, *inter alia*, Labor Code sections 201, 204, 226, 226.7, 510, alleged to have occurred during Plaintiff's employment with Defendants on behalf of Plaintiff and other purported aggrieved employees ("LWDA Letter").

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2. WHEREAS, on May 26, 2020, Plaintiff filed this action, alleging a single cause of action under the Private Attorneys General Act (“PAGA”), seeking to recover civil penalties for the aforementioned alleged violations of the Labor Code.

3. WHEREAS, subsequent to the filing of this stipulation, the Parties have engaged in informal discovery through which Defendants have provided information regarding the number of California employees believed to have been affected by the alleged violations during the relevant time period. At the time the Parties negotiated a settlement agreement, the total number of aggrieved employees potentially affected by the PAGA Claims was 582.

4. Whereas, Defendants deny Plaintiff’s allegations, both on factual and legal bases.

5. WHEREAS, the Parties engaged in settlement negotiations resulting in a settlement reached at mediation primarily through their respective attorneys: John P. Briscoe, a shareholder of Mayall Hurley P.C. and a member of that firm’s employment litigation group; and Kevin D. Reese, a Principal of Jackson Lewis P.C., both experienced litigators with knowledge of employment law and the PAGA.

6. WHEREAS, the Parties have reached agreement on the terms of settlement regarding the PAGA claims (and also Plaintiff’s individual claims, by way of a separate, confidential settlement agreement).

7. WHEREAS, Defendants, subsequent to the Parties’ mediation and settlement, without admitting any liability or fault, have modified the practices related to the claims at issue to avoid further potential exposure or liability to the claims set forth in the operative Complaint.

8. WHEREAS, Labor Code section 2699(l) requires that the court review and approve any proposed settlement agreement pursuant to PAGA.

9. WHEREAS, Plaintiff and Plaintiff’s counsel concluded—after taking into account the sharply disputed factual and legal issues involved in the Action, the risks attending further prosecution, the discovery and investigation conducted to date, and the substantial benefits received and to be received pursuant to the compromise and settlement of the Action, the nature of the claimed violations and the wide discretion of the Court to reduce civil penalties imposed—that settlement on

1 the terms herein set forth is in the best interest of all interested parties, including the Labor and
2 Workforce Development Agency (the "LWDA"), and that the settlement adequately serves the
3 deterrent purposes of the PAGA.

4 10. WHEREAS, Plaintiff and Plaintiff's counsel have balanced their evaluation of the
5 validity and strength of the asserted claims against the problems of proof and the legal standards
6 governing the claims alleged. Based on this evaluation, Plaintiff's counsel believes that the
7 settlement reached satisfies the public policies of PAGA to punish past violations and deter future
8 violations of the Labor Code.

9 11. WHEREAS, similarly, although Defendants dispute the various allegations and
10 causes of action in the Action, Defendants agreed to this settlement without any admission of fault
11 or liability. Nothing in this Agreement, nor any action taken in implementation thereof, nor any
12 statements, discussions or communications, nor any materials prepared, exchanged, issued, or used
13 during the course of the negotiations leading to this Agreement, is intended by the Parties to
14 constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any
15 way in this case or any judicial, arbitral, administrative, investigative, or other forum or proceeding
16 as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or
17 executive order, or any obligation or duty at law or in equity, by Defendants or any other Released
18 Party.

19 12. WHEREAS, the Parties hereby agree to settle the PAGA claims at issue in the Action
20 ("the PAGA Settlement") for a total payment of \$120,000. A true and correct copy of the PAGA
21 Settlement is attached hereto as **Exhibit A** and incorporated by reference as though fully set forth
22 herein.

23 13. WHEREAS, the persons covered by the PAGA Settlement will be all persons who
24 worked for Defendant Butterfly Effects, LLC in California at any time as an hourly and/or non-
25 exempt employee from March 22, 2019 to the date of the effective date of this order (the "Other
26 Aggrieved Employees") within California. The time period covered by the PAGA Settlement will
27 be from March 22, 2019 through the effective date of this order ("the PAGA Timeframe"). The

Released Parties include Defendants and all of their current and former directors, officers, partners, shareholders, owners, employees, insurers, attorneys, agents, successor, and assigns; and (2) all of Defendants' current and former parents, subsidiaries, and affiliates, as well as each of their current and former directors, officers, partners, shareholders, owners, employees, insurers, attorneys, agents, successors, and assigns (hereinafter collectively referred to as the "Released Parties"). Upon the Effective Date (the date of this stipulated order), the LWDA and each of the Other Aggrieved Employees, including Plaintiff, hereby voluntarily and knowingly release and forever discharge all claims under PAGA that arise out of or relate to the allegations contained in the Complaint and includes all known or unknown claims for civil penalties, attorneys' fees, costs, or any other relief under PAGA arising out of the Labor Code claims and allegations expressly pleaded in the Complaint or such claims or allegations that could have been based on the facts pleaded in the Complaint, from March 22, 2019 through the date of this order.

14. This waiver shall not operate as a waiver of any of Plaintiff's individual (i.e., non-PAGA) claims, which are being resolved by a separate agreement.

15. WHEREAS, the sum of \$120,000 (the "Gross PAGA Settlement Sum") shall be allocated as follows:

- a. \$40,000 representing 33 1/3% of the Gross PAGA Settlement Sum as attorneys' fees incurred for prosecution of the PAGA Claim;
- b. \$7,545.10, representing litigation costs incurred in prosecuting the PAGA claim;
- c. \$5,000, representing an incentive payment to Plaintiff for bringing this PAGA claim;
- d. An amount that will not exceed \$6,000 to cover the costs of administering the Gross PAGA Settlement Sum (the Parties have selected Phoenix Settlement Administrators); and
- e. The remaining amount after all deductions from the Gross PAGA Settlement Sum of approximately \$61,454.90 representing the amount of the net PAGA settlement sum (the "Net PAGA Settlement Sum").

The Net PAGA Settlement Amount will be further allocated as follows:

- 1
- 2 a. 25 percent (25%) of the Net PAGA Settlement Sum will be distributed by the
- 3 settlement administrator to the Other Aggrieved Employees who worked during
- 4 the PAGA Timeframe. Each employee will receive a proportional share of the
- 5 net PAGA Settlement Sum based on the number of pay periods he/she was
- 6 employed during the PAGA Timeframe. Any such employees still employed with
- 7 or on behalf of Defendant Butterfly Effects, LLC will receive the appropriate
- 8 credit apart from their regular pay. The settlement administrator will send each
- 9 Other Aggrieved Employee their portion of the settlement by mail to the last
- 10 known address. Settlement checks issued to the Other Aggrieved Employees
- 11 pursuant to this Agreement shall expire 180 days from the date they are issued.
- 12 Any unclaimed funds after the 180 days shall be remitted to the LWDA.
- 13
- 14 b. 75 percent (75%) of the Net PAGA Settlement Sum shall be paid to the LWDA
- 15 in accordance with Section 2699(i) of the California Labor Code.

16 16. The Parties jointly request that the Court approve the penalties sought as part of the

17 PAGA Settlement.

18 17. This Stipulation is made for the sole purpose of settling this action. This Stipulation

19 and the settlement it evidences are made in compromise of disputed claims. Because this action was

20 pleaded as a PAGA action, this Stipulation must receive approval by the Court. Accordingly, the

21 Parties enter into this Stipulation and associated settlement on a conditional basis. If the Court does

22 not enter an order granting approval of the Stipulation, this Stipulation shall be deemed null and void;

23 it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose

24 whatsoever; and the negotiation, terms and entry of the Stipulation shall remain subject to the

25 provisions of California Evidence Code sections 1119 and 1152, Federal Rule of Evidence 408, and

26 any other analogous rules of evidence that may be applicable.

27 18. The Parties agree to cooperate in obtaining an order from the Court approving this

28 Stipulation and the associated settlement from the Court. The Parties further agree to fully cooperate

in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared

or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise

reasonably necessary to the approval and implementation of this Stipulation and shall otherwise use

their respective best efforts to obtain approval of and implementation of this Stipulation and the

1 associated settlement.

2 19. The Parties and their counsel agree that they will not issue any press releases, initiate
3 any contact with the press, respond to any press inquiry or have any communication with the press
4 about the fact, amount or terms of this Stipulation. In addition, the Parties and their counsel agree
5 that they will not engage in any advertising or distribute any marketing materials relating to this
6 Stipulation or this action in any manner that identifies Defendants, including but not limited to any
7 postings on any websites maintained by Plaintiff's counsel. Neither Plaintiff nor Plaintiff's Counsel
8 will discuss the terms or the fact of this Agreement with third parties other than (1) their immediate
9 family members, or (2) their respective accountants or lawyers as necessary for tax purposes.
10 Plaintiff and Plaintiff's Counsel agree not to publish any of the terms or conditions of this Stipulation
11 in any manner that identifies Defendants.

12 20. Defendants agree not to oppose Plaintiff's requests for attorneys' fees in the amount
13 set forth in Paragraph 15. The Parties agree that if the Court approves an amount of attorneys' fees
14 less than the amount set forth in Paragraph 15, the unapproved portion or portions shall revert to the
15 Net PAGA Settlement Amount to be distributed between the Other Aggrieved Employees and the
16 LWDA in the same percentages as set forth in Paragraph 15.

17 **IT IS SO STIPULATED.**

18 **DATED:** February 26, 2021

MAYALL HURLEY P.C.

19 By: 

20 JOHN P. BRISCOE
21 Attorneys for Plaintiff
JANAI ROBINSON

22 **DATED:** February 26, 2021

JACKSON LEWIS, P.C.

23 By: 

24 KEVIN R. REESE
25 JANELLE J. SAHOURIA
26 Attorneys for Defendants
BUTTERFLY EFFECTS, LLC AND ADP
TOTALSOURCE, INC.

1 **[PROPOSED] ORDER**

2 Upon review of the foregoing stipulation entered into by and between the Parties in the
3 above-referenced action, and good cause appearing therefor,

4 **IT IS HEREBY ORDERED** that the foregoing stipulation is hereby approved and the
5 Court approves the Parties' PAGA Settlement pursuant to Labor Code § 2699(l).
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7 **DATED:**

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Judge of the Superior Court
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Exhibit A

SETTLEMENT AGREEMENT

This Settlement Agreement under the California Labor Code Private Attorneys General Act is made by and between (a) Plaintiff Janai Robinson, on behalf of herself and the State of California (including, but not limited to, the Labor and Workforce Development Agency), on the one hand; and (b) Defendants Butterfly Effects, LLC and ADP TotalSource, Inc., on the other hand, subject to Court approval in accordance with California Labor Code section 2699(1)(2).

I. DEFINITIONS

The following terms used in this Settlement Agreement shall have the meanings ascribed to them as set forth below:

- A. “Action” means the civil action titled *Janai Robinson v. Butterfly Effects, LLC and ADP TotalSource, Inc.*, filed in Superior Court of California, County of San Joaquin, Case No. STK-CV-VOE-2020-4288.
- B. “Settlement Agreement,” “Agreement,” or “Settlement” means this Settlement Agreement.
- C. “Complaint” means the operative complaint filed in the Action.
- D. “Court” means the Superior Court of California, County of San Joaquin.
- E. “Covered Period” means the period of time from March 22, 2019 through the date the Court grants approval of the Settlement.
- F. Defendants means Butterfly Effects, LLC and ADP TotalSource, Inc.
- G. “Final” means: (a) that the Settlement has been finally approved by the Court and the applicable date for seeking appellate review of the Court’s final approval of the Settlement and judgment has passed without a timely appeal or request for review having been made; or (b) if there is a timely appeal or other request for review, the applicable appellate court has rendered a final judgment affirming the Court’s final approval of the Settlement without material modification and the date for further appeal has passed without further appeal.
- H. “LWDA” means the California Labor and Workforce Development Agency.
- I. “LWDA Payment” means the portion of the Total Settlement Amount to be paid to the LWDA under this Agreement.
- J. “Net Settlement Amount” means the portion of the Total Settlement Amount that is available for distribution as the LWDA Payment and the Settlement Shares to the PAGA Members after deducting: (1) Plaintiff’s Court-approved attorneys’ fees and litigation costs; (2) the Settlement Administrator’s Court-approved fees and expenses; (3) the Plaintiff’s Court-approved Incentive Payment, if any, and (4) any

other fees or costs necessary to effectuate the settlement, including, but not limited to, any necessary payment of taxes.

- K. "PAGA" means the Private Attorneys General Act, California Labor Code section 2698, *et seq.*
- L. "PAGA Member(s)" means a person or the persons who worked for Defendant Butterfly Effects, LLC in California at any time as an hourly and/or non-exempt employee during the Covered Period.
- M. "Parties" shall mean: (1) Plaintiff, on behalf of herself and the State of California (including, but not limited to, the LWDA); and (2) Defendants.
- N. "Party" shall mean either Plaintiff or Defendants.
- O. "Plaintiff" means Janai Robinson.
- P. "Plaintiff's Counsel" means Mayall Hurley P.C.
- Q. "Released PAGA Claims" means the claims released by Plaintiff, the State of California (including, but not limited to, the LWDA), and the PAGA Members, which include all claims under PAGA that arise out of or relate to the allegations contained in the operative Complaint and includes all known or unknown claims for civil penalties, attorneys' fees, costs, or any other relief under PAGA arising out of the Labor Code claims and allegations expressly pleaded in the operative Complaint or such claims or allegations that could have been based on the facts pleaded in the Complaint.
- R. "Released Parties" means: (1) Defendants and all of their current and former directors, officers, partners, shareholders, owners, employees, insurers, attorneys, agents, successors, and assigns; and (2) all of Defendants' current and former parents, subsidiaries, and affiliates, as well as each of their current and former directors, officers, partners, shareholders, owners, employees, insurers, attorneys, agents, successors, and assigns.
- S. "Settlement Administrator" means Phoenix Settlement Administrators—the third party appointed by the Parties and the Court to administer this Settlement.
- T. "Settlement Shares" means the portion of the Total Settlement Amount allocable to the PAGA Members, as provided by this Agreement.
- U. "Total Settlement Amount" means the total amount to be paid by Defendant Butterfly Effects, LLC, as provided by this Agreement and approved by the Court.

II. RECITALS

- A. On February 24, 2020, Plaintiff submitted notice to the LWDA pursuant to California Labor Code section 2699.3, in which Plaintiff alleged: (1) failure to pay overtime, in violation of Labor Code section 510; (2) failure to provide compliant rest periods or premium pay, in violation of Labor Code sections 226.7; (3) failure to provide complaint meal periods or premium pay, in violation of Labor Code sections 226.7 and 512; (4) failure to furnish itemized wage statements, in violation of Labor Code section 226(a); (5) failure to pay all wages due upon each pay period, in violation of Labor Code section 204; (6) failure to pay all wages due and owing upon cessation of employment, in violation of Labor code section 201. The applicable statutory exhaustion periods under section 2699.3 expired without the LWDA indicating any intention of pursuing the claims on its own.
- B. On May 26, 2020, Plaintiff filed a complaint and initiated this Action against Defendants. In the complaint, Plaintiff alleges violations of the California Labor Code consistent with Plaintiff's February 24, 2020 PAGA notice to the LWDA and seeks civil penalties, attorneys' fees, and costs pursuant to PAGA.
- C. On November 5, 2020, the Parties participated in private mediation with Louis Marlin, Esq. ("the Mediator"). The settlement discussions during mediation were conducted at arm's length and with the assistance of an experienced mediator. This Settlement is the result of an informed analysis of Defendants' alleged potential liability in relation to the costs and risks associated with continued litigation.
- D. Based on the documents and information acquired during this litigation, Plaintiff's Counsel's independent investigation and evaluation, and the Mediator's efforts, Plaintiff's Counsel believes this Settlement is fair, reasonable, adequate, and in the best interest of Plaintiff, the State of California (including, but not limited to, the LWDA), and the PAGA Members in light of the facts and circumstances, including the risk of significant delay, the uncertainty of litigation, and the defenses asserted by Defendants. Plaintiff's Counsel also believes this Settlement advances the public policy and purposes underlying PAGA.
- E. Defendants, meanwhile, adamantly denies the claims and allegations asserted in this Action. Nevertheless, Defendants wish to fully and finally resolve this dispute in the interest of avoiding the time, cost, and expense of continued litigation. Nothing in this Agreement is intended or will be construed as an admission by Defendants that Plaintiff's claims or allegations in the Action have any merit or that Defendants have any liability to Plaintiff, the PAGA Members, the State of California (including, but not limited to, the LWDA), or anyone else.

III. SETTLEMENT TERMS AND CONDITIONS

A. Consideration and Payments.

- 1. **Total Settlement Amount.** The Total Settlement Amount pursuant to this Agreement is One-Hundred and Twenty Thousand Dollars and No Cents

(\$120,000.00). The Total Settlement Amount will cover: (1) Plaintiff's Counsel's attorneys' fees and litigation costs; (2) Plaintiff's Incentive Payment (if any); (3) the Settlement Administrator's fees and expenses; (4) the LWDA Payment; and (5) the Settlement Shares allocable to the PAGA Members.

2. **Plaintiff's Counsel's Attorneys' Fees and Litigation Costs.** Plaintiff's Counsel's will file an application or motion to the Court for: (1) attorneys' fees of no more than Forty Thousand Dollars and No Cents (\$40,000.00); and (2) litigation costs of no more than Seven Thousand Five Hundred Forty-Five Dollars and Ten Cents (\$7,545.10). Defendants agree not to oppose or impede Plaintiff's Counsel's application or motion so long as the request is consistent with the amounts above. All of the above attorneys' fees and costs will be paid from the Total Settlement Amount. Any amounts not awarded by the Court to Plaintiff's Counsel for attorneys' fees and litigation costs shall be added to the Net Settlement Amount.
3. **Incentive Payment.** Plaintiff agrees to execute a general release of all claims, including an express waiver of California Civil Code section 1542. In exchange for the general release, and in recognition of her effort and work in prosecuting the Action on behalf of herself and the State of California (including, but not limited to, the LWDA), Plaintiff will file an application or motion to the Court for an Incentive Payment of up to Five Thousand Dollars and No Cents (\$5,000.00). Defendants agree not to oppose or impede Plaintiff's application or motion so long as Plaintiff's request is consistent with the amount above. The Incentive Payment, which will be paid from the Total Settlement Amount, will be in addition to Plaintiff's Settlement Share. The Settlement Administrator will issue an IRS Form 1099 for the Incentive Payment to Plaintiff, and Plaintiff shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. Plaintiff agrees to indemnify and hold Defendants and Released Parties harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Incentive Payment. Should the Court approve the Incentive Payment in an amount less than that set forth above, the amount shall be added to the Net Settlement Amount.
4. **Payments to Settlement Administrator.** The Settlement Administrator will pay to itself out of the Total Settlement Amount its reasonable fees and expenses, as approved by the Court. Those fees and costs are estimated to be \$3,950.
5. **LWDA Payment.** The Settlement Administrator will pay 75% of the Net Settlement Amount to the LWDA as its share of the Settlement attributable to civil penalties under PAGA.

6. **Settlement Shares.** Unless otherwise ordered by the Court, the Settlement Administrator will pay 25% of the Net Settlement Amount as Settlement Shares to the PAGA Members. The Settlement Shares are intended to settle civil penalties, and therefore the payments to PAGA Members will not be reduced by payroll tax withholding and deductions; instead, the Settlement Administrator will issue each PAGA Member an IRS Form 1099, as well as any state or local equivalent, with respect to the payment. PAGA Members shall be solely and legally responsible for correctly characterizing the payment for tax purposes and for paying any taxes on the amounts received.
 - a. **Calculation of Each PAGA Member's Share of the Settlement Shares.** Each PAGA Member's share of the Settlement Shares will be calculated based on the number of pay periods the PAGA Member worked during the Covered Period:
 - i. The Settlement Administrator will determine: (1) the total number of pay periods (rounded to the nearest whole pay period) worked by all PAGA Members during the Covered Period; (2) the number of pay periods (rounded to the nearest whole pay period) worked by each PAGA Member during the Covered Period; and (3) the amount from the Net Settlement Amount to be paid to each PAGA Member as Settlement Shares.
 - ii. Defendant Butterfly Effects, LLC's pay period data will be presumed correct, unless a PAGA Member proves otherwise to the Settlement Administrator by credible evidence. All pay period disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all pay period disputes will be final and non-appealable.
 - iii. Each PAGA Member's share of the Settlement Shares shall be calculated using the following formula: $[(\text{Settlement Shares} \div \text{Total Number of Pay Periods Worked by All PAGA Members During the Covered Period}) \times (\text{PAGA Member's Number of Pay Periods Worked During the Covered Period})]$.
7. **No Other Payments.** Except as provided in this Agreement, Defendants shall not be required to pay any other expenses, costs, damages or fees incurred by Plaintiff, Plaintiff's Counsel, the State of California (including, but not limited to, the LWDA), PAGA Members, or by any of their attorneys, experts, advisors, agents, or representatives.

B. Releases and Judgment.

1. **Release of PAGA Claims.** Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the PAGA Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released PAGA Claims with respect to the Released Parties.
2. **General Release by Plaintiff.** In exchange for the benefits of this Settlement, including the Incentive Payment, Plaintiff agrees to execute a separate general release of all claims, including an express waiver of California Civil Code section 1542. Plaintiff shall execute the general release upon executing this Settlement Agreement, and the general release shall become effective on the Effective Date.
3. **Judgment.** In exchange for the consideration set forth in this Agreement, Plaintiff, individually and on behalf of the State of California (including, but not limited to, the LWDA) and the PAGA Members, agrees to enter Judgment with a release of all claims, as set forth in this Agreement.

C. Settlement Procedure.

1. **Appointment of Settlement Administrator.** In connection with a Joint Stipulation and Order Approving this Settlement Agreement ("Joint Approval Stipulation"), the Parties have agreed upon Phoenix Settlement Administrators as the Settlement Administrator to distribute Settlement Shares and other payments due under the Settlement; and otherwise administer the Settlement. The Settlement Administrator, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties and responsibilities will include preparing, printing, and mailing the Notice Packet to the PAGA Members; conducting a National Change of Address search and using Accurint and other reasonable and cost-effective skip trace methods to locate any PAGA Member whose Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Notice Packet to the PAGA Member's new address; issuing the settlement checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Notice Packet, will be paid out of the Total Settlement Amount.
2. **Joint Approval Stipulation.**
 - a. The Parties will cooperate in seeking approval of the Settlement, including by drafting and filing Joint Approval Stipulation. The Parties further agree to fully cooperate in the drafting and/or filing

of any further documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement. Plaintiff's Counsel shall draft the Joint Approval Stipulation and provide the draft to Defendants for review.

- b. After execution by all Parties, Plaintiff will file the Joint Approval Stipulation.
 - c. If the Court does not grant the Joint Approval Stipulation and issue an order approving the Settlement, under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns and determine whether resolution of the claims encompassed by the Settlement can be obtained in a manner consistent with the Court's concerns. If requested by the Court, the parties will prepare a joint motion for approval of the Settlement.
 - d. If the Court's final approval of the Settlement is reversed or the Settlement is materially modified on appellate review, then the Settlement will become null and void. A modification of amounts payable in attorneys' fees or expenses shall not be deemed a material modification of the Settlement.
3. **LWDA Submissions.** The Parties agree that Plaintiff shall comply with all requirements under PAGA regarding the timely submission of settlement materials to the LWDA, including (1) submitting the Settlement Agreement and Joint Approval Motion papers to the LWDA on the same date that the Settlement Agreement and motion papers are filed with the Court; and (2) submitting the Court's judgment and/or order approving the Settlement to the LWDA within ten (10) days after entry of the judgment or order.
4. **Notice and Payment of Settlement Shares to PAGA Members.** After the Court enters its order granting the Joint Approval Motion, every PAGA Member will be provided with a notice concerning the Settlement ("Notice Packet") and payment of the PAGA Member's Settlement Share.
- a. Consistent with the timeframes set forth below, the Settlement Administrator will send each PAGA Member the Notice Packet and his or her Settlement Share payment. The Settlement Administrator will mail the Notice Packets and Settlement Share payments to all identified PAGA Members, using the mailing address information provided by Defendant Butterfly Effects, LLC, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
 - b. In the event of returned or non-deliverable Notice Packets and Settlement Share payments, the Settlement Administrator will make

reasonable efforts to locate PAGA Members and re-send the Notice Packets and Settlement Share payments. The Settlement Administrator will promptly, and not later than fifteen (15) calendar days from receipt of the returned packet and payment, search for a more current address for the PAGA Member using Accurint and other reasonable and cost-effective skip trace methods, and re-mail the Notice Packet and Settlement Share payment to the PAGA Member. The Settlement Administrator will use the PAGA Member's data and otherwise work with Defendant Butterfly Effects, LLC to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Plaintiff's Counsel and according to the following deadlines, to trace the mailing address of any PAGA Member for whom a Notice Packet or Settlement Share payment is returned by the U.S. Postal Service as undeliverable. These reasonable steps will include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to PAGA Members for whom new addresses are found. If the Notice Packet and Settlement Share payment is re-mailed, the Settlement Administrator will note for its own records and notify Plaintiff's Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties. Plaintiff's Counsel and Defendants' Counsel will be entitled to receive from the Settlement Administrator any updated address information about a PAGA Member as the Settlement Administrator obtains such information.

5. **No Right to Opt Out.** The Parties agree that there is no right, statutory or otherwise, for any PAGA Member to opt out or otherwise exclude himself or herself from the Settlement.
6. **Timing of Settlement Payments and Receipt of Contact Information.**
 - a. Within three (3) business days after the Settlement becomes Final, as defined in this Agreement, Plaintiff's Counsel shall provide the Settlement Administrator a copy of the Court's order approving the Settlement and judgment.
 - b. Within five (5) business days after the Settlement becomes Final, as defined in this Agreement, the Settlement Administrator shall provide Defendant Butterfly Effects, LLC with wire transfer information and an accounting required.
 - c. Within fifteen (15) business days after the Settlement Administrator provides Defendant Butterfly Effects, LLC with wire transfer

information, Defendant Butterfly Effects, LLC will wire the Total Settlement Amount to the Settlement Administrator or Qualified Settlement Fund.

- d. Also, within fifteen (15) business days after the Settlement Administrator provides Defendant Butterfly Effects, LLC with wire transfer information, Defendant Butterfly Effects, LLC will provide the Settlement Administrator (1) the names, last known addresses, and Social Security numbers of all PAGA Members; and (2) the pay period information for each PAGA Member. This information will remain confidential and will not be disclosed to anyone, except in order to carry out the Settlement, pursuant to Defendants' express written authorization, or by order of the Court. The Court-approved Settlement Shares, LWDA Payment, Incentive Payment, and attorneys' fees, costs, and expenses will be paid within seven (7) business days after Defendant Butterfly Effects, LLC wires the Total Settlement Amount to the Settlement Administrator or Qualified Settlement Fund.
7. **Uncashed Settlement Share Checks.** A PAGA Member must receive or cash his or her Settlement Share payment or check within 180 calendar days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the PAGA Member at his or her correct address. If a PAGA Member cannot be located, or if a PAGA Member fails to cash the check for his or her Settlement Share within 180 days after it is mailed to him or her, the Settlement Administrator will distribute the funds represented by the uncashed check to the California Labor and Workforce Development Agency.
8. **Waiver of Right to Appeal.** Provided that the Court's approval of this Settlement is consistent with the material terms of this Agreement, Plaintiff, Defendants, and their respective counsel hereby waive any and all rights to appeal the final approval of the Settlement, and the order approving the settlement and judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken, the time for consummating the Settlement (including making payments under the Settlement) will be suspended until such time as their appeal is finally resolved and the order approving the Settlement and judgment become Final, as defined in this Agreement.
9. **Confidentiality Preceding Approval.** Prior to filing the Joint Approval Motion, Plaintiff and Plaintiff's Counsel will not issue any press or other media releases or have any communication with the press or media or anyone other than family members, clients, financial advisors, retained experts, and vendors related to settlement administration, regarding the

Settlement. Information regarding the Settlement may be disclosed to the Court if requested or in response to information disclosed by Defendants. If, before the filing of the Joint Approval Motion, Plaintiff or Plaintiff's Counsel discloses to any unauthorized party (a) that a settlement has been reached; or (b) any of the terms of the Settlement except as required by law or to effect the Settlement, Defendants may rescind the Settlement, rendering it null and void.

D. Miscellaneous Terms.

1. No Admission of Liability.

- a. Defendants deny that they have engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants, or an admission by Plaintiff that any of their claims were non-meritorious or any defense asserted by Defendants was meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).
- b. Whether or not the Court grants the Joint Approval Stipulation and enters judgment in accordance with this Agreement, nothing in this Agreement, any document, statement, proceeding or conduct related to the Settlement, or any reports or accounting of those matters, will be construed as, offered or admitted in evidence as, received as, or deemed to be evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage.
- c. This Section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

2. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or the PAGA Members.
3. **No Public Comment.** Plaintiff and Plaintiff's Counsel will not make any public disclosure of the settlement or this Agreement, except through the public filings for Court approval of the Agreement; the Parties will use their

best efforts to reach agreement on all Court filings. Plaintiff's counsel will take all steps necessary to ensure the Plaintiff is aware of, and will ensure that he adheres to, the restriction against public comment of the Settlement.

4. **No Attorney Advertising.** By signing the below, Plaintiff's Counsel agrees that its law firm will not specifically refer to this case, this settlement, or the names of the Released Parties on their website, on any social media platform, in any advertising or promotional material of any kind, or in any other written or electronic communications of any kind.
5. **No Assignment of Claims.** The Parties and their counsel 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 right herein released and discharged except as set forth herein.
6. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
7. **Attorney Authorization.** Plaintiff's Counsel and Defendants' Counsel warrant and represent that they are authorized to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court or mediator, and in all cases all such documents, supplemental provisions and assistance of the court will be consistent with this Agreement.
8. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
9. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
10. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the

State of California, without giving effect to any conflict of law principles or choice of law principles.

11. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
12. **Fair, Reasonable, and Adequate Settlement of PAGA Claims.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential. Plaintiff's Counsel also maintains that this Settlement advances the public policy and purposes underlying PAGA.
13. **Invalidity of Any Provision; Severance.** If any non-material provision, term, section, or paragraph of this Agreement is found to be invalid, illegal or unenforceable, all remaining provisions, terms, sections, or paragraphs shall continue in full force and effect and remain binding on all parties. If any provision, term, section or paragraph of this Agreement is determined to be unenforceable, such provision, term, section or paragraph shall be modified so that the unenforceable provision, term, section, or paragraph is enforceable to the greatest extent possible while maintaining the objective intent of the Agreement.
14. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
15. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third (3) business day after mailing by United States mail, addressed as follows:

To Plaintiff and the PAGA Settlement Group:

John P. Briscoe
Mayall Hurley P.C.
2453 Grand Canal Boulevard
Second Floor
Stockton, CA 95207-8253

To Defendants:

Kevin R. Reese
Jackson Lewis P.C.
50 California Street, 9th Floor
San Francisco, CA 94111

16. **Extension of Deadlines.** If the date by which any court filings or deadlines is to occur, per the terms and conditions of this Agreement, falls on a Saturday, Sunday, or legal holiday in the State of California, the date of filing shall be made the next following day which is not a Saturday, Sunday, or legal holiday in the State of California. If the date by which any mailing is to occur per the terms and conditions of this Agreement falls on a Sunday or legal holiday in the State of California, the date of mailing shall be made the next following day which is not a Sunday or legal holiday in the State of California.
17. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven business (7) days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Settlement Agreement.

Dated: 1/25/2021

Janai Robinson

DocuSigned by:
Janai Robinson
EE7590D4A57E407

Dated: 1/29/21

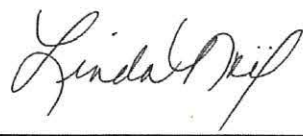
Butterfly Effects, LLC

By:

Kevin Silver
Kevin Silver
Chief Financial Officer

Dated: 1/29/2021

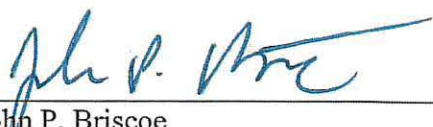
ADP TotalSource, Inc.

By: 
Linda Noel
Counsel

APPROVED AS TO FORM:

Dated: 1/25/2021

Mayall Hurley P.C.

By: 
John P. Briscoe
Attorney for Plaintiff Janai Robinson, on
behalf of herself, other alleged current and
former aggrieved employees, and the State
of California (including, but not limited to,
the Labor and Workforce Development
Agency)

Dated: 02/01/2021

JACKSON LEWIS P.C.

By: 
Kevin R. Reese
Attorney for Defendants Butterfly Effects,
LLC and ADP TotalSource, Inc.
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