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6 Attorneys for ERIK MARTINEZ,
on behalf of himself, all others similarly situated,
7 and on behalf of the general public.

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

10 Attorneys for ERIK MARTINEZ,
11 on behalf of himself, all others similarly situated,
and on behalf of the general public,
12

13 Plaintiff,

14 v.

15 PATRICK INDUSTRIES, INC.; and DOES 1-
16 100,

17 Defendants.

Case No. CIVDS2009663

*[Assigned for All Purposes to the
Hon. David Cohn; Dept. S26]*

**DECLARATION OF DAVID MARA,
ESQ., IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE**

Date: July 5, 2022
Time: 10:00 a.m.

Complaint Filed: June 1, 2020
Trial Date: None Set

1 I, DAVID MARA, declare the following:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiff ERIK MARTINEZ
3 and the putative class members in this matter. I am duly admitted to practice before all the
4 courts of the state of California. The following facts are within my personal knowledge and,
5 if called to testify, I could and would competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor Code
8 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and
9 cases alleging violations of the Private Attorneys General Act of 2004 (“PAGA”).
- 10 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court,
11 Case No. GIC834348, which was the underlying case in the California Supreme Court’s
12 landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in
13 which the California Supreme Court delineated the scope of employer obligations to provide,
14 and employee rights to receive, meal and rest periods under California law.
- 15 5. I wrote an Amicus brief on behalf of Consumer Attorneys of California (“CAOC”) in the
16 recent decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.*
17 (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest
18 breaks is not considered duty-free).
- 19 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the
20 California Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and
21 wage and hour class action).
- 22 7. My firm has been granted class certification in both state and federal courts.
- 23 8. I am also Plaintiff’s counsel in a host of other class actions involving violations of California’s
24 wage and hour laws, many of which involve the transportation industry. For example, I have
25 been and am involved as counsel for plaintiffs in the following sampling of class action cases
26 involving wage and hour violations under California law: *Peron v. The Vons Companies, Inc.*
27 (Case No. 37-2014-00006965); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No.
28 DR150155); *Martin v. Sysco Central California, Inc.* (Case No. 1:16-cv-00990-DAD-SAB);

1 *Paramo v. Cintas Corporate Services, Inc., et. al.* (Case No. CIVDS1719941); *Cortez v.*
2 *United Natural Foods, Inc.* (Case No. 5:18-cv-04603-BLF); *Frieri v. Sysco San Diego, Inc.*
3 (Case No. 3:16-cv-1432-JLS-NLS); *Allen v. J.S. West Hardister, LLC, et. al.* (Case No.
4 9000289); *Betts v. Foster Dairy Farms* (Case No. 9000320); *Perez v. City of San Diego* (Case
5 No. 37-2014-00016621); *Cuellar-Ramirez v. US Foods, Inc.* (Case No. RG15770766);
6 *Rodriguez v. Delta Sierra Beverage, LLC* (Case No. 34-2017-00206727); *Helton v. Pepsi-*
7 *Cola Sales and Distribution, Inc., et. al.,* (Case No. 3:17-cv-01135-EMC); *Kramer v. XPO*
8 *Logistics, Inc.* (Case No. 3:16-cv-07039-WHO).

- 9 9. On February 19, 2020, Plaintiff uploaded a notice to the Labor and Workforce Development
10 Agency in accordance with the PAGA. Plaintiff's notice alleges that Defendant failed to pay
11 all straight time and overtime wages, failed to provide lawful meal and rest periods, failed to
12 provide accurate itemized wage statements, and failed to pay all wages due at the termination
13 of employment.
- 14 10. Plaintiff filed the Complaint against Defendant San Bernardino County Superior Court on
15 June 1, 2020 (Case No. CIV2009663). The complaint alleged the following causes of action
16 against Defendant: (1) failure to pay all straight time and/or minimum wages; (2) failure to
17 pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit
18 rest periods; (5) knowing and intentional failure to comply with itemized employee wage
19 statement provisions; (6) violation of the Labor Code Private Attorneys General Act of 2004;
20 and (8) violation of Unfair Competition Law.
- 21 11. Since the filing of the Action and through execution of this Settlement Agreement, Plaintiff
22 has conducted a thorough investigation into the facts underlying the claims asserted in the
23 Complaint. Plaintiff has also engaged in extensive informal and formal discovery, including,
24 the production of an extensive data sampling of time clock punches and wage statements and
25 all applicable policies. In total, Defendant produced over 5,500 documents.
- 26 12. Prior to mediation, Defendant provided Plaintiff with detailed information regarding the size
27 of the Class, the applicable hiring and termination dates for Class Members, and the pay rates
28 of Class Members, in addition to other relevant information.

13. On March 28, 2022, the Parties participated in a full-day mediation with respected wage and hour mediator, Michael Dickstein. This mediation was successful. The Parties then met and conferred over all the terms of the settlement and finalized their agreement in the Parties' Agreement. The Parties' Agreement is attached hereto as **Exhibit 1**.
14. Based on the data requested of and provided by Defendant, Plaintiff has determined that the approximately 358 Class Members worked approximately 17,959 workweeks, which equates to approximately 89,795 shifts, during the Class Period. In addition, there are approximately 202 PAGA Aggrieved Employees who worked approximately 7,968 pay periods within the PAGA Period. Based upon the data and documents requested of and produced by Defendant, Plaintiff calculated that Class Members were paid an average hourly rate of approximately \$16.36.
15. Plaintiff alleges that Defendant failed to provide lawful meal periods because Plaintiff contends that Defendant's time records show meal period violations. Plaintiff asserts that Defendant's time records show violations in approximately 95% of shifts. If Plaintiff was to prevail on this claim for the entire class period, Plaintiff and the Class Members would be entitled to the following estimated maximum potential damages: $\$1,395,593$ ($89,795 \text{ shifts} \times \$16.36 \text{ per hour} \times 0.95 \text{ violation rate} = \$1,395,593.89$).
16. Plaintiff also alleges that Defendant fails to pay for all hours worked because Plaintiff contends that Defendant has an unlawful rounding practice. Plaintiff contends that Defendant's rounding practice results in approximately 0.2 hours of unpaid time per shift on average. If Plaintiff was to prevail on this claim for the entire class period, Plaintiff and the Class Members would be entitled to the following estimated maximum potential damages: $\$293,809$ ($89,795 \text{ shifts} \times \$16.36 \text{ per hour} \times 0.2 \text{ hours} = \$293,809.24$).
17. Plaintiff alleges that Defendant fails to provide employees with lawful rest periods. Plaintiff contends that Defendant does not have a written rest period policy and that employees are unable to leave Defendant's warehouse during rest periods. If Plaintiff was to prevail on this claim for the entire class period, Plaintiff and the Class Members would be entitled to the following estimated maximum potential damages: $\$1,469,046$ ($89,795 \text{ shifts} \times \$16.36 \text{ per$

1 hour = \$1,469,046.20).

2 18. Further, Plaintiff alleges that Defendant fails to provide accurate, itemized wage statements

3 because Plaintiff asserts that Defendant lists a P.O. Box which Plaintiff contends does not

4 qualify as the “address of the legal entity that is the employer.” The statute of limitations for

5 Plaintiff’s wage statement claim is one year. Under California Labor Code § 226(e)(1), the

6 damages for breach of this section are fifty dollars (\$50) for the initial pay period in which a

7 violation occurs and one hundred dollars (\$100) per employee for each violation in a

8 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

9 If Plaintiff was to prevail on this claim for the entire class period, Plaintiff and the Class

10 Members would be entitled to the following estimated maximum potential damages:

11 \$1,304,000 (\$4,000 x 326 employees = \$1,304,000).

12 19. If Plaintiff was to prevail on his unpaid wages claim, Plaintiff and the Class Members may

13 also be entitled to waiting time penalties. Plaintiff calculates the potential maximum exposure

14 under his waiting time penalties cause of action as \$1,279,564 (290 former employees x 30

15 days x 8.99 average shift length x \$16.36 average hourly rate = \$1,279,564.68). As these

16 damages are derivative of Plaintiffs’ unpaid wages claim, if Plaintiffs’ unpaid wages claim

17 fails, this claim also would fail.

18 20. Plaintiffs allege that Defendant has five (5) violations – unlawful rest and meal periods, failure

19 to pay all wages owed, inaccurate wage statements, and waiting time penalties – of the

20 California Labor Code sections which give rise to PAGA penalties. The statute of limitations

21 for PAGA violations go back one year. There are approximately 7,968 pay periods within the

22 PAGA statute of limitations. Plaintiff calculates Defendant’s exposure under PAGA as

23 follows: \$3,984,000 (\$100 x 5 PAGA violations x 7,968 pay periods = \$3,984,000).

24 21. Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if he

25 were successful in his core claims, Defendant’s total exposure would be approximately

26 \$4,462,448 [\$293,809 (unpaid wages exposure) + \$1,395,593 (meal period exposure) +

27 \$1,469,046 (rest period exposure) + \$1,304,000 (wage statement exposure) = \$4,462,448]. If

28 Plaintiff is successful in his unpaid wage claims, he may also be entitled to damages for

1 waiting time penalties in the amount of \$1,279,564. If all of Plaintiff's claims are successful,
2 he may also be entitled to PAGA penalties in the maximum amount of \$3,984,000.

3 22. In light of the risks Plaintiff's claims faced, I believe that the settlement amount of \$1,800,000
4 – with an average settlement share amount estimated at \$2,995.98 – is a reasonable and fair
5 settlement amount.

6 I hereby declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.

8 Dated: June 10, 2022

MARA LAW FIRM, PC

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By: 

David Mara, Esq.

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Attorneys for Plaintiff ERIK MARTINEZ on behalf
12 of himself, all others similarly situated, and on
13 behalf of the general public

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Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this settlement agreement is made between Plaintiff Erik Martinez (hereinafter “Plaintiff”) on behalf of himself and the Class and Defendant Patrick Industries, Inc. (hereinafter “Defendant” or “Patrick”) (collectively Plaintiff and Defendant are referred to in this Agreement as the “Parties”). This agreement is intended to settle the case entitled *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino County Superior Court, Case No. CIVDS2009663).

I. DEFINITIONS

In addition to the other terms defined in this agreement, the terms below have the following meaning:

1. **Action**: The action filed by Plaintiff against Defendant, currently pending in the San Bernardino County Superior Court, entitled *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino County Superior Court, Case No. CIVDS2009663).
2. **Administration Costs**: The costs incurred by the Settlement Administrator, Phoenix Class Action Administration Solutions, to administer this Settlement, which shall not exceed \$15,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
3. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
4. **Attorneys Fee Award**: The amount of attorneys’ fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed 33.33% of the Gross Settlement Amount. 33.33% of the Gross Settlement Amount is \$599,940. The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
5. **Class**: All non-exempt employees of Defendant who worked in California from June 1, 2016 through June 10, 2022 or preliminary approval, whichever is earlier.
6. **Class Counsel**: David Mara and Jill Vecchi of Mara Law Firm, PC.

7. **Class Data**: The electronic database Defendant shall deliver to the Settlement Administrator within fifteen (15) business days after Preliminary Approval of this Settlement Agreement, which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) last known telephone number; (4) Social Security number; (5) hire and termination dates; (6) the total number of weeks during which the Class Member performed actual work during the Class Period; and (7) the total number of pay periods during which the PAGA Aggrieved Employees worked during the PAGA Period. The Class Data shall be based on Defendant's payroll, personnel, and other business records. At no time during the Settlement process will any Class Member's address, Social Security number, or telephone number be filed with the Court, except under seal as may be ordered.
8. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
9. **Class Notices**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
10. **Class Period**: June 1, 2016 through June 10, 2022 or preliminary approval, whichever is earlier.
11. **Class Representative or Plaintiff**: Plaintiff Erik Martinez.
12. **Class Representative Enhancement Payment**: The amount the Court awards to Plaintiff, which will not exceed \$7,500. This payment shall be paid from the Gross Settlement Amount. This payment is being offered in consideration for Plaintiff executing a general release of claims against Defendant, a release that is broader than any Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for the Plaintiff's actions in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiff put into pursuing the litigation. If the Court awards less than the amount requested, that shall not be a basis for Plaintiff or Class Counsel to rescind or withdraw from this Settlement, and any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
13. **Complaint**: Plaintiff's Complaint, filed on or about June 1, 2020 in San Bernardino County Superior Court (Case No. CIV2009663).
14. **Cost Award**: The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$30,000. The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, that shall not be a basis for Plaintiff or

Class Counsel to rescind or withdraw from this Settlement, and the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.

15. **Counsel for Defendant:** Kristin M. Halsing of Faegre Drinker Biddle & Reath LLP.
16. **Court:** Judge David Cohn and/or the Superior Court of California for the County of San Bernardino or any other court exercising jurisdiction over the Settlement.
17. **Defendant:** Defendant Patrick Industries, Inc.
18. **Disbursement of the Settlement:** The date on which the Settlement Administrator shall disburse the Gross Settlement Amount as indicated herein. Under the terms of this Settlement Agreement, within fifteen (15) calendar days of Defendant funding the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payments to the LWDA and PAGA Aggrieved Employees, as approved by the Court.
19. **Effective Final Settlement Date:** The effective date of this Settlement will be when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement.
20. **Employer Taxes:** Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities, shall be paid by Defendant separate and apart from the Gross Settlement Amount.
21. **Final Judgment or Final Approval:** The final order entered by the Court approving this Agreement.
22. **Funding of Settlement:** Defendant shall wire to the Settlement Administrator the Gross Settlement Amount no later than twenty (20) calendar days of the Effective Final Settlement Date.

23. **Gross Settlement Amount or GSA:** \$1,800,000, to be paid by Defendant in full satisfaction of all claims arising from the Action. This is the gross amount Defendant can be required to pay under this Settlement Agreement, with the exception of its obligation to pay Employer Taxes. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) the PAGA Payment to the LWDA and PAGA Aggrieved Employees, as approved by the Court; (6) the Participating Class Members' share of employment taxes; (7) interest; and all other costs associated with the settlement. This Gross Settlement Amount has been agreed to by Plaintiff and Defendant based on the aggregation of the agreed-upon settlement value of individual claims. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
24. **Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
25. **LWDA:** California Labor and Workforce Development Agency.
26. **Net Settlement Amount or NSA:** The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payment, the PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the employee's tax liability for the share for the portion of the settlement shares allocated as wages.
27. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
28. **PAGA Aggrieved Employees:** Class Members who worked during the PAGA Period.

29. **PAGA Payment:** The Parties agree to settle the PAGA claims for \$75,000. 75% of this amount shall be paid to the LWDA. The remaining 25% of the shall be added to the PAGA Fund for distribution to PAGA Aggrieved Employees.
30. **PAGA Period:** February 19, 2019 through June 10, 2022 or preliminary approval, whichever is earlier.
31. **PAGA Released Claims:** The Released PAGA Claims applicable to Plaintiff and all PAGA Aggrieved Employees shall mean: any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged or could have been alleged based upon a reasonable interpretation of the facts alleged in the PAGA Action, against Defendant (including any and all unnamed Does). The Released PAGA Claims include, but are not limited to, violations of the Private Attorneys General Act, Labor Code §2699, et seq. This release will be for the PAGA Period.
32. **Opt-Out or Request for Exclusion:** Means a Class Member who requests to be excluded from, or opt-out of, the Settlement within thirty (30) days of the Notices being mailed out by the Settlement Administrator. Individuals who request to be excluded from, or opt-out of, the Settlement shall not receive a Settlement Share and will not release any of the Released Claims against the Released Parties herein.
33. **Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
34. **Parties:** Plaintiff Erik Martinez, as an individual and as Class Representative, and Defendant Patrick Industries, Inc.
35. **Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the Class Settlement.
36. **Released Claims:** The Released Claims applicable to Plaintiff and all Participating Class Members shall mean: any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have arisen out of the same facts alleged in the Complaint, against the Released Parties and any and all Doe defendants. The Released Claims include, but are not limited to, 1) Failure to Pay All Straight Time Wages and/or Minimum Wages; 2) Failure to Pay All Overtime Wages; 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 5- 2001(11); Cal. Code Regs., tit. 8 § 11050); 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 5- 2001(12); Cal. Code Regs. tit. 8

§ 11050); 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175); 6) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203); and 7) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.). This release will be for the Class Period. PAGA Aggrieved Employees will also release any claims under the Private Attorneys General Act, Labor Code §2699, et seq., as described in Paragraph 31.

37. **Released Parties:** Defendant and its successors and predecessors in interest, subsidiaries, affiliates, trusts, brother-sister or otherwise related companies, and parents, as well as all of their past, present and/or future, direct and/or indirect, officers, managing members, directors, owners, members, employees, principals, heirs, representatives, accountants, auditors, partners, trustees, insurers, reinsurers, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns; and any attorney or law firm representing Defendant and/or the other aforementioned Released Parties with regard to Plaintiff's asserted claims against Defendant.
38. **Response Deadline:** Thirty (30) calendar days from the initial mailing of the Class Notices. If the 30-day deadline falls on a Sunday or federal holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.
39. **Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address Defendant has on file for those Class Members to all former employee Class Members at the address resulting from the skip trace. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Notice returned to the Settlement Administrator as non-deliverable with a forwarding address on or before the Response Deadline will be sent promptly via regular first class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment. The Settlement Administrator shall at all times protect the privacy rights of Class Members.
40. **Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Phoenix Class Action Administration Solutions.
41. **Qualifying Workweeks:** The number of calendar days of employment that each Participating Class Member worked for Defendant during the Class

Period, divided by seven (7), and rounding up to the nearest whole number. All Participating Class Members will be credited with at least one Qualifying Workweek.

42. **Workweek Escalation Clause:** If the total number of workweeks worked by Class Members between June 1, 2016 through February 23, 2022, increases by more than 5% of 17,104, or 855 workweeks, Defendant shall have the option of increasing the Gross Settlement Amount proportionately above the 5% increase, such that, for example, a 6% increase in workweeks would result in an option to pay a 1% increase in the GSA. Should Defendant not exercise that option, Plaintiff shall have the option of terminating the Settlement Agreement altogether.

II. **RECITALS**

43. On February 19, 2020, Plaintiff uploaded a notice to the Labor and Workforce Development Agency in accordance with the PAGA. Plaintiff's notice alleges that Defendant failed to pay all straight time and overtime wages, failed to provide lawful meal and rest periods, failed to provide accurate itemized wage statements, and failed to pay all wages due at the termination of employment.
44. Plaintiff filed the Complaint against Defendant San Bernardino County Superior Court on June 1, 2020 (Case No. CIV2009663). The complaint alleged the following causes of action against Defendant: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) violation of the Labor Code Private Attorneys General Act of 2004; and (8) violation of Unfair Competition Law.
45. Defendant timely answered the Complaint. At all times, Defendant disputed that it had violated California wage and hour law and, further, maintained that Plaintiff's claims were not appropriate for class or representative adjudication for numerous reasons.
46. Since the filing of the Action and through execution of this Settlement Agreement, Class Counsel has conducted a thorough investigation into the facts underlying the claims asserted in the Complaint. Class Counsel has also engaged in extensive informal and formal discovery, including, the production of an extensive data sampling of time clock punches and wage statements and all applicable policies. The Parties conferred extensively over the scope of the Parties' informal information exchange.
47. Prior to mediation, Defendant provided Class Counsel with detailed information regarding the size of the Class, the applicable hiring and

termination dates for Class Members, and the pay rates of Class Members, in addition to other relevant information.

48. On March 28, 2022, the parties participated in a full-day mediation with respected wage and hour mediator, Michael Dickstein, wherein the parties were able to reach an agreement on settlement that is reflected in this Agreement.
49. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
50. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
51. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class or representative treatment. Defendant asserts a number of defenses to the Complaint, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
52. **Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this

Settlement is finally approved by the Court, the Plaintiffs, Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiffs and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. **SETTLEMENT TERMS AND CONDITIONS**

53. **Conditional Stipulation to Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
54. **Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.
55. **Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Erik Martinez shall be appointed as representative for the Class.
56. **Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
57. **Payment and Notice to the LWDA.** In consideration of claims made in the Action pursuant to the PAGA, Class Counsel will request that the Court approve a PAGA Allocation of Seventy-Five Thousand Dollars (\$75,000.00) of the Gross Settlement Amount to these claims. Seventy-five percent (75%) of this amount will be paid by the Settlement Administrator to the LWDA from the Gross Settlement Amount and the remaining twenty-five percent (25%) will be distributed from the Total Net Settlement Amount to Aggrieved Employees as set forth in Paragraph 58. The Court's adjustment, if any, of the amount allocated to Plaintiff's PAGA claim(s), will not invalidate this Settlement Agreement. In accordance with section 2699(1)(2) of the California Labor Code, a copy of this Settlement Agreement shall be provided to the LWDA on the same day that Plaintiff files his motion for preliminary approval of this Settlement with the Court.

- 58. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member and PAGA Aggrieved Employee.

A. Calculation.

- i. **Individual Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of Qualifying Workweeks he or she worked for Defendant in California as a Class Member based on the Class Data provided by Defendant, divided by (ii) the total number of Qualifying Workweeks worked by all Participating Class Members based on the same Class Data, (iii) which is then multiplied by the Net Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.
- ii. **Individual PAGA Settlement Share Calculation.** Each PAGA Aggrieved Employee will receive a proportionate share of the PAGA Fund that is allocated for distribution to PAGA Aggrieved Employees (i.e., 25% of the PAGA Payment), equal to (i) the number of Qualifying Workweeks he or she worked for Defendant in California during the PAGA Period based on the Class data provided by Defendant, divided by (ii) the total number of Qualifying Workweeks worked by all PAGA Aggrieved Employees during the PAGA Period based on the same Class data, (iii) which is then multiplied by the PAGA Payment allocated for distribution to PAGA Aggrieved Employees.

- B. Tax Withholdings.** Each Class Member's Individual Settlement Share will be apportioned as follows: 25% wages, 37.5% interest, and 37.5% penalties. Each PAGA Aggrieved Employee's PAGA Settlement Share will be apportioned as 100% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Only the employee share of payroll tax withholdings shall be from each Class Member's Individual Settlement Share. The employer share of payroll tax

withholdings shall be paid separate from and in addition to the Gross Settlement Amount.

C. Tax Treatment and Payment. The Parties agree that Plaintiff and the Participating Class Members who receive any payment pursuant to this Settlement shall be solely responsible for any and all individual tax obligations associated with this Settlement and shall hold Defendant harmless from any and all liability with regard thereto.

59. Constituents of Gross Settlement Amount Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the Gross Settlement Amount as directed later on herein to the following:

A. To the Named Plaintiff: In addition to his Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Erik Martinez, will receive up to \$7,500 in consideration for providing Defendant a General Release, a release that is broader than the claims released by Participating Class Members. Defendant shall not oppose this request. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to his Class Representative Enhancement Payment.

B. To Class Counsel. At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys Fee Award not to exceed 33.33% of the GSA (which equates to \$559,940) and a Cost Award not to exceed \$30,000. Defendant shall not oppose this request. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award out of the Gross Settlement Amount. The Settlement Administrator may, at the request of Class Counsel, purchase an annuity to utilize U.S. treasuries and bonds or other attorneys fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the entirety of the application for the Attorneys Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members. The Parties agree that the Court's approval of an award of fees in an amount less than that requested by Class Counsel shall not permit or be grounds for Plaintiff or

Class Counsel to cancel, void, back out, or otherwise revoke their acceptance of this Settlement and the Parties' shall proceed with the Settlement notwithstanding.

C. To the Responsible Tax Authorities. The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. Defendant's portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) will be paid outside of and in addition to the GSA. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and will forward the amount of the Participating Class Members' portion of normal payroll withholding taxes to the appropriate taxing authorities.

D. To the Settlement Administrator. The Settlement Administrator – Phoenix Class Action Administration Solutions – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$15,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

E. To the LWDA. The Settlement Administrator will pay \$56,250 of the Gross Settlement Amount to the LWDA. This is 75% of the \$75,000 allocated to satisfy the PAGA penalties claim. The remaining 25% of the PAGA Payment (which equates to \$18,750) shall become part of the PAGA Fund and be available for distribution to PAGA Aggrieved Employees.

F. To Participating Class Members. The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Gross Settlement Amount.

60. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix Class Action Administration Solutions shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to Class Members; performing skip traces and remailing notices to Class Members; calling Class Members with undeliverable notices to obtain accurate addresses; keeping track of any objections or requests for exclusion from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; maintaining a website which will include settlement documents; providing weekly status reports to Defendant's Counsel and Class

Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and remailing Individual Settlement Shares to Participating Class Members; calculating and mailing the PAGA Payment to the LWDA; distributing the Attorneys Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds remaining in the GSF as a result of uncashed checks to the State of California unclaimed property fund in the name of the Class Member; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in Phoenix Class Action Administration Solutions or otherwise have a relationship with Phoenix Class Action Administration Solutions that could create a conflict of interest.

61. Procedure for Approving Settlement.

A. Motion for Preliminary Approval and Conditional Certification.

- i. Within forty-five (45) calendar days after execution of this Settlement Agreement by all Parties, Plaintiff will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval hearing; (4) approving the Class Notice; (5) establishing a procedure for Class Members to request exclusion or object; and (6) enjoining Class Members and/or Aggrieved Employees from filing, initiating, or continuing to prosecute any actions, claims, complaints, or proceedings in Court, with the LWDA or with any other entity or in any other forum regarding the Released Claims. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Class Notice, attached hereto as **Exhibit A**. Prior to moving for Preliminary Approval, Class Counsel shall share the draft motion with Defendant's counsel and provide Defendant five business (5) days to review and propose revisions.
- ii. At the same time that Plaintiff files his Motion for Preliminary Approval, Plaintiff shall send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA.
- iii. At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of

the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.

- iv. **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment.

B. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- i. **Delivery of Class Data.** Within fifteen (15) business days after entry of the Preliminary Approval Order, Defendant shall deliver the Class Data to the Settlement Administrator. The Settlement Administrator will conduct a skip trace for the address of all former Defendant employee Class Members. The Settlement Administrator shall maintain the Class Data and all information contained within the Class Data as private and confidential.
- ii. **Preparation of Class Notices.** Based on the information in the Class Data and the formula set forth herein, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share for every Class Member, to be included in the individualized Class Notices to be sent to that Class Member, and shall prepare and mail a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) days before mailing the Class Notices to Class Members.

The Class Notices will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's principal terms; (iii) the Class definition; (iv) the total number of Qualifying Workweeks the respective Class Member worked for Defendant during the Class Period (according to Defendant's records); (v) the Class Member's estimated Individual Settlement Payment; (vi) the formula for calculating Individual Settlement Payments; (vii) the dates which comprise the Class Period; (viii) instructions on how to submit Requests for Exclusion and/or Notices of Objection; (ix) the Response Deadline; and (x) the claims to be released pursuant to the Settlement of the Action. The Class Notice will also inform each Class Member of his/her right to do nothing, dispute the number of work weeks worked, opt out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.

- iii. **Mailing of Class Notices.** Within fourteen (14) calendar days after receipt of the Class Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class Members using the mailing address information provided by Defendant and the results of the skip trace performed on all former Defendant employee Class Members.
- iv. **Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall 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 Class Members for whom new addresses are found.
- v. **Undeliverable Notices.** If the Settlement Administrator is unable to locate a better address through a database search or skip trace, the Settlement Administrator shall call the last known phone number provided by Defendant to attempt to obtain an accurate

address. If an address is obtained, the Settlement Administrator shall promptly re-mail the Class Notice to the updated address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each remailing. If the Settlement Administrator is unable to locate an accurate address for the Class Member by telephone, the Settlement Administrator will promptly provide the contact information of the Class Member with the undeliverable Notice to Class Counsel. Class Counsel will provide this contact information to a third-party investigator to perform a TLOxp search using the available contact information. The TLOxp search performs a “deep skiptrace” of the Class Member and will have a greater chance of locating a better address to provide the Class Member with Notice. The costs for the TLOxp searches will be considered part of the Settlement Administration costs.

vi. Weekly Status Reports. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant’s Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, the number of requests for exclusion or objections received, and whether any Class Member has submitted a challenge to any information contained in their Class Notice. Additionally, the Settlement Administrator will provide to Class Counsel and Defendant’s counsel any updated reports regarding the administration of the Settlement Agreement as needed or requested.

vii. Settlement Administrator’s Declaration. No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

C. Objections to Settlement. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be

increased for returned mailings. The postmark date of the mailing will be deemed the exclusive means for determining whether a written Notice of Objection is timely. The date of the initial mailing of the Class Notice, and the date the signed Notice of Objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall deliver any Notice of Objections it receives to Class Counsel and counsel for Defendant within five (5) calendar days of receipt. Counsel for the Parties shall file with the Court any response to the objections submitted by objecting Class Members at least ten (10) court days before the date of the Final Approval Hearing.

- a. Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
- b. Notice of Intent to Appear.** Class Members who timely file valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel, provided the objector has first notified the Settlement Administrator by sending his/her written objections to the Settlement Administrator, postmarked no later than the Response Deadline.

Class Members who fail to object in writing in accordance with the above requirements will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement, unless otherwise ordered by the Court. To the extent a timely Notice of Objection is withdrawn before final approval, such an objection shall be treated as though no objection has been made.

- D. Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and the last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline. The postmark date will be the exclusive means to determine whether a

Request for Exclusion has been timely submitted. A request to Opt-Out of the Settlement shall not serve to exclude the Class Member from participation in the settlement of PAGA claims under this Settlement. PAGA Aggrieved Employees who opt-out from the class portion of the settlement shall still be entitled to their share of the PAGA Fund. Subject to Court approval of the PAGA Payment, PAGA Aggrieved Employees shall have no right or ability to opt out of the PAGA portion of this Settlement and PAGA Released Claims.

- i. Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.
- ii. Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
- iii. Defective Submissions.** If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter to postmark a revised Request for

Exclusion. If the revised Request for Exclusion is not postmarked or received within that period, it will be deemed untimely.

E. Access to Information. The Settlement Administrator will maintain all Requests for Exclusion and Notices of Objection received from Class Members. The Claims Administrator will provide copies to the Parties of all documents, including, but not limited to the Requests for Exclusion returned by any Class Member upon reasonable request, or as otherwise set forth herein. To protect the privacy of the Class Members, the Parties shall redact the private personal information of the Class Members prior to filing any Notices of Objection with the Court. Private personal information includes: birthdates, addresses, social security numbers, and phone numbers.

F. Class Member Disputes. If a Class Member who receives a Class Notice wishes to dispute the number of work weeks listed on the Class Notice, the Class Member may notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member contends he or she worked for Defendant during the Class Period. The Settlement Administrator shall then provide the documentation provided by the Class Member to Defendant. Defendant shall review its records, the documentation provided by the Class Member, and shall provide information to the Settlement Administrator in response to any such disputed claim. Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding. All disputes will be decided within ten (10) business days of the Response Deadline, unless otherwise ordered by the Court.

G. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

H. Motion for Final Approval.

- i. Upon expiration of the deadlines to fax or postmark Requests for Exclusion and/or Notices of Objection to the Settlement, Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Individual Settlement Shares; (2) the Attorneys Fee Award; (3)

the Cost Award; (4) Administrative Costs; (5) the Class Representative Enhancement Payment; and (6) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Participating Class Members. The Final Approval/Settlement Fairness Hearing will not be held any earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the Final Approval/Settlement Fairness Hearing.

At the Final Approval Hearing, Class Counsel shall petition the Court to enter an order in the Action, which shall include a dismissal of the Action by Plaintiff, Participating Class Members and Aggrieved Employees, with prejudice, and declare that Plaintiff and all Participating Class Members and/or Aggrieved Employees are bound by the release of claims described in the Class Notice and herein. Prior to petitioning the Court, Class Counsel shall share the draft order with Defendant's counsel and provide Defendant five (5) business days to review and propose revisions.

- ii. **Denial or Appeal of Final Approval.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorneys Fee Award, Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- iii. **Proposed Order and Judgment.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing

such post-judgment matters as may be appropriate under Court rules and applicable law.

- I. Waiver of Right to Appeal.** Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the 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 proceeding, or post-judgment proceeding. Plaintiff or Class Counsel may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal any court order that materially alters the Settlement Agreement's terms.
- J. Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement Agreement, and that Court's decision is not completely reversed and the judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount (other than an alteration of Class Representative Enhancement Payment, Attorneys Fee Award, Cost Award), and any change to the calculation of the Individual Settlement Share.
- K. Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.
- i. Disbursement:** Within fifteen (15) calendar days after the Defendant wires the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class

Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) the PAGA Payment; and (6) Defendant's portion of payroll taxes as the Class Members' current or former employer.

- ii. **Qualified Settlement Fund or QSF:** The Parties agree that the GSF is intended to be a "Qualified Settlement Fund" (QSF) under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

L. Settlement Administrator's Final Report. Within thirty (30) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator will provide any supplemental declaration required by the Court or the Parties. Also within thirty (30) calendar days of the Effective Date, the Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement.

M. Uncashed Checks. Participating Class Members and PAGA Aggrieved Employees must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

- i. **Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.
- ii. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed, shall escheat to the State of California Controller's

Office under the Unclaimed Property Statutes in the name of the Class Member.

- N. **Administration of Taxes by Settlement Administrator.** The Settlement Administrator will be responsible for, *inter alia*: (i) issuing to Plaintiff, Participating Class Members, Aggrieved Employees, and Plaintiff's Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement; and (ii) forwarding all payroll taxes, if any, and penalties to the appropriate government authorities.
- O. **Certificate of Completion.** No later than twenty-five (25) Court days prior to the Final Approval/Settlement Fairness Hearing, the Settlement Administrator will provide a written declaration under oath to: (i) certify completion of administration of the Notice Packets to the Court and counsel for all Parties; and (ii) provide all Settlement-related data, including the number of Class Members who submitted valid Requests for Exclusion and/or Notices of Objection to the Settlement.
- P. **Defendant's Legal Fees.** Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.
62. **Release of Claims.** As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid Request for Exclusion release the Released Parties from the Released Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims.
63. **Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the named Plaintiff in an amount not to exceed \$7,500, Plaintiff Erik Martinez shall give the following general release of claims for himself and his respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release excludes any pending Workers' Compensation claims and any other claims not permitted to be released by law. Plaintiff agrees not to sue or otherwise make a claim against any of the Released Parties for the Released Claims after the Effective Date.

64. Option to Rescind the Settlement Agreement. Defendant may elect to rescind the Settlement if twenty percent (20%) or more of the Class Members submit timely Requests for Exclusion and do not rescind them by the Response Deadline. If Defendant wishes to exercise its conditional right to rescind, it must do so by written communication to Class Counsel that is received by Class Counsel within twenty (20) calendar days of the Response Deadline. In the event that Defendant exercises their conditional right to rescind, the Parties will be restored to their litigation positions as of March 28, 2022, except that all deadlines and/or hearings pending as of March 28, 2022 will be rescheduled to afford the Parties sufficient time to resume litigation. Furthermore, in the event that Defendant exercises its conditional right to rescind, Defendant will be responsible for all Settlement Administration Costs incurred up to the date of rescission.

65. Excluded Class Members. Any Class Member who, through a settlement agreement with Defendant or any of the Released Parties that was executed prior to the date of Preliminary Approval, released the claims at issue in the Action for the entire Class Period will: (i) not be included in the Class; (ii) be excluded from the settlement payment calculations discussed herein; and (iii) not be entitled to notice (including a Notice Packet) as provided herein. Any release that does not encompass the entire Class Period requires the claims of such individuals to be limited to the time which is unaffected by the prior settlement(s).

66. Miscellaneous Terms

A. No Admission of Liability. Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified 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 by Defendant of liability or

wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except as necessary in a proceeding to enforce the terms of this Settlement).

- B. No Effect on Employee Benefits.** The Class Representative Enhancement Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (including, but not limited to, vacation, holiday pay, retirement plans, profit-sharing plans, bonus plans, sick leave plans, or any other benefit plan) of Plaintiff or the Participating Class Members. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members and/or Aggrieved Employees may be entitled under any benefit plans.
- C. 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 between the Parties 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. The Parties expressly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.
- D. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under 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 effect 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 this 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, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- E. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- F. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- G. Amendment or 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 counsel for all Parties, their successors-in-interest, or their counsel.
- H. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- I. No Prior Assignment.** Plaintiffs hereby represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- J. 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.
- K. Fair, Adequate, and Reasonable Settlement.** 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.

L. No Tax or Legal Advice. The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff, Participating Class Members, Aggrieved Employees, and Class Counsel are not relying on any statement, representation, or calculation by Defendant in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.

M. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS OR OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

- N. California Labor Code Section 206.5.** In consideration of Defendant's payment of the sums provided herein, each and every Participating Class Member will be deemed to have also acknowledged and agreed that California Labor Code section 206.5 is not applicable to any Participating Class Member because there is a good faith dispute as to whether any wages are due at all to any such Participating Class Member.
- O. Nullification of Settlement Agreement.** In the event that (a) the Court does not finally approve the Settlement as provided herein or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or Judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.
- P. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- Q. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- R. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement and have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.
- S. Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent, recommendation, and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

- T. Administration Process.** The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.
- U. No Publicity.** Neither the named Plaintiff nor Class Counsel shall engage in the release of any press releases or advertising related to this settlement or Defendant, nor shall they initiate any publicity of any kind related to this settlement. The terms of this settlement (including but not limited to the amount of the GSA) shall remain confidential, and shall not be discussed or disclosed by Plaintiff (other than to his attorneys, spouses (if any), and/or financial advisors (if any)) or by Class Counsel, until the preliminary approval motion is filed with the Court. If asked about the lawsuit prior to the preliminary approval motion being filed, Plaintiff agrees to state only that “The Parties have reached an agreement in principle and will work towards Court approval.” Plaintiff and Class Counsel agree not to post anything about this Settlement on social media or otherwise publicize this Settlement.
- V. Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right, or remedy.
- W. Enforcement Actions.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys’ fees and costs, including expert witness fees, incurred in connection with any enforcement actions.
- X. Execution in Counterpart.** 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 or PDF signatures will be considered an original for all purposes. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- Y. All Terms Subject to Final Court Approval.** All amounts and procedures described in this Settlement Agreement will be subject to final Court approval.

Z. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

AA. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law. Plaintiff agrees that, by signing this Settlement Agreement, he is bound by the terms herein stated and further agrees not to request to be excluded from the Settlement and further warrants and represents that he has no objection to any of the terms of this Settlement. Any attempt by Plaintiff to opt-out of the Settlement or otherwise not comply with this Settlement Agreement shall be deemed void and of no force or effect. Any such request for exclusion shall therefore be void and of no force or effect.

BB. Notice to Counsel. All notices, requests, demands, and other communications required or permitted to be given pursuant to this Settlement Agreement shall be in writing and shall be delivered (i) personally or (ii) mailed, postage prepaid, by first-class U.S. Mail with a concurrent copy by email, to the undersigned persons at their respective addresses as set forth herein:

Class Counsel

David Mara, Esq.
Jill Vecchi, Esq.
Mara Law Firm PC
2650 Camino Del Rio North, Suite 205
San Diego, CA 92108
Tel.: (619) 234-2833
Fax: (619) 234-4048
E-mail: jvecchi@maralawfirm.com

Counsel for Defendant

Kristin M. Halsing, Esq.
Faegre Drinker Biddle & Reath LLP
1800 Century Park East, Ste. 1500
Los Angeles, CA 90067
Tel.: (310) 203-4036
Fax: (310) 229-1285
E-mail: kristin.halsing@faegredrinker.com

IV. READ CAREFULLY BEFORE SIGNING

The Parties hereby agree to and execute this Joint Stipulation of Class and Representative Action Settlement agreement.

Dated: 6/9/2022 | 3:56:58 PM PDT **ERIK MARTINEZ**

DocuSigned by:

D991854E206C49F...

Dated: _____

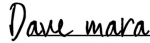
PATRICK INDUSTRIES, INC.

Name:

Title:

Dated: 6/9/2022 | 4:42:26 PM PDT **MARA LAW FIRM, PC**

DocuSigned by:

_____

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff, on behalf of himself, and all
others similarly situated

Dated: _____

FAEGRE DRINKER BIDDLE & REATH LLP

Kristin M. Halsing, Esq.

Attorney for Defendant

Exhibit *A*

SAN BERNARDINO COUNTY SUPERIOR COURT

If you worked for Patrick Industries, Inc. (“Patrick” or “Defendant”) in California as a non-exempt employee at any time between June 1, 2016 through June 10, 2022 a class action settlement will affect your rights. You may be entitled to a payment under this settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- A former employee, Erik Martinez, filed a proposed class action lawsuit against Patrick. The lawsuit alleges that Patrick failed to provide employees with lawful meal and rest periods, failed to pay employees all wages owed, failed to provide lawful wage statements to employees, and failed to pay all wages due at termination of employment. The lawsuit also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). Patrick denies all alleged violations and denies liability. The Court has not made a ruling on the merits of the case. The Parties have agreed to settle the claims set forth in the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	Get a settlement payment and give up any rights to sue for the Released Claims (defined below). <u>If you are still employed by Patrick and choose to receive a settlement payment, this will not affect your employment.</u>
EXCLUDE YOURSELF	Get no payment as a Class Member. This is the only option that allows you to ever be part of any other lawsuit against Patrick involving the legal claims and statutory period alleged in this case. Please note that you are unable to exclude yourself from the PAGA portion of the settlement if you are a PAGA Member.
OBJECT	If you do not agree with the settlement, write to the Court about why you don’t agree with the settlement.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court still has to decide whether to approve of the settlement. Payments will be made if the Court approves the settlement. Please be patient.

WHAT INFORMATION IS IN THIS NOTICE?

1. Why did I get this notice?	Page 2
2. What is this lawsuit about?	Page 2
3. How does a class action settlement work?	Page 3
4. Who are the attorneys representing the parties?	Page 3
5. How do I participate in the settlement?	Page 3
6. How do I request to be excluded from the settlement?	Page 4
7. How do I object to the settlement?	Page 4
8. How does this settlement affect employees' rights?	Page 5
9. How much is the settlement?	Page 6
10. How much can I expect to receive from the settlement?	Page 7
11. Will taxes be taken out of my settlement share?	Page 7
12. When can I expect to receive money from the settlement?	Page 8
13. How will the attorneys be paid?	Page 8
14. How will the class representative be paid?	Page 8
15. What do I do if I need more information or have questions?	Page 9

1. *Why Have I Received this Notice?*

Patrick's records indicate that you were employed as a non-exempt employee in California by Patrick at sometime between June 1, 2016 through June 10, 2022. This period of time is referred to as the "Class Period." If you worked for Patrick in California during the "Class Period," you may be entitled to money under this Settlement. This Notice provides you with basic information about the case and advises you of your options with regard to the Settlement.

2. *What is this Case About?*

This action was filed by Plaintiff on June 1, 2020 in the Superior Court of San Bernardino County. The complaint alleges the following causes of action against Defendant: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) violation of the Labor Code Private Attorneys General Act of 2004; and (8) violation of Unfair Competition Law.

The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiff or to the Class.

3. How Does this Class Action Settlement Work?

Plaintiff and his attorneys believe the settlement is fair, adequate, and reasonable. The San Bernardino County Superior Court has preliminarily reviewed the terms of the settlement and determined the settlement is fair, adequate, and reasonable. On [date of ruling on preliminary approval], the Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [date of final approval hearing], 2022 at [time a.m./p.m.], in Department S26 before Judge David S. Cohn, located at 247 W 3rd Street, San Bernardino, CA 92415. The date of the Final Fairness Hearing may change without further notice to the Class. You are advised to check the Court's website (instructions on accessing this site are provided in Section 15 of this Notice) to confirm that the date has not been changed.

4. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff and the Class ("Class Counsel")	Attorneys for Patrick
MARA LAW FIRM, PC David Mara dmara@maralawfirm.com Jill Vecchi jvecchi@maralawfirm.com 2650 Camino Del Rio North, Suite 205 San Diego, CA 92108 Telephone: (619) 234-2833	FAEGRE DRINKER BIDDLE & REATH LLP Kristin M. Halsing 1800 Century Park East, Suite 1500 Los Angeles, CA 90067 Telephone: (310) 203-4000

The Court has appointed Mara Law Firm, PC, to represent you and all other Class Members simultaneously in this Settlement. You are not required to hire your own attorney because Mara Law Firm, PC, are working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

5. How do I Participate in the Settlement?

If you do nothing, you will automatically be included as a participant in this Settlement and will not have to take any further action to receive your settlement payment. By participating in the Settlement, you will be bound by the Release described in Section 8 below. It is your responsibility to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment.

Important Note: *Patrick will not retaliate against you in any way for either participating or not participating in this Settlement.*

If you do nothing, you will receive money and will be bound by the release of claims stated in this notice.

6. *How Do I Request to be Excluded from the Settlement?*

If you request to be excluded from the settlement, you will not receive any part of the class portion of the settlement. This is the only option that allows you to ever be a part of any other lawsuit against Patrick about the legal claims and statutory period alleged in this case. By timely opting out, you will not receive any part of the class portion of the Settlement, nor will you be bound by the release except as it relates to the PAGA portion of the Settlement and release related thereto.

HOW TO REQUEST TO BE EXCLUDED FROM THE SETTLEMENT:

How can I request to be excluded from the settlement?	You can request to be excluded from the class portion of the settlement by mailing the Settlement Administrator a written request for exclusion.
Is there a deadline to request to be excluded?	If you send a written request to the Settlement Administrator, you must postmark your request by RESPONSE DEADLINE .
What information do I need to provide?	Your request for exclusion must include: (1) your full name, current address, last four digits of your Social Security number; (2) the case name and number (<i>Erik Martinez v. Patrick Industries, Inc.</i> , Case No. CIVDS2009663); (3) a clear statement that you wish to be excluded from the Settlement; and (4) your signature and the date of signature.

The proposed settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves this settlement, then even if you request exclusion from the settlement, you still will receive an individual settlement share for the PAGA claims if you were employed at any time between February 19, 2019 through June 10, 2022 and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining substantive, individual and/or class claims.

7. *How Do I Object to the Settlement?*

You can ask the Court to deny approval by filing an objection or appearing at the Final Approval Hearing to assert the objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be

sent out and the lawsuit will continue. Importantly, you cannot object to the settlement if you have requested to be excluded from the settlement.

HOW TO OBJECT TO THE SETTLEMENT:	
How can I object to the settlement?	As long as you have not requested to be excluded from the Settlement, you can object to the settlement by mailing the Settlement Administrator a written objection, or appearing at the Final Approval Hearing to assert your objection.
Is there a deadline to request to be excluded?	If you send a written objection to the Settlement Administrator, you must postmark your request by RESPONSE DEADLINE .
What information do I need to provide?	Your written objection must include: (1) your full name, address, last for digits of your Social Security number, and signature; (2) the case name and number <i>Erik Martinez v. Patrick Industries, Inc.</i> , Case No. CIVDS2009663); (3) the factual and legal basis, with supporting documents, if any, on which the objection is based; (4) whether you are represented by an attorney and the contact information of any such attorney; and (5) whether you plan to appear at the Final Approval Hearing.

Class Members who fail to file timely written objections in the manner specified above or fail to appear at the Final Approval Hearing to assert an objection shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether an appeal or otherwise) to the settlement, unless otherwise ordered by the Court.

If the Court rejects the objection, the objector will receive a settlement payment and will be bound by the terms of the settlement and will release claims as defined in Section 8 of this notice and in the settlement agreement.

8. How Does This Settlement Affect Employees' Rights?

If the proposed settlement is approved by the Court, a final judgment will be entered by the Court. All Class Members who do not opt out of the settlement will be bound by the Court's final judgment and will release Patrick, and the other Released Parties¹ from the released claims.

¹ "Released Parties" means Defendant and its successors and predecessors in interest, subsidiaries, affiliates, trusts, brother-sister or otherwise related companies, and parents, as well as all of their past, present and/or future, direct and/or indirect, officers, managing members,

The claims released under the settlement are: any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have arisen out of the same facts alleged in the Complaint, against the Released Parties and any and all Doe defendants. The Released Claims include, but are not limited to, 1) Failure to Pay All Straight Time and/or Minimum Wages; 2) Failure to Pay All Overtime Wages; 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 5- 2001(11); Cal. Code Regs., tit. 8 § 11050); 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 5- 2001(12); Cal. Code Regs. tit. 8 § 11050); 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175); 6) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203); and 7) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.). **This release will be for the Class Period.**

In addition, PAGA Aggrieved Employees will release any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged or could have been alleged based upon a reasonable interpretation of the facts alleged in the PAGA Action, against Defendant (including any and all unnamed Does). The Released PAGA Claims include, but are not limited to, violations of the Private Attorneys General Act, Labor Code §2699, et seq. This release will be for the PAGA Period.

If you would like to see the settlement documents or complaint on file, you can check www.INSERT.com, the Court's website, or contact Class Counsel. Directions for accessing the Court's website are outlined in Section 15 of this notice. Class Counsel's information is outlined in Section 4 of this notice.

9. *How Much is the Settlement?*

The amount that Patrick is required to pay under this settlement is \$1,800,000. This amount is referred to as the "Gross Settlement Amount." The Gross Settlement Amount includes the following amounts: (1) approximately \$**INSERT** for disbursement to Class Members who do not request to be excluded from the settlement; (2) \$7,500 to Plaintiff Erik Martinez for his efforts in bringing this action; (3) costs to administer the settlement – meaning costs associated with mailing this notice to employees and costs associated with sending out settlement checks – to the Settlement Administrator, Phoenix Class Action Administration Solutions, which will not exceed \$15,000; (3) payment of \$75,000 to the Plaintiff's claims under the Private Attorneys' General Act of 2004; and (4) payment to Class Counsel in the amount of \$599,940 (33.33% of the Gross Settlement Amount) in attorneys' fees for investigating the facts of the case, litigating the case,

directors, owners, members, employees, principals, heirs, representatives, accountants, auditors, partners, trustees, insurers, reinsurers, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns; and any attorney or law firm representing Defendant and/or the other aforementioned Released Parties with regard to Plaintiff's asserted claims against Defendant.

and negotiating the settlement, and an amount not to exceed \$30,000 for actual costs spent litigating this case. All of these payments are subject to Court approval.

The Court will not approve any of these requests until the Final Fairness Hearing. If the any of the amounts awarded are less than the amounts requested, the difference shall become part of the amount available for distribution to employees who do not request to be excluded from the settlement.

10. How Much Can I Expect to Receive from the Settlement?

Each employee who does not request to be excluded from the settlement will be provisionally assigned an award amount based on his or her tenure as part of the Class. To arrive at this figure, Patrick will provide the Settlement Administrator with the number of Workweeks credited to each Class Member during the Class Period. The Settlement Administrator will then calculate the total number of Workweeks worked by all Participating Class Members during the Class Period (“Total Workweeks”). To determine the Individual Settlement Payment for each Participating Class Member, the Settlement Administrator will (1) divide each Participating Class Member’s respective Workweeks by the Total Workweeks, and (2) multiply the resulting figure by the Net Settlement Amount. Therefore, your settlement payment ties directly to the number of workweeks you worked for Patrick between June 1, 2016 through June 10, 2022.

Although your exact settlement share cannot be precisely calculated until employees have had the opportunity to request to be excluded from the settlement, based upon the calculation formula above, your approximate share of the settlement is: \$ [REDACTED] (based on Patrick’s data which shows you worked # of workweeks between June 1, 2016 through June 10, 2022). Please note that under the law, the case can only go back four years from the date it was filed. This means the case can go back to June 1, 2016. If you began your employment prior to June 1, 2016, this lawsuit can only compensate you for the weeks you worked for Patrick on or after June 1, 2016.

If you believe the number of workweeks attributed to you is incorrect, you must submit written correspondence to the Settlement Administrator that is postmarked no later than [INSERT], explaining the basis for the dispute and including any supporting documentation showing that the workweeks credited to you are inaccurate.

You may also be entitled to a payment for your release of PAGA claims if you worked for Patrick on or after February 19, 2019 through June 10, 2022. If you worked for Patrick during this time period you are a PAGA Aggrieved Employee. Your payment as a PAGA Aggrieved Employee is \$ [REDACTED].

11. Will Taxes be Taken Out of My Settlement Share?

Yes, 25% of each settlement payment is intended to settle employees’ claims for unpaid wages. This portion of your settlement share will be reduced by applicable payroll tax withholdings and deductions. Patrick will pay the employer’s share of legally required payroll taxes separately and

outside of the settlement. The Settlement Administrator will issue you an IRS Form W-2 with respect to this portion of your settlement share.

Seventy-five (75%) of each settlement payment is intended to settle each employees' claims for interest and penalties. This portion will not be reduced by payroll tax withholding and deductions. In addition, one hundred percent of each PAGA Aggrieved Employees Employee's PAGA Settlement Share will be apportioned as 100% penalties. The Settlement Administrator will issue you an IRS Form 1099 with respect to these payments.

12. When Can I Expect to Receive Money from the Settlement?

If you do not request to be excluded from the settlement, you should receive your settlement check approximately two months after the Court gives final approval of the settlement and it becomes effective. The settlement becomes effective on the date on the date the Court grants final approval if there are no objectors or plaintiffs in intervention. As such, if there are no appeals from the settlement, you should receive your settlement check approximately two months after the date of the Final Fairness Hearing, listed in Section 3 of this notice.

Please note that you must cash or deposit your settlement check within 180 calendar days after the check is mailed to you. If your check was lost or misplaced or you have changed your address, please contact the Settlement Administrator. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, they will be deemed void and of no further force and effect. This means that you will not be able to cash or redeem your settlement check 180 days after its issuance. The funds from settlement checks that are voided will be distributed to the State Controller, with the identity of the Class Member to whom the funds belong, to be held for the Class Member per California Unclaimed Property Law.

13. How Will the Attorneys for the Class Be Paid?

The Court-appointed attorneys for Plaintiffs and the employees will be paid from the Gross Settlement Amount, subject to Court approval, in an amount not to exceed 33.33% of the Gross Settlement Amount (estimated to be \$599,940) in attorneys' fees and an amount not to exceed \$30,000 in actual litigation costs. Patrick has paid and will continue to pay all of its own attorneys' fees and costs.

14. How Will the Class Representative Be Paid?

Plaintiff Erik Martinez will also be paid, subject to Court approval, an amount not to exceed \$7,500 in consideration for bringing this case, for the time and effort he put into litigating this case and for conferring a benefit upon other employees and the State of California.

15. What do I do if I Need More Information or Have Questions?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, you can receive a copy of the settlement agreement by contacting Class Counsel at the information listed in Section 4, above, or by accessing the Court docket in this case through the Court's website at <https://www.sb-court.org>, or by visiting the office of the Court at 247 W 3rd Street, San Bernardino, CA 92415 between 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You may also ask Class Counsel for a copy of any of the case documents to be mailed to you free of charge. Please refer to the Patrick Industries Class Action Settlement when calling the settlement administrator or Class Counsel.

To view the case documents on the Court's website, access the website <https://www.sb-court.org>. Once at this website, click on the "Online Services" link. Then click the link that says "Learn More" under the heading "Access Case Information and Document Sales." At the bottom of the page, click on the link "Accept." Click the link "Classic Portal" at the bottom of the webpage. Then, click on the button "Smart Search." On the next page, type the case number "CIVDS2009663" into the box with the words "*Enter a Record Number or Name in Last, First Middle Suffix Format." Then, click the "Submit" button. You will be directed to a screen with the case name. Find the case name "PATRICK INDUSTRIES, INC." and click on the case number associated with this case (CIVDS2009663). This will take you to the case information. If you scroll down on this page you will be able to access all of the documents filed in the case.

Additionally, the Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<**FINAL APPROVAL HEARING DATE/TIME**>>, in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class Members. You are not required to attend the Final Approval Hearing, although any Settlement Class Member is welcome to attend the hearing.

The Court's final judgment will be posted on the Settlement Administrator's website (<http://.com>).

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.