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on behalf of herself and all others similarly situated

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SCOTT A. HUMPHREYS and DOUGLAS HUMPHREYS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

JOSE G. RODRIGUEZ, on behalf of himself
and all other similarly situated,

Plaintiff,

v.

SCOTT A. HUMPHREYS, INC., a California
corporation; SCOTT A. HUMPHREYS, an
individual; DOUGLAS HUMPHREYS, an
individual, and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 56-2020-00540421-CU-OE-VTA

[Assigned to the Hon. Hon. Matthew P,
Guasco in Dept. 20]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: February 24, 2020

Trial Date: None Set

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and among
3 plaintiff JOSE G. RODRIGUEZ (“Plaintiff”) individually and on behalf of the Settlement Class,
4 as defined below, on the one hand; and defendants SCOTT A. HUMPHREYS, INC.
5 (“Humphreys, Inc.”), SCOTT A. HUMPHREYS (“SAH”) and DOUGLAS HUMPHREYS
6 (“DH” and, collectively with Humphreys, Inc. and SAH, “Defendants”), on the other hand, in
7 the lawsuit entitled *Jose G. Rodriguez v. Scott A. Humphreys, Inc., et al.* filed in Ventura County
8 Superior Court, Case No. 56-2020-00540421-CU-OE-VTA (the “Class Action”) and the lawsuit
9 entitled *Jose G. Rodriguez v. Scott A. Humphreys, Inc., et al.* filed in Ventura County Superior
10 Court, Case No. 56-2020-00542265-CU-OE-VTA (the “PAGA Action”). Plaintiff and
11 Defendants shall be, at times, collectively referred to as the “Parties”. This Agreement is
12 intended by the Parties to fully, finally, and forever resolve, discharge and settle the claims as set
13 forth herein, based upon and subject to the terms and conditions of this Agreement.

14 **1. DEFINITIONS**

15 **A. “Actions”** means, collectively, *Jose G. Rodriguez v. Scott A. Humphreys, Inc., et*
16 *al.* filed in Ventura County Superior Court, Case No. 56-2020-00540421-CU-OE-VTA and *Jose*
17 *G. Rodriguez v. Scott A. Humphreys, Inc., et al.* filed in Ventura County Superior Court, Case
18 No. 56-2020-00542265-CU-OE-VTA.

19 **B. “Class Action”** means *Jose G. Rodriguez v. Scott A. Humphreys, Inc., et al.* filed
20 in Ventura County Superior Court, Case No. 56-2020-00540421-CU-OE-VTA.

21 **C. “Class Counsel”** means: David D. Bibiyan, Esq., Diego Aviles, Esq., and Sara
22 Ehsani-Nia, Esq., of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used
23 synonymously with the term “Plaintiff’s Counsel.”

24 **D. “Class Period”** means the period from February 24, 2016 through February 6,
25 2021.

26 **E. “Court”** means the Superior Court of the State of California for the County of
27 Ventura.

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1 **F. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
2 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
3 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
4 have been filed, the date on which they have been resolved or exhausted.

5 **G. “Defendants”** means Scott A. Humphreys, Inc., Scott A. Humphreys and Douglas
6 Humphreys.

7 **H. “Employer Taxes”** means employer-funded taxes and contributions imposed on
8 the wage portions of the Individual Settlement Payments (defined below) under the Federal
9 Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and
10 federal taxes and contributions required of employers, such as for unemployment insurance.

11 **I. “General Release”** means the general release of claims by Plaintiff, which is in
12 addition to his limited release of claims as a Participating Class Member.

13 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Four
14 Hundred Seventy-Five Dollars and Zero Cents (\$475,000.00),¹ which shall be paid by
15 Defendants, from which all payments for the Individual Settlement Payments to Participating
16 Class Members (defined below) and the Court-approved amounts for attorneys’ fees and
17 reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration
18 Costs, a Service Award, and the Labor Code Private Attorneys’ General Act, codified at Labor
19 Code Section 2698, et seq. (“PAGA”) payment, shall be paid. It expressly excludes Employer
20 Taxes, which shall be paid by Defendants separate and apart from the Gross Settlement Amount.

21 **K. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
22 Thousand Five Hundred Dollars and Zero Cents (\$7,500), which subject to Court approval, will
23 be paid out of the Gross Settlement Amount.

24 **L. “Individual Settlement Payment”** means a payment to a Participating Class
25 Member (defined below) of his or her net share of the Net Settlement Amount (defined below,
26 which share and payment shall be determined by the calculations provided in this Agreement).

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¹ As the same may be increased in accordance with Paragraph 16, below.

1 **M. “Individual Settlement Share”** means the gross amount of the Net Settlement
2 Amount that a Settlement Class Member is eligible to receive based on the number of shifts that
3 he or she worked as a Settlement Class Member during the Class Period if he or she does not
4 submit a timely and valid Request for Exclusion.

5 **N. “LWDA Payment” of “PAGA Payment”** means the payment to the State of
6 California Labor and Workforce Development Agency (“LWDA”) for its seventy-five percent
7 (75%) share of the total amount allocated toward penalties under the PAGA all of which is to be
8 paid from the Gross Settlement Amount. The Parties have agreed that Ten Thousand Dollars and
9 Zero Cents (\$10,000.00) shall be allocated toward PAGA penalties (“PAGA Payment”), of which
10 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA
11 and Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) will remain a part of the
12 Net Settlement Amount for payment to Participating Class Members on a *pro rata* basis.

13 **O. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
14 that is available for distribution to the Participating Class Members after deductions for the Court-
15 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
16 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, and the
17 LWDA Payment.

18 **P. “Operative Complaint” or “Complaint”** means the First Amended Complaint
19 to be filed with the Court in the Class Action pursuant to this Agreement.

20 **Q. “PAGA Action”** means *Jose G. Rodriguez v. Scott A. Humphreys, Inc., et al.* filed
21 in Ventura County Superior Court, Case No. 56-2020-00542265-CU-OE-VTA.

22 **R. “PAGA Period”** means the period from February 24, 2019 through February 6,
23 2021.

24 **S. “Participating Class Members”** means all Settlement Class Members who do
25 not submit a timely and valid Request for Exclusion.

26 **T. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
27 Plaintiff Jose G. Rodriguez.

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1 **U. “Preliminary Approval Date”** means the date on which the Court enters an
2 Order granting preliminary approval of the Settlement.

3 **V. “Released Parties”** shall mean Defendants and each of their past, present, and
4 future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-
5 sponsored employee benefit plans of any nature and their successors and predecessors in interest,
6 including all of their officers, directors, shareholders, employees, agents, principals, heirs,
7 representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,
8 trustees, and agents.

9 **W. “Response Deadline”** means the deadline for Settlement Class Members to mail
10 any Requests for Exclusion, objections, or Shift Disputes to the Settlement Administrator, which
11 is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and
12 Spanish by the Settlement Administrator. The date of the postmark shall be the exclusive means
13 for determining whether a Request for Exclusion, objection, or Shift Dispute was submitted by
14 the Response Deadline.

15 **X. “Request for Exclusion”** means a written request to be excluded from the
16 Settlement Class pursuant to Section 9.C below.

17 **Y. “Settlement Administration Costs”** means all costs incurred by the Settlement
18 Administrator in administration of the Settlement, including, but not limited to, translating the
19 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
20 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and
21 associated taxes and withholdings, providing declarations, generating Individual Settlement
22 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
23 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’
24 fees and reimbursement of litigation costs and expenses, to Plaintiff for her Service Award, and
25 to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections and
26 related information, and any other actions of the Settlement Administrator as set forth in this
27 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are
28 estimated not to exceed \$3,600. If the actual amount of the Settlement Administration Costs is

less than \$3,600, the difference between \$3,600 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$3,600, then such excess will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for paying any additional funds in order to pay these additional costs.

Z. “Settlement Administrator” means the Third-Party Administrator mutually agreed upon by the Parties that will be responsible for the administration of the Settlement including, without limitation, translating the Class Notice in Spanish, the distribution of the Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters under this Agreement.

AA. “Settlement Class” or “Settlement Class Members” means all current and former non-exempt, hourly paid employees who worked in California for Defendants at any time during the Class Period.

BB. “Shifts” means the number of shifts that a Settlement Class Member was employed and worked for Defendants in a non-exempt, hourly position during the Class Period. If a Settlement Class Member disputes his/her Individual Settlement Share, it shall be termed a “Shift Dispute.”

2. BACKGROUND

A. Plaintiff filed a putative wage-and-hour class action complaint against Defendants on February 24, 2020. Plaintiff alleges that during the Class Period, with respect to Plaintiff and the Settlement Class Members, Defendants, *inter alia*, failed to pay the Settlement Class Members’ overtime wages and minimum wages for all hours worked and/or recorded. Plaintiff further alleges that Defendants failed to provide compliant meal and rest periods and associated premium payments; failed to issue compliant and accurate itemized wage statements; failed to timely pay all wages due and owing at the time of termination or resignation; failed to reimburse employees for work related expenses; and engaged unfair competition based on the alleged Labor Code Violations.

B. On February 24, 2020, Plaintiff filed with the LWDA and served on Defendants a notice under Labor Code section 2699.3 (the “PAGA Notice”) stating he intended to serve as a

1 proxy of the LWDA to recover civil penalties for aggrieved employees. The PAGA Notice
2 includes violations of law originally pled in the Class Action, plus a request for penalties for
3 failure to comply with Labor Code sections 204, 246, 432, 1174, 1198.5, and 2810.5. On June
4 10, 2020, when 65 days passed without any communication from the LWDA, Plaintiff filed a
5 separate PAGA Action in the Ventura County Superior Court, Case No. 56-2020-00542265-CU-
6 OE-VTA, on behalf of himself and all other aggrieved employees in the PAGA Period as a proxy
7 of the LWDA to recover civil penalties for the Labor Code violations set out in the PAGA Notice.

8 **C.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
9 mediation, in which Plaintiff was provided with, among other things: (1) hire dates and separation
10 dates (as applicable) for non-exempt employees working for Defendants during the Class Period;
11 (2) a representative sampling of corresponding time and payroll records for thirty-nine (39) Class
12 Members; (3) contact information for Class Members; and (4) all pertinent written policies in
13 place during the Class Period.

14 **D.** On December 10, 2020, the Parties participated in a full-day mediation before
15 mediator Lynn Frank, Esq., a well-regarded mediator experienced in mediating complex labor
16 and employment matters. With the aid of the mediator's evaluation, the Parties reached the
17 Settlement to resolve the Actions. As part of the Settlement Plaintiff agrees to file a First
18 Amended Complaint in the Class Action effectively consolidating the Actions, as further set out
19 below.

20 **E.** Class Counsel has conducted significant investigation of the law and facts relating
21 to the claims asserted in the Actions and the PAGA Notice and has concluded that that the
22 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
23 Class, taking into account the sharply contested issues involved, the expense and time necessary
24 to litigate the Actions through trial and any appeals, the risks and costs of further litigation of the
25 Actions, the risk of an adverse outcome, the uncertainties of complex litigation, the information
26 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
27 to be received by the Settlement Class Members.

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1 **F.** Defendants have concluded that, because of the substantial expense of defending
2 against the Actions, the length of time necessary to resolve the issues presented herein, the
3 inconvenience involved, and the concomitant disruption to their business operations, it is in their
4 best interest to accept the terms of this Agreement. Defendants deny each of the allegations and
5 claims asserted against them in the Actions and the PAGA Notice. However, Defendants
6 nevertheless desire to settle the Actions for the purpose of avoiding the burden, expense and
7 uncertainty of continuing litigation and for the purpose of putting to rest the controversies
8 engendered by the Actions.

9 **G.** This Agreement is intended to and does effectuate the full, final, and complete
10 resolution of all Released Claims of Plaintiff and Settlement Class Members, other than those
11 Settlement Class Members who submit a timely and valid Request for Exclusion.

12 **3. JURISDICTION**

13 The Court has jurisdiction over the Parties and the subject matter of the Actions. The
14 Actions include claims that, if proven, would authorize the Court to grant relief pursuant to the
15 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
16 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
17 pursuant to California Rule of Court, rule 3.769, subdivision (h).

18 **4. STIPULATION OF CLASS CERTIFICATION**

19 The Parties stipulate to the certification of the Settlement Class under this Agreement for
20 purposes of settlement only.

21 **5. CONSOLIDATION OF ACTIONS AND MOTION FOR PRELIMINARY**
22 **APPROVAL**

23 The Parties have stipulated to the filing of a First Amended Complaint in the Class Action
24 that includes all of the allegations in the PAGA Action, thereby effectively consolidating all
25 allegations in the PAGA Action into this Action. If and when the First Amended Complaint is
26 filed, Plaintiff will dismiss the PAGA Action without prejudice. Shortly thereafter, Plaintiff will
27 move for an order granting preliminary approval of the Settlement, approving and directing the
28 mailing of the proposed Notice of Class Action Settlement (“Class Notice”) attached hereto as

1 **Exhibit “A”**, conditionally certifying the Settlement Class for settlement purposes only, and
2 approving the deadlines proposed by the Parties for the submission of Requests for Exclusion,
3 Shift Disputes, and objections, the papers in support of Final Approval of the Settlement, and
4 any responses to Objections or opposition papers to the Motion for Final Approval. The Parties
5 hereby expressly agree that whether or not the Court finally approves the Settlement, Plaintiff’s
6 allegations from the PAGA Action will relate back to the date on which Plaintiff filed the PAGA
7 Action, and Defendants will be estopped from making any argument that there is any adverse
8 effect on the statute of limitations caused by Plaintiff’s dismissal of the PAGA Action without
9 prejudice to effectuate this consolidation.

10 **6. STATEMENT OF NO ADMISSION**

11 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
12 and the Settlement Class with respect to any claims or allegations asserted in the Actions and the
13 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
14 or allegations asserted in the Actions or the PAGA Notice. Except as set forth elsewhere herein,
15 in the event that this Agreement is not approved by the Court, or any appellate court, is
16 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
17 limited or affected in any way any claims, rights or remedies, or defenses in the Actions or the
18 PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any
19 way any of its defenses in the Actions and the PAGA Notice. The Parties shall be restored to
20 their respective positions in the Actions prior to the entry of this Settlement.

21 **7. RELEASE OF CLAIMS**

22 **A. Release by All Participating Class Members.**

23 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
24 of Judgment, and payment by Defendants to the Third-Party Administrator selected of the full
25 Gross Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, Plaintiff
26 and all Participating Class Members waive, release, discharge, and promise never to assert in any
27 forum against the Released Parties all claims against the Released Parties asserted in the First
28 Amended Complaint filed in the Class Action, or any and all claims that may be asserted against

1 the Released Parties based on the factual allegations in the First Amended Complaint to be filed
2 in the Class Action, as follows: For the duration of the Class Period, the release includes: (a) all
3 claims for failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all
4 claims for failure to provide compliant meal and rest periods and associated premium pay; (d) all
5 claims for the failure to timely pay wages upon termination; (f) all claims for non-compliant
6 wage statements; and (g) all claims asserted through California Business & Professions Code §
7 17200 *et seq.* arising out of the Labor Code violations referenced in the First Amended
8 Complaint. For individuals employed during the PAGA Period, the release includes, for the
9 duration of the PAGA Period, all claims for PAGA penalties released during the Class Period, as
10 well as all asserted PAGA claims for penalties under Labor Code Sections 210, 226.3, 558,
11 1197.1 and 2699 based on the factual allegations and Labor Code sections alleged to have been
12 violated in the PAGA Notice and the First Amended Complaint to be filed in the Class Action,
13 including, without limitation, Labor Code sections 204, 246, 432, 1174, 1198.5, and 2810.5.

14 **B. General Release.**

15 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
16 of Judgment, and payment by Defendants to the Third-Party Administrator selected of the full
17 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in
18 addition to the Released Claims, Plaintiff makes the additional following General Release:
19 Plaintiff releases the Released Parties from of all claims, demands, rights, liabilities and causes
20 of action pertaining to wage-and-hour violations, known or unknown, asserted or that might have
21 been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law
22 or regulation arising out of, relating to, or in connection with any violation related to wage-and-
23 hour acts or omissions of the Released Parties through the date of full execution of this
24 Agreement in connection with his employment or the termination thereof. For the claims
25 released via this General Release, Plaintiff stipulates and agrees that, upon the entry of an Order
26 granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the
27 Third-Party Administrator selected of the full Gross Settlement Amount and Employers' Taxes
28 necessary to effectuate the Settlement, Plaintiff shall be deemed to have expressly waived and

1 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
2 1542 of the California Civil Code, or any other similar provision under federal or state law, which
3 provides:

4 A general release does not extend to claims which the creditor
5 does not know or suspect to exist in his or her favor at the time of
6 executing the release, which if known by him or her must have
7 materially affected his or her settlement with the debtor or
8 released party.

8 **8. SETTLEMENT ADMINISTRATOR**

9 Plaintiff and Defendants, through their respective counsel, have selected Simpluris, Inc.
10 to administer the Settlement, which includes but is not limited to translating the Class Notice to
11 Spanish, distributing and responding to inquiries about the Class Notice and calculating all
12 amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement
13 Administrator, currently estimated to be \$3,600, will be paid from the Gross Settlement Amount.
14 If the actual Settlement Administrator fees are less than \$3,600, the difference will remain a part
15 of the Net Settlement Amount.

16 **9. NOTICE, SHIFT DISPUTE, OBJECTION, AND EXCLUSION PROCESS**

17 **A. Notice to the Settlement Class Members.**

18 (1) Within ten (10) calendar days after the Preliminary Approval Date,
19 Defendants' Counsel shall provide the Settlement Administrator with information with respect
20 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
21 known telephone number(s) currently in Defendants' possession, custody, or control; (2) Social
22 Security Number in Defendants' possession, custody, or control; and (3) the hire dates and
23 termination dates for each Settlement Class Member ("Class List"), which the Settlement
24 Administrator shall provide to Plaintiff upon receipt. The Settlement Administrator shall perform
25 an address search using the United States Postal Service National Change of Address ("NCOA")
26 database and update the addresses contained on the Class List with the newly-found addresses,
27 if any. Within seven (7) calendar days of receiving the Class List from Defendants, the Settlement
28 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class

1 Members via first-class regular U.S. Mail using the most current mailing address information
2 available. The Settlement Administrator shall maintain a list with names and all addresses to
3 which notice was given, and digital copies of all the Settlement Administrator's records
4 evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from
5 the Final Approval Date, which shall be made accessible to Plaintiff's Counsel upon request.

6 (2) The Class Notice will set forth:

- 7 (a) the Settlement Class Member's estimated payment and the basis
8 for it;
- 9 (b) the information required by California Rule of Court, rule 3.766,
10 subdivision (d);
- 11 (c) the material terms of the Settlement;
- 12 (d) the proposed Settlement Administration Costs;
- 13 (e) the definition of the Settlement Class;
- 14 (f) a statement that the Court has preliminarily approved the
15 Settlement;
- 16 (g) how the Settlement Class Member can obtain additional
17 information, including contact information for Class Counsel;
- 18 (h) information regarding opt-out and objection procedures;
- 19 (i) the date and location of the Final Approval Hearing; and
- 20 (j) that the Settlement Class Member must notify the Settlement
21 Administrator no later than the Response Deadline if the
22 Settlement Class Member disputes the accuracy of the number of
23 Shifts as set forth on his or her Class Notice ("Shift Dispute"). If
24 a Settlement Class Member fails to timely dispute the number of
25 Shifts attributed to him or her in conformity with the instructions
26 in the Class Notice, then he or she shall be deemed to have waived
27 any objection to its accuracy and any claim to any additional
28 settlement payment based on different data.

1 (3) If a Class Notice from the initial notice mailing is returned as
2 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
3 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
4 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
5 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
6 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
7 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
8 Administrator with a forwarding address before the Response Deadline shall be promptly re-
9 mailed to the forwarding address affixed thereto. Class Members who are re-mailed a Class
10 Notice shall have an additional fifteen (15) calendar days to submit a Request for Exclusion,
11 objection or to dispute estimated payments.

12 (4) No later than seven (7) calendar days from the Response Deadline, the
13 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
14 completion of the notice process, including the number of attempts to obtain valid mailing
15 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
16 and copies of all Requests for Exclusion and objections/comments received by the Settlement
17 Administrator.

18 **B. Objections.**

19 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating
20 Class Members) may object or comment regarding the Settlement. In order for any Settlement
21 Class Member to object or comment to this Settlement, or any term of it, he or she should do so
22 by mailing a written objection or comment to the Settlement Administrator at the address or
23 phone number provided on the Class Notice no later than the Response Deadline. The Settlement
24 Administrator shall email a copy of the objection/comment forthwith to Class Counsel and
25 Defendants' counsel. Class Counsel shall lodge a copy of the objection or comment with the
26 Court with the Motion for Final Approval. The objection or comment should set forth in writing:
27 (1) the objector's/commenter's name and address, and (2) the reason(s) for the
28 objection/comment, along with whatever legal authority, if any, the objector/commenter asserts

1 supports the objection. If a Settlement Class Member objects or comments regarding this
2 Settlement, the Settlement Class Member will remain a member of the Settlement Class and if
3 the Court approves this Agreement, the Settlement Class Member will be bound by the terms of
4 the Settlement in the same way and to the same extent as a Settlement Class Member who does
5 not object or comment. The date of mailing of the Class Notice to the objecting or commenting
6 Settlement Class Member shall be conclusively determined according to the records of the
7 Settlement Administrator. Settlement Class Members do not need to object or comment in
8 writing to be heard at, or object/comment to the Settlement, at the Final Approval Hearing.

9 **C. Requesting Exclusion.**

10 Any Settlement Class Member may request exclusion from (i.e., “opt out” of) the
11 Settlement by mailing a written request to be excluded from the Settlement (“Request for
12 Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline.
13 To be valid, a Request for Exclusion must include the Class Member’s name, social security
14 number and signature and the following statement or something to its effect: “Please exclude me
15 from the Settlement Class in the *Rosa Franco v. Vincent Rags, Inc, et al.* matter” or a statement
16 of similar meaning. The Settlement Administrator shall immediately provide copies of all
17 Requests for Exclusion to Class Counsel and Defendants’ Counsel and shall report the Requests
18 for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the
19 Final Approval Hearing. Any Settlement Class Member who requests exclusion using this
20 procedure will not be entitled to receive any payment from the Settlement and will not be bound
21 by the Settlement Agreement or have any right to object to, appeal, or comment on the
22 Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting
23 a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
24 those pertaining to the Released Claims, as well as any Judgment that may be entered by the
25 Court if Final Approval of the Settlement is granted.

26 **D. Disputes Regarding Settlement Class Members’ Shift Data.**

27 Each Settlement Class Member may dispute the number of Shifts attributed to him or her
28 on his or her Class Notice (“Shift Dispute”). Any such disputes must be mailed to the Settlement

Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS MEMBERS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Shifts during the Class Period. Specific calculations of the Individual Settlement Payments will be made as follows:

A. The Settlement Administrator will determine the total number of Shifts worked by each Settlement Class Member and the aggregate number of Shifts worked by all Settlement Class Members during the Class Period ("Class Shifts"), as reflected on the Class List provided by Defendants.

B. To determine each Participating Class Member's Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Shifts worked by all Participating Class Members during the Class Period ("Participating Class Shifts") and use the following formula: Individual Settlement Share = (Participating Class Member's Shifts ÷ Participating Class Shifts) × Net Settlement Amount.

C. This net amount is to be paid out to Participating Class Members by way of check and is referred to as "Individual Settlement Payment(s)."

DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments.

Settlement Class Members who do not submit a timely and valid Request for Exclusion (i.e., Participating Class Members) will receive an Individual Settlement Payment. Individual Settlement Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration

1 of the 180-day period, checks for such payments shall be canceled and funds associated with
2 such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code
3 of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue shall be forwarded
4 to the Controller of the State of California pursuant to the Unclaimed Property Law, California
5 Civil Code § 1500, *et seq.*, to be held in trust for those Participating Class Members who did
6 not timely cash their Individual Settlement Payment checks. The Parties agree that this
7 disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as all
8 payments to the Participating Class Members will be paid out, whether or not these
9 Participating Class Members cash their Individual Settlement Payment. Therefore, Defendants
10 will not be required to pay any interest on such amounts.

11 **B. Funding of Settlement.**

12 Defendants shall make monthly payments to the Settlement Administrator pursuant to
13 Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement
14 account (“QSA”) with an FDIC insured banking institution, for distribution in accordance with
15 this Agreement and the Court’s Orders and subject to the conditions described herein. Starting
16 on January 10, 2021 and on the first calendar day of the first month thereafter, for eighteen (18)
17 months, Defendants shall deposit \$26,388.89 each month (*i.e.*, 1/18th of the remaining balance),
18 into the QSA until the entire sum of the Gross Settlement Amount is paid. In addition, as part of
19 the final payment, Defendants shall include Defendants’ share of taxes owed on the wages
20 portion of the settlement (*i.e.*, Employer Taxes), which shall be determined by the Settlement
21 Administrator. Should the QSA be set up after January 10, 2021, Defendants shall make with
22 their first payment any payments already owed in prior months. Individual Settlement Payments
23 for Class Members shall be paid exclusively from the QSA, pursuant to the settlement formula
24 set forth herein, and shall be mailed within seven (7) calendar days after the entire sum of the
25 Gross Settlement Amount is paid or Final Order and Judgment following a Final Fairness and
26 Approval hearing, whichever is later, as required by this Agreement.

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1 Payments from the QSA shall be made for (1) the Service Awards to Plaintiff as specified
2 in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
3 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
4 Administrator Costs, as specified in this Agreement and approved the Court; and (4) the amount
5 allocated to PAGA penalties to be paid to the LWDA (*i.e.*, the LWDA payment), as specified in
6 this Agreement and approved by the Court. The balance remaining shall constitute the Net
7 Settlement Amount from which Individual Settlement Payments shall be made to Participating
8 Class Members, less applicable taxes and withholdings. All interest accrued shall be for the
9 benefit of the Class Members and distributed in a pro-rata basis.

10 **C. Time for Distribution.**

11 Within seven (7) calendar days after payment of the full Gross Settlement Amount by
12 Defendants, as well as Employer Taxes, or after the Final Order and Judgment following a Final
13 Fairness and Approval hearing, whichever is later, or as soon thereafter as practicable, the
14 Settlement Administrator shall distribute all payments due under the Settlement, including the
15 Individual Settlement Payments to Participating Class Members, as well as the Court-approved
16 payments for the Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to
17 Class Counsel, Administration Costs to the Settlement Administrator, and the portion of the
18 LWDA payment payable to the LWDA (*i.e.*, the LWDA Payment).

19 **11. ATTORNEYS' FEES AND LITIGATION COSTS**

20 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
21 fees of up to one third of the Gross Settlement Amount, or One Hundred Fifty-Eight Thousand
22 Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$158,333.33). Class Counsel
23 shall further apply for, and Defendants shall not oppose, an application or motion by Class
24 Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of this
25 matter as set forth by declaration testimony in an amount up to Fifteen Thousand Dollars and
26 Zero Cents (\$15,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross
27 Settlement Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle,
28 and obtain Final Approval of the settlement in the Action. The "future" aspect of the amounts

1 stated herein includes, without limitation, all time and expenses expended by Class Counsel
2 (including any appeals therein). There will be no additional charge of any kind to either the
3 Settlement Class Members or request for additional consideration from Defendants for such
4 work. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts
5 that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part
6 of the Net Settlement Amount.

7 **12. SERVICE AWARD TO PLAINTIFFS**

8 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an
9 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for
10 Plaintiff, for participation in and assistance with the Class Action. Any Service Award awarded
11 to Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form
12 1099. If the Court approves Service Awards to Plaintiff in less than the amounts sought herein,
13 then the unapproved portion(s) shall be a part of the Net Settlement Amount.

14 **13. TAXATION AND ALLOCATION**

15 A. Each Individual Settlement Share shall be allocated as follows: 33% as wages (to
16 be reported on an IRS Form W2); and 67% as interest and penalties (to be reported on an IRS
17 Form 1099). The Parties agree that the employees' share of taxes and withholdings with respect
18 to the wage-portion of the Individual Settlement Share will be withheld from the Individual
19 Settlement Share in order to yield the Individual Settlement Payment. The amount of federal
20 income tax withholding will be based upon a flat withholding rate for supplemental wage
21 payments in accordance with Treasury Regulation § 31.3402(g)-1(a)(2) as amended or
22 supplemented. Income tax withholding will also be made pursuant to applicable state and/or
23 local withholding codes or regulations.

24 B. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
25 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
26 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
27 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
28

set forth in this Section may be modified in a manner to bring Defendants into compliance with any such changes.

C. All Employer Taxes shall be paid by Defendants separate, apart and above from the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of payroll taxes as described above.

D. Neither Counsel for Plaintiff nor Defendants intend anything contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

14. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION

The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000) of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the LWDA Payment), and twenty-five percent (25%) (\$2,500.00) will remain a part of the Net Settlement Amount to be distributed to Participating Class Members on a *pro rata* basis, based upon their respective Shifts worked during the Class Period.

15. COURT APPROVAL

This Agreement is contingent upon an order by the Court granting Final Approval of the Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties shall be restored to their respective positions in the Actions prior to entry of this Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive the Settlement Agreement being voided or not approved, and which control in such an event.

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1 **16. INCREASE IN WEEKLY PAY PERIODS**

2 Defendants represent that there are no more than 26,301 shifts worked during the Class
3 Period by Class Members. In the event the number of Shifts increases by more than 10%, or
4 2,630 shifts, then the Gross Settlement Amount shall be increased proportionally by the Shift
5 Value. The Shift Value shall be calculated by dividing the Gross Settlement Amount
6 (\$475,000.00) by 26,301, which amounts to a Shift Value of \$18.06. Thus, for example, should
7 there be 30,000 Shifts in the Class Period, then the Gross Settlement Amount shall be increased
8 by \$66,803.94. (30,000 Shifts – 26,301 Shifts x \$18.07/shift.)

9 **17. NOTICE OF JUDGMENT**

10 In addition to any duties set out herein, the Settlement Administrator shall provide
11 notice of the Final Judgment entered in the Class Action by posting the same on its website.

12 **18. MISCELLANEOUS PROVISIONS**

13 **A. Interpretation of the Agreement.**

14 This Agreement constitutes the entire agreement between Plaintiff and Defendants with
15 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
16 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
17 oral or written representations or terms shall modify, vary or contradict its terms. In entering
18 into this Agreement, the Parties agree that this Agreement is to be construed according to its
19 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
20 interpreted and enforced under the laws of the State of California, both in its procedural and
21 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
22 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
23 in the Superior Court of the State of California for the County of Ventura, and Plaintiff and
24 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
25 in connection therewith. The foregoing is only limited to disputes concerning this Agreement
26 and in no way limits or negates the enforceability and effect of any underlying arbitration
27 agreements signed by employees of Defendants obligating them to arbitrate any and all claims
28 on an individual (and not on a class, collective, or representative) basis. Plaintiff, on behalf of

1 himself and on behalf of the Settlement Class, and Defendants participated in the negotiation and
2 drafting of this Agreement and had available to them the advice and assistance of independent
3 counsel. As such, neither Plaintiff nor Defendants may claim that any ambiguity in this
4 Agreement should be construed against the other. The Agreement may be modified only by a
5 writing signed by counsel for the Parties and approved by the Court.

6 **B. Further Cooperation.**

7 Plaintiff, Defendants, and their respective attorneys shall proceed diligently to prepare
8 and execute all documents, to seek the necessary approvals from the Court, and to do all things
9 reasonably necessary to consummate the Settlement as expeditiously as possible.

10 **C. Counterparts.**

11 The Agreement may be executed in one or more actual or non-original counterparts, all
12 of which will be considered one and the same instrument and all of which will be considered
13 duplicate originals.

14 **D. Authority.**

15 Each individual signing below warrants that he or she has the authority to execute this
16 Agreement on behalf of the party for whom or which that individual signs.

17 **E. No Third-Party Beneficiaries.**

18 Plaintiff, Participating Class Members, Class Counsel, and Defendants are direct
19 beneficiaries of this Agreement, but there are no third-party beneficiaries.

20 **F. Deadlines Falling on Weekends or Holidays.**

21 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
22 or legal holiday, that deadline shall be continued until the following business day.

23 **G. Severability.**

24 In the event that one or more of the provisions contained in this Agreement shall for any
25 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
26 unenforceability shall in no way effect any other provision.

27
28 [Signatures on Following Page]

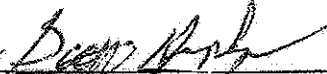
1 **IT IS SO AGREED:**

2 Dated: Apr 20, 2021, 2021


Jose Rodriguez (Apr 20, 2021 09:38 PDT)

JOSE G. RODRIGUEZ
Plaintiff and Class Representative

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7 Dated: 3/9/21, 2021

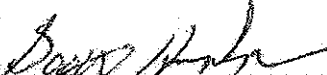

SCOTT A. HUMPHREYS, INC.

Defendant

By:

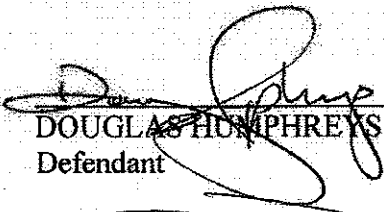
Its:

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11 Dated: 3/9/21, 2021


SCOTT A. HUMPHREYS

Defendant

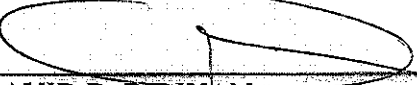
12
13
14 Dated: 3-9-21, 2021


DOUGLAS HUMPHREYS

Defendant

15
16 **AGREED AS TO FORM:**

17
18 Dated: 3/20/21, 2021


DAVID D. BIBIYAN

Counsel for Plaintiff Jose G. Rodriguez

19
20
21 Dated: March 9, 2021


PETER J. HORTON

Counsel for Defendants Scott A. Humphreys,
Inc., Scott A. Humphreys and Douglas
Humphreys