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JELLCO CONTAINER, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

GABRIEL ONTIVEROS, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act,

Plaintiff,

vs.

JELLCO CONTAINER INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No. 30-2020-01145687-CU-OE-CXC

CLASS ACTION

ASSIGNED FOR ALL PURPOSES TO:
JUDGE: KIRK NAKAMURA
DEPT.: CX103

**SETTLEMENT AGREEMENT AND
STIPULATION TO RESOLVE CLASS
ACTION AND PAGA CLAIMS**

Date Action Filed: June 30, 2020
Trial Date: Not Set

1 This *Settlement Agreement and Stipulation To Resolve Class Action and PAGA Claims* is
2 entered into to resolve the action entitled *Gabriel Ontiveros, et al. v. Jelco Container Inc.*, Orange
3 County Superior Court Case No. 30-2020-01145687-CU-OE-CXC.

4 **DEFINITIONS**

5 1. Action. “Action” means *Gabriel Ontiveros, et al. v. Jelco Container Inc.*, Orange
6 County Superior Court Case No. 30-2020-01145687-CU-OE-CXC.

7 2. Agreement or Settlement. “Agreement” or “Settlement” means this Settlement
8 Agreement and Stipulation To Resolve Class Action and PAGA Claims, entered into by the Parties
9 to resolve the Action.

10 3. Aggrieved Employees. “Aggrieved Employees” means Class Members who
11 worked during the PAGA Period (as defined in Paragraph 22).

12 4. Attorneys’ Fees and Costs. “Attorneys’ Fees and Costs” means the amount
13 authorized by the Court for an award of attorneys’ fees to Class Counsel for litigation and
14 resolution of the matter, in the amount that does not exceed thirty-five percent (35%) of the Gross
15 Settlement Amount, and reimbursement of costs incurred by Class Counsel in connection with this
16 Action, in an amount to not to exceed twenty-five thousand dollars (\$25,000).

17 5. Class Counsel. “Class Counsel” means Lawyers for Justice, PC and Protection
18 Law Group, LLP.

19 6. Class or Class Members. “Class” or “Class Members” means all current and former
20 employees who worked in a non-exempt position for Jelco Container, Inc. within the state of
21 California during the Class Period.

22 7. Class Notice. “Class Notice” means the Notice of Class Action Settlement,
23 attached as **Exhibit A** to this Agreement, or a substantially similar notice approved by the Court.
24 The Class Notice will be translated into Spanish by the Settlement Administrator and mailed to
25 Class Members in both English and Spanish.

26 8. Class Period. “Class Period” means the period from June 30, 2016 to the date the
27 Court enters the Order preliminarily approving the Settlement.

28 9. Court. “Court” means the Orange County Superior Court, where the Action is

1 currently pending.

2 10. Defendant. “Defendant” means Jellco Container, Inc.

3 11. Effective Date. The “Effective Date” shall be: (i) if no motion to intervene,
4 objection, or motion to vacate the judgment is filed, the last day for filing a motion to vacate the
5 judgment; (ii) if a motion to intervene, objection, or motion to vacate the judgment is filed, the
6 Effective Date shall be the last day for filing an appeal, review, or writ from the ruling on the
7 motion to intervene, the ruling on the objection, or the ruling on the motion to vacate judgment, if
8 no appeal, review, or writ has been filed by that date; or (iii) if an appeal, review, writ, or other
9 challenge is sought from the Final Order and Judgment, the day after the Final Order and Judgment
10 is affirmed or the appeal, review, or writ is dismissed or denied, and the Final Order and Judgment
11 is no longer subject to further judicial review.

12 12. Enhancement Award. “Enhancement Award” means the amount the Court
13 authorizes to be paid to Named Plaintiff in addition to his Individual Settlement Payment, in
14 recognition of his efforts and work in prosecution of the Action up to \$5,000.00.

15 13. Final Hearing Date. “Final Hearing Date” means the date set by the Court for the
16 hearing on final approval of the Settlement.

17 14. Final Order and Judgment. “Final Order and Judgment” means the proposed order
18 granting final approval of the Settlement and entering judgment, which Plaintiff will submit to the
19 Court with the motion for final approval of the Settlement.

20 15. Gross Settlement Amount. “Gross Settlement Amount” means the total settlement
21 payment Defendant agreed to make under this Agreement. The Gross Settlement Amount is
22 \$700,000.00.

23 16. Individual Settlement Payment. “Individual Settlement Payment” means the
24 individual settlement payment allocated to each Participating Class Member based on the
25 Participating Class Member’s *pro rata* share of the Net Settlement Amount.

26 17. Named Plaintiff. “Named Plaintiff” means Gabriel Ontiveros.

27 18. Notice Period. “Notice Period” means the time period commencing on the date the
28 Class Notice is mailed to Class Members and ending 60 days thereafter.

1 19. Net Settlement Amount. “Net Settlement Amount” means the settlement amount
2 to be distributed to Participating Class Members, which is the Gross Settlement Amount less
3 Attorneys’ Fees and Costs, the Enhancement Award, the PAGA Payment, and Settlement
4 Administration Costs.

5 20. PAGA Claims. “PAGA Claims” means those claims that were, or could have been,
6 alleged in the Action, pursuant to the California Private Attorneys General Act (PAGA).

7 21. PAGA Payment. “PAGA Payment” means the amount of \$25,000.00, which
8 represents the portion of the Settlement allocated to the settlement of the PAGA Claims. The
9 PAGA Amount is paid from the Gross Settlement Amount, and will be allocated as set forth in
10 Paragraph 43.d.

11 22. PAGA Period. “PAGA Period” means the period from April 23, 2019 to the date
12 the Court enters the Order preliminarily approving the Settlement.

13 23. Parties. “Parties” means the Defendant and the Named Plaintiff, individually and
14 on behalf of all Class Members and Aggrieved Employees (defined in Paragraph 3). Each of the
15 Parties may be referred to in the singular as a “Party.”

16 24. Participating Class Member. “Participating Class Member” means each Class
17 Member who has not timely opted out of the Settlement pursuant to Paragraph 48 of the
18 Agreement; “Settlement Class” means a class of all Participating Class Members.

19 25. Preliminary Approval Order. “Preliminary Approval Order” means an order from
20 the Court preliminarily approving this Settlement.

21 26. Released Parties. “Released Parties” means and includes Jelco Container, Inc. and
22 its past, present, and future predecessors, successors, assigns, shareholders, members, owners,
23 officers, directors, investors, employees, managers, managing agents, partners, affiliated
24 companies or entities, parents, holding companies, agents, attorneys, insurers, and representatives.

25 27. Settled Claims or Released Claims. “Settled Claims” or “Released Claims” means
26 any and all claims, known or unknown, contingent or accrued, against Defendant and the other
27 Released Parties that (a) arise from the facts, matters, transactions or occurrences alleged in the
28 Action or that could have been alleged in the Action based on such facts; or (b) arise from the

facts, matters, transactions or occurrences alleged, or that could have been alleged, in the letter sent by Class Counsel to the Labor and Workforce Development Agency (“LWDA”) on or about April 23, 2020, asserting that Defendant violated various provisions of the Labor Code. Without limiting the foregoing, and in addition to the foregoing, the Settled Claims include claims for failure to pay the minimum wage, failure to pay regular wages, failure to pay overtime compensation and other premium wages, off-the-clock work, failure to provide and maintain complete and accurate itemized wage statements that included all information required by the California Labor Code; failure to provide meal periods and rest breaks or additional pay in lieu thereof; failure to reimburse business expenses; untimely payment of wages during and at the time of termination; violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.6, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, the applicable California Wage Orders, and all related or corresponding federal laws; violation of California Business and Professions Code Section 17200 et seq.; and claims under California Labor Code Section 2698 et seq.

28. Settlement Administration Costs. “Settlement Administration Costs” means the costs of settlement administration, including costs of notice to Class Members, distributing settlement payments, and any other fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Settlement.

29. Settlement Administrator. “Settlement Administrator” means ILYM Group, Inc. or such other third-party administrator approved by the Court.

30. Settlement Hearing. “Settlement Hearing” means the hearing on the Final Hearing Date at which the Court will determine whether to fully and finally approve the fairness and reasonableness of this Agreement.

RECITALS

31. On or about June 30, 2020, Gabriel Ontiveros filed the Action against defendant Jellco Container, Inc. on behalf of a class current and former hourly-paid nonexempt employees who worked for Defendant within the State of California and as a Private Attorney General on behalf of aggrieved employees and the State. The Complaint alleges that Defendant violated

1 various wage-and-hour laws, including: (1) failure to pay overtime; (2) failure to pay meal period
2 premiums; (3) failure to pay rest period premiums; (4) failure to pay minimum wages; (5) failure
3 to pay final wages timely; (6) failure to pay wages timely during employment; (7) violation of
4 Labor Code § 226; (8) failure to keep requisite payroll records; (9) failure to reimburse for
5 business expenses; (10) violation of California Business and Professions Code § 17200 *et seq.*;
6 and (11) violation of California Labor Code § 2698 *et seq.*

7 32. Defendant denies that it engaged in any misconduct in connection with the wage-
8 and-hour practices associated with the Class Members or Aggrieved Employees. Defendant further
9 denies that it has any liability of any kind associated with the claims alleged in the Action.
10 Defendant contends that it has complied with both federal and state wage-and-hour laws, and all
11 other laws regulating its relationship with the Class Members, including the Named Plaintiff.

12 33. On March 2, 2021, the Parties participated in mediation with Jeffrey Krivis, Esq.
13 (the “Mediator”), a respected mediator of complex wage and hour actions, and with the assistance
14 of the Mediator’s evaluations, the Parties reached the settlement that is memorialized herein.

15 34. Class Counsel has investigated the facts relating to the Action. Settlement
16 discussions were conducted at arm’s-length, and the Settlement is the result of an informed and
17 detailed analysis of Defendant’s potential liability and exposure in relation to the costs and risks
18 associated with continued litigation. Based on the documents produced, as well as Class counsel’s
19 own independent investigation and evaluation, Class Counsel believes that the Settlement
20 documented by this Settlement Agreement is fair, reasonable, and adequate, and in the best interest
21 of the Class in light of all known facts and circumstances, including the risk of significant delay
22 and defenses asserted to the merits of the Action. While Defendant specifically denies any liability
23 in the Action, Defendant has agreed to enter into this Settlement to avoid the costs associated with
24 defending the Action.

25 **TERMS AND CONDITIONS**

26 NOW, THEREFORE, in consideration of the recitals listed above and the promises and
27 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of
28 the consideration and undertakings set forth below, Named Plaintiff, individually and on behalf of

1 the Class Members, and Defendant agree that the Action shall be and is finally and fully
2 compromised and settled on the following terms and conditions:

3 35. Non-Admission Of Liability. The Parties enter into this Agreement to resolve the
4 dispute that has arisen between them and to avoid the burden, expense and risk of continued
5 litigation. In entering into this Agreement, Defendant and the other Released Parties do not admit,
6 and specifically deny, that they have violated any federal, state, or local law; violated any
7 regulations or guidelines promulgated pursuant to any statute or any other applicable laws,
8 regulations or legal requirements; breached any contract; violated or breached any duty; engaged
9 in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
10 the Class. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations
11 connected with it, shall be construed as an admission or concession by Defendant or any of the
12 other Released Parties of any such violations or failures to comply with any applicable law. Except
13 as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms
14 and provisions shall not be offered or received as evidence in any action or proceeding to establish
15 any liability or admission on the part of Defendant or to establish the existence of any condition
16 constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

17 36. Conditional Nature Of Settlement. For settlement purposes *only*, the Parties agree
18 that (a) a class may be certified in the Action pursuant to California Code of Civil Procedure
19 Section 382, and (b) the Action may proceed as a PAGA representative action.

20 a. The Parties intend their settlement to be contingent upon the preliminary
21 and final approval of each and every term of this Agreement, without material modification. The
22 Parties and their respective counsel shall use their respective best efforts to obtain Court approval
23 and implement this Agreement in accordance with its terms. If the Court does not so approve this
24 Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are
25 unable to agree upon a resolution, the Parties intend this Agreement to become null and void, and
26 unenforceable, in which event the settlement terms set forth in this Agreement, including any
27 modifications made with the consent of the Parties, and any action taken or to be taken in
28 connection with this Agreement shall be terminated and shall become null and void and have no

1 further force or effect, and the class certified for settlement purposes pursuant to this Agreement
2 will be decertified for all purposes.

3 b. In the event the Court does not grant preliminary or final approval of the
4 Parties' settlement, or in the event that this Agreement shall terminate or the settlement embodied
5 in this Agreement does not become effective for any reason, the Agreement and all negotiations,
6 court orders and proceedings relating to the Agreement shall be without prejudice to the rights of
7 the Named Plaintiff, Class Members and Defendant, each of whom shall be restored to their
8 respective positions existing prior to the execution of this Agreement, and evidence relating to the
9 Agreement and all negotiations shall not be discoverable or admissible in the Action or any other
10 litigation. Defendant does not waive, and instead expressly reserves, its rights to challenge the
11 propriety of class certification for any purpose should the Court not grant preliminary or final
12 approval of the Parties' settlement.

13 c. The Parties and their respective counsel shall use their respective best
14 efforts to obtain Court approval and implement this Agreement in accordance with its terms. If
15 the Court grants the Preliminary Approval Order, but does not grant final approval of the
16 Settlement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are
17 unable to agree upon a resolution, then the Preliminary Approval Order will be vacated in its
18 entirety. In addition, if the Court does not grant final approval of the Settlement, neither this
19 Agreement, the Preliminary Approval Order, nor any other document in any way relating to the
20 foregoing, shall be relied upon, referred to, or used in any way for class certification proceedings
21 or representative action proceedings in the Action or any other action. Defendant does not waive,
22 and instead expressly reserves, its rights to challenge the propriety of class certification for any
23 purpose should the Court not grant final approval of the Settlement.

24 37. Participating Class Member Release Of Claims. Upon the funding of the Gross
25 Settlement Amount, the Named Plaintiff and all Participating Class Member shall be deemed to
26 have fully, finally, and forever released, settled, compromised, relinquished and discharged any
27 and all of the Released Parties from the Released Claims that arose during the Class Period.

28 a. This release by the Named Plaintiff and each Participating Class Member is

1 intended to settle any and all of the Settled Claims, whether known or unknown, that any of them
2 may have against the Released Parties, or any of them, during the Class Period. Thus, even if the
3 Named Plaintiff or any Participating Class Member may subsequently discover facts in addition
4 to or different from those they now know or believe to be true with respect to the subject matter of
5 the Released Claims, they shall be deemed to have, and by operation of the Final Judgment shall
6 have fully, finally, and forever settled and released any and all Settled Claims, whether known or
7 unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or
8 hidden, which now exist, or have existed upon any theory of law or equity now existing or coming
9 into existence in the future.

10 b. Because it is impossible or impracticable to have each Class Member
11 execute this Agreement, the Class Notice will advise all Class Members of the binding nature of
12 the release and such notice will have the same force and effect as if the Agreement were executed
13 by each Class Member.

14 38. Aggrieved Employees Release of PAGA Claim: In exchange for the PAGA
15 Amount recited in this Agreement, the Named Plaintiff, as the representative for the State of
16 California and all Aggrieved Employees, and on behalf of their current, former, and future heirs,
17 executors, administrators, attorneys, agents, and assigns will forever completely release and
18 discharge the Released Parties from the PAGA Claims that arose during the PAGA Period. The
19 Aggrieved Employees and the State of California will be deemed by operation of the Final Order
20 and Judgment to have agreed not to sue or otherwise make a claim against any of the Released
21 Parties for the PAGA Claims that arose during the PAGA Period.

22 39. Full Release By The Named Plaintiff. As of the occurrence of the Effective Date,
23 the Named Plaintiff fully releases and discharges Defendant and the other Released Parties from
24 the Released Claims and any other claims that the Named Plaintiff ever had against the Released
25 Parties through the date of execution of the Agreement. Without limiting the generality of the
26 foregoing, the Named Plaintiff specifically and expressly releases to the maximum extent
27 permitted by law any claims against the Released Parties, arising out of or relating to the Named
28 Plaintiff's employment or the termination of his employment with Defendant and any other

Released Party. This general release by the Named Plaintiff includes a waiver of Named Plaintiff's rights under Civil Code Section 1542, which provides: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or his 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."

40. No Prior Assignments: The Named Plaintiff and Class Counsel represent 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 released and discharged by this Agreement, except as set forth in this Agreement.

41. Settlement Payments And Calculation Of Claims. Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of \$700,000.00. The Gross Settlement Amount includes, but is not limited to, payments to be made to Participating Class Members, Class Counsel's Attorneys' Fees and Costs, Enhancement Award to the Named Plaintiff, the PAGA Payment, settlement administration fees and costs, and all payroll taxes. For the avoidance of doubt, subject to the conditions below, Defendant shall not be required to pay any amount over \$700,000 for this Settlement. The following table summarizes the allocation of the Gross Settlement Amount:

Gross Settlement Amount of \$700,000.00, Allocated As Follows:

- **\$25,000.00** for the PAGA Amount
 - **\$18,750.00** for the LWDA Payment
 - **\$6,250.00** for payments to Aggrieved Employees
- Class Counsel Attorneys' Fees not to exceed **\$245,000.00**
- Class Counsel Costs not to exceed **\$25,000.00**
- Up to **\$5,000.00** for an Enhancement Award for Named Plaintiff
- Settlement Administration Costs, not to exceed **\$10,000.00**
- Approximately **\$390,000** paid to Class Members on a *pro rata* basis

42. Settlement Escalator. Defendant represented at the time of mediation that there were approximately 21,000 Workweeks within the Class Period and approximately 132 class members. The Parties understood that the Workweeks would increase between the date of the mediation and preliminary approval and, therefore, considered this during their settlement negotiations. Accordingly, should the actual number of Workweeks increase by more than fifteen percent (15%) (i.e. by more than 3,150 Workweeks) Defendant shall increase the Net Settlement Amount on a *pro-rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 15%. For example, if the number of Workweeks increases by 16% to 24,360 Workweeks, the Net Settlement Amount will increase by 1%.

43. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall be apportioned as follows:

a. Class Counsel Attorneys' Fees and Costs: At the final approval hearing, Class Counsel will apply to the Court for an award of Attorneys' Fees of no more than 35% of the Gross Settlement Amount, which equals \$245,000. Class Counsel will also apply to the Court for an award of Costs incurred by Class Counsel not to exceed the amount of \$25,000.00. These fees and costs are included in, and shall come from, the Gross Settlement Amount. Class Counsel will be issued an IRS Form 1099 for any fees and costs awarded by the Court pursuant to this Section 43.a. Except as provided in this Section 43.a, each party will bear his, her, or its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Action. If the Court awards a lower amount of Attorneys' Fees and Costs than the amount requested, any amount not awarded will be part of the distribution to the Participating Class Members and shall not be a reason to invalidate/terminate this Agreement.

b. Settlement Administrator Costs: At the final approval hearing, Class Counsel will apply to the Court for approval of Settlement Administration costs not to exceed the amount of \$10,000.00. These costs are included in, and shall come from, the Gross Settlement Amount.

c. Named Plaintiff Enhancement Award: At the final approval hearing, Class Counsel will apply to the Court for an award of up to \$5,000.00 to be paid to the Named Plaintiff

1 as an Enhancement Award for his services and for assuming the risks associated with this litigation,
2 and as consideration for providing a general release. Defendant will not oppose such application.
3 The Enhancement Award is included in, and shall come from, the Gross Settlement Amount.
4 Named Plaintiff will be issued an IRS Form 1099 for the Enhancement Award approved by the
5 Court pursuant to this Section. The Enhancement Award payable to the Named Plaintiff shall be
6 in addition to any payment he may receive pursuant to Section 43.e, below. If the Court awards
7 less than the amount requested, any amount not awarded will be part of the distribution to the
8 Participating Class Members and shall not be a reason to invalidate/terminate this Agreement.

9 d. PAGA Payment: At the final approval hearing, Class Counsel will apply to
10 the Court for approval of the PAGA Payment of \$25,000.00 for claims for civil penalties asserted
11 under PAGA. Class Counsel will submit notice of this Settlement to the LWDA, as required by
12 Labor Code § 2699(l)(2). The Parties agree that 75% of the PAGA Amount (\$18,750.00) will be
13 paid to the LWDA as the “LWDA Payment”, and the remaining 25% (\$6,250.00) of civil penalties
14 will be allocated to the Aggrieved Employees. The amount allocated to the Aggrieved Employees
15 will be paid using the same formula as set forth in Section 43.e, but will be limited to weeks worked
16 during the PAGA Period. Any Class Members who worked during the PAGA Period and who opt
17 out of the Settlement will still be considered Aggrieved Employees for purposes of this
18 Section 43.d and, therefore, will (i) receive their portion of the PAGA Payment; and (ii) release all
19 PAGA Claims against the Released Parties.

20 e. Class Member Payments: After deducting the approved amounts specified
21 in Sections 43.a-43.d above, each Participating Class Member will be entitled to a *pro rata* portion
22 of the remaining amount. Individual Settlement Payments will be calculated from the Net
23 Settlement Amount based on the respective number of weeks worked by each Participating Class
24 Member in a non-exempt position during the Class Period, rounded up. Each Participating Class
25 Member’s share of the Net Settlement Amount will be calculated by dividing the Participating
26 Class Member’s weeks worked in a non-exempt position by the total number of weeks worked by
27 all Class Members in a non-exempt position during the Class Period and multiplying this figure
28 by the Net Settlement Amount. The Class Notice will include the number of weeks that the Class

1 Member worked during the Class Period and the amount the Class Member is estimated to receive
2 under the terms of the Settlement.

3 Example: Class Member A worked 50 workweeks during the Class Period.
4 All Class Members who worked during the Class Period worked a total of 20,000
5 workweeks. Class Member A's Individual Settlement Payment would be calculated as
6 follows:

- 7 – 50 workweeks worked by Class Member A ÷ 20,000 workweeks for all
8 Class Members = 0.25%.
- 9 – Class Member A would be entitled to an Individual Settlement Payment
10 in the amount of \$982.50 (0.25% x \$393,000).
- 11 – If Class Member is also an Aggrieved Employee, Class Member will
12 also receive a *pro rata* share of the PAGA Payment, as set forth in
13 Section 43.d.

14 f. The Parties acknowledge and agree that the formula used to calculate the
15 Individual Settlement Payments does not mean that all of the elements of damages, restitutionary
16 relief, and penalties alleged in the Action are not being taken into account. The above formula
17 was devised as a practical and logistical method to simplify the participation process.

18 g. Individual Settlement Payments shall be distributed only to Participating
19 Class Members. PAGA Payments will be distributed to all Aggrieved Employees. The Individual
20 Settlement Payments allocated to Class Members who opt out of the Settlement will be distributed
21 to Participating Class Members on a *pro rata* basis based on the formula set forth in Section 43.e.

22 h. The Parties agree that, under no circumstances shall Defendant be obligated
23 to pay any amount under this Agreement to any Class Member other than Participating Class
24 Members, with the exception of the PAGA Payments.

25 44. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
26 Participating Class Members under this Agreement and the PAGA Payments made to Aggrieved
27 Employees will not be utilized to calculate any additional benefits under any benefit plans to which
28 any Participating Class Member or Aggrieved Employees may be eligible including, but not

1 limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
2 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this
3 Agreement will not affect any rights, contributions, or amounts to which any Participating Class
4 Member or Aggrieved Employee may be entitled under any benefit plans.

5 45. Taxation Of Settlement Proceeds. All settlement payments paid to Participating
6 Class Members, Aggrieved Employees, and the Named Plaintiff, will be paid in a net amount after
7 applicable state and federal tax withholdings, including payroll taxes, have been deducted.

8 a. The Individual Settlement Payment shall be reported as follows: (i) 20% of
9 the amount distributed to each Participating Class Member will be considered wages, and will be
10 reported as such to each Participating Class Member on a W-2 Form; (ii) 40% of the amount
11 distributed to each Participating Class Member will be considered interest on the unpaid wages,
12 and will be reported as such to each Participating Class Member on an IRS Form 1099; and
13 (iii) 40% of the amount distributed to each Participating Class Member will be considered statutory
14 penalties, and will be reported as such to each Participating Class Member on an IRS Form 1099.
15 The PAGA Payments will be considered penalties and will be reported on an IRS Form 1099.

16 b. Prior to mailing Individual Settlement Payments to Participating Class
17 Members, the Settlement Administrator will calculate, withhold from the Individual Settlement
18 Payment, and remit to applicable governmental agencies sufficient amounts as may be owed by
19 Participating Class Members for required withholdings and taxes, including all payroll taxes. The
20 Settlement Administrator will issue appropriate tax forms to each Participating Class Member
21 consistent with the foregoing breakdown. The Parties understand that the Named Plaintiff and
22 Participating Class Members who receive an Individual Settlement Payment pursuant to this
23 Agreement shall be solely responsible for any and all tax obligations associated with such receipt.

24 c. The Parties stipulate that the Settlement Fund (as defined at Section 50) will
25 qualify as a settlement fund pursuant to the requirements of Section 468(B)(g) of the Internal
26 Revenue Code of 1986, as amended, and Section 1.468B-1 *et seq.* of the federal income tax
27 regulations. Furthermore, the Settlement Administrator is designated as the "Administrator" of
28 the qualified settlement funds for purposes of Section 1.468B-2(k) of the income tax regulations.

1 Accordingly, all taxes imposed on the gross income of the Settlement Fund and any tax-related
2 expenses arising from any income tax return or other reporting document that may be required by
3 the Internal Revenue Service or any state or local taxing body will be paid from the Settlement
4 Fund.

5 d. All Parties represent and acknowledge that nothing in this Agreement
6 constitutes tax advice regarding the tax treatment of payments under federal, state, or local law.
7 Participating Class Members will assume any such tax obligations or consequences that may arise
8 from this Agreement and Class Members shall not seek any indemnification from the Parties or
9 any of the Released Parties in this regard. In the event that any taxing body determines that
10 additional taxes are due from any Class Member, such Class Member assumes all responsibility
11 for the payment of such taxes.

12 46. Notice Procedure. Within 10 business days after entry of the Preliminary Approval
13 Order, Defendant will provide to the Settlement Administrator a list of Class Members that
14 identifies each Class Member by name, Social Security Number, and last-known address; specifies
15 the employment dates of each Class Member in a non-exempt position during the Class Period;
16 and provides the number of weeks worked by each Class Member in a non-exempt position during
17 the Class Period and the PAGA Period and the amount payable to each Class Member (the “Class
18 List”). Defendant will provide the Class List in an Excel file or other format reasonably acceptable
19 to the Settlement Administrator. The Settlement Administrator will keep the list confidential and
20 use it only for the purposes described in this Agreement.

21 a. Defendant will provide to Class Counsel a copy of the Class List (without
22 names, contact information, or social security numbers) to verify Defendant’s calculation of
23 workweeks worked and amounts payable to Class Members. Class Counsel will review the same
24 to determine if the calculation of payments to Class Members and Aggrieved Employees is
25 consistent with this Settlement Agreement. Class Counsel will notify Defendant’s counsel and the
26 Settlement Administrator within seven calendar days if any of the calculations are incorrect.

27 b. Upon receipt of the Class List, the Settlement Administrator will check
28 Defendant’s calculations of amounts payable to Class Members and Aggrieved Employees to

1 confirm the accuracy of Defendant's calculations.

2 c. Upon receipt of the Class List, the Settlement Administrator shall perform
3 a search based upon the National Change of Address Database to update and correct any known
4 or identifiable address changes. The Settlement Administrator shall exercise its best judgment to
5 determine the current mailing address for each Class Member. Within 15 calendar days after
6 receipt of the Class List from Defendant, the Settlement Administrator will send the Class Notice,
7 in English and in Spanish, to each Class Member via First Class U.S. Mail. Receipt of the Class
8 Notice shall be presumed as to each and every Class Member whose Class Notice is not returned
9 to the Settlement Administrator as undeliverable within 15 calendar days after mailing.

10 d. The Settlement Administrator will re-mail any notice packet returned by the
11 United States Postal Service with a forwarding address on or before the expiration of the Notice
12 Period. It shall be conclusively presumed that those Class Members whose re-mailed Class Notice
13 is not returned to the Settlement Administrator as undeliverable within 15 calendar days after re-
14 mailing, received the Class Notice. Class Members who receive a re-mailed Class Notice shall
15 have their Notice Period extended 15 calendar days.

16 e. The Settlement Administrator will use the appropriate skip tracing and
17 National Change of Address searches to increase the likelihood of delivery of the Class Notice to
18 Class Members, and to re-mail the notice packets returned by the Postal Service without a
19 forwarding address upon locating new or alternate addresses after a reasonable search.

20 f. Class Counsel will provide to the Court, in connection with seeking final
21 approval of the Settlement, a declaration from the Settlement Administrator confirming that the
22 Class Notice was mailed to all Class Members as required by this Agreement, as well as any
23 additional information Class Counsel deems appropriate to provide to the Court.

24 47. Dispute Procedure. The Class Notice will include a procedure by which a Class
25 Member may dispute the number of workweeks allocated to the Class Member by submitting a
26 written dispute sent via U.S. Mail to the Settlement Administrator postmarked no later than the
27 expiration of the Notice Period ("Workweek Dispute"). To be valid, a Workweek Dispute must
28 contain the following: (i) the Class Member's full name, current address, and signature; (ii) the

1 Action name and case number; (iii) the number of workweeks the Class Member maintains is
2 correct; and (iv) documentary evidence sufficient to prove that Defendant's calculation of the
3 workweeks for the Class Member is incorrect. Upon receipt of notice of a Workweek Dispute, the
4 Settlement Administrator shall promptly serve Class Counsel and Defendant's counsel with a copy
5 of the Workweek Dispute and any accompanying papers. No Workweek Dispute shall be effective
6 or considered for any purpose unless it is timely mailed by U.S. mail to and received by the
7 Settlement Administrator as provided above. Defendant shall have the right to respond to the
8 Workweek Dispute by any Class Member. All information and documents relating to any such
9 disputes will be provided to Class Counsel. The Settlement Administrator will resolve the
10 Workweek Dispute and make a final and binding determination without hearing or right of appeal.
11 The Settlement Administrator's determination will be subject to review by the Court at the time of
12 the Final Approval Hearing so long as the Participating Class Member submits an objection to the
13 Settlement Administrator's determination at or before the Final Approval Hearing.

14 a. Within 10 calendar days after the close of the Notice Period, the Settlement
15 Administrator will provide Class Counsel and Defendant's counsel with a report listing the amount
16 of all Individual Settlement Payments and PAGA Payments to be made to Participating Class
17 Members and Aggrieved Employees. The report to Class Counsel will not include the names or
18 contact information of Participating Class Members and Aggrieved Employees. After receiving
19 the Settlement Administrator's report, Class Counsel and Defendant's counsel shall review the
20 same to determine if the calculation of payments to Participating Class Members and Aggrieved
21 Employees is consistent with this Settlement Agreement.

22 48. Opt-Out Procedure. Unless a Class Member opts out of the settlement described in
23 this Agreement, the Class Member will be bound by the terms and conditions of this Agreement,
24 including the release of the Released Claims that arose during the Class Period. A Class Member
25 will not be entitled to opt out of the settlement established by this Agreement unless the Class
26 Member submits a valid opt-out request ("Opt-Out Request"). A valid Opt-Out Request must:
27 (i) contain the Class Member's full name, current address, and signature; (ii) the Action name and
28 case number; (iii) a written request clearly expressing the Class Member's desire to be excluded

1 from (or opt out of) the Settlement; and (iv) be returned so that it is postmarked on or before the
2 expiration of the Notice Period.

3 a. Upon receipt of any Opt-Out Request within the Notice Period, the
4 Settlement Administrator shall review the Opt-Out Request to confirm that it complies with the
5 opt-out requirements of this Agreement.

6 b. Any Class Member who fails to submit a timely, complete and valid Opt-
7 Out Request will be barred from opting out of this Agreement or the settlement, unless otherwise
8 ordered by the Court. If the Settlement Administrator receives a timely Opt-Out Request that is
9 incomplete, it will make reasonable attempts to contact the class member to cure the defect. The
10 Settlement Administrator will not consider any Opt-Out Request postmarked after the end of the
11 Notice Period, but will report its receipt of any such requests to Class Counsel and counsel for
12 Defendant. It shall be presumed that, if an opt-out request is not postmarked on or before the end
13 of the Notice Period, the Class Member did not make the request in a timely manner, unless the
14 Class Member's Notice Period was extended pursuant to Section 46.d, above. A declaration
15 submitted by any Class Member attesting to the mailing of an opt-out request on or before the
16 expiration of the Notice Period shall be insufficient to overcome the conclusive presumption that
17 the opt-out request was untimely. Under no circumstances shall the Settlement Administrator have
18 the authority to extend the deadline for Class Members to submit a request to opt out of the
19 settlement without Defendant's written consent, except for the 15-day extension of a Class
20 Member's Notice Period due to a re-mailed Class Notice, as set forth in Section 46.d, above.

21 c. At the close of the Opt-Out Period, the Settlement Administrator shall report
22 the names of all individuals who opted-out of the Agreement to the parties and include this
23 information in a Declaration regarding the distribution of the notice that will be provided in support
24 of Plaintiff's Motion for Final Approval.

25 d. If 5% or more of the Class Members timely opt out of the settlement,
26 Defendant will have the sole and absolute discretion to withdraw from this Agreement within 10
27 business days after Defendant receives notice of the number of opt outs. Defendant will provide
28 written notice to Class Counsel if it intends to withdraw from this Agreement. In the event that

1 Defendant elects to so withdraw, the withdrawal shall have the same effect as a termination of this
2 Agreement for failure to satisfy a condition of settlement, and the Agreement shall become null
3 and void and have no further force or effect, and the class certified pursuant to this Agreement will
4 be decertified for all purposes. If Defendant chooses to terminate this Settlement Agreement under
5 this provision, it shall be responsible to pay the Settlement Administrator's fees and costs. If the
6 Settlement Agreement is terminated for any other reason, including the Court's failure to grant
7 final approval of the Parties' settlement, then Class Counsel and Defendant will be jointly
8 responsible for the Settlement Administrator's fees and costs.

9 49. Objections To Settlement. Any Class Member may object to the Settlement. Any
10 written objection must be mailed to the Settlement Administrator (who shall promptly provide a
11 copy to Class Counsel and counsel for Defendant) by the close of the Notice Period. Class Counsel
12 will ensure that any written objections get filed with the Court concurrently with the final approval
13 documents. Class Members who have not objected in writing may still appear and be heard at the
14 final fairness..

15 a. Written objections to the Settlement must contain at least the following:
16 (i) the objecting Class Member's full name, current address, and signature; (ii) a clear reference to
17 the Action; and (iii) a statement of the specific reasons why the objector believes the Settlement is
18 unfair or objects to the Settlement. All objections shall be signed by the objecting Class Member
19 or the Class Member's legally authorized representative.

20 b. Class Counsel or Defendant's counsel may, before the final approval
21 hearing, file responses to any written objections submitted to the Court.

22 c. Unless they opt out of the Settlement as specified in Section 48, Class
23 Members who object to the proposed settlement or the Agreement will remain Participating Class
24 Members, and shall be deemed to have voluntarily waived their right to pursue an independent
25 remedy against Defendant and the other Released Parties. To the extent any Participating Class
26 Member objects to the proposed settlement or Agreement and such objection is overruled in whole
27 or in part, such individuals will be bound by the Court's Final Approval Order.

28 d. In the event that any person objects to or opposes this proposed settlement

1 or the Agreement, or attempts to intervene in or otherwise enter the Action, the Parties and Class
2 Counsel will use their best efforts to defend the Settlement.

3 e. In the event that a Class Member timely submits both an objection and an
4 opt-out request, the objection will be rejected and the opt-out accepted as a class member who
5 opts-out of the Agreement is not a class member and no longer has grounds to object to the
6 settlement.

7 50. Funding And Distribution Of Settlement. Within 14 calendar days of the close of
8 the Notice Period, the Settlement Administrator will provide a draft declaration to Class Counsel
9 and Defendant's counsel of the number of Participating Class Members, the identity of those
10 individuals who opted-out of the Settlement, the total amount payable to all Participating Class
11 Members, the PAGA Payment, Attorneys' Fees and Costs, the Enhancement Award, and the costs
12 of settlement administration. Within five business days after the Effective Date, Defendant shall
13 remit to the Settlement Administrator the Gross Settlement Amount of \$700,000.00 (the
14 "Settlement Fund"). The delivery by Defendant of the Settlement Fund to the Settlement
15 Administrator will constitute the full and complete discharge of the entire obligation of Defendant
16 under this Agreement. No Released Party will have any further obligation or liability to the Named
17 Plaintiff, Participating Class Members, Aggrieved Employees, or Class Counsel under this
18 Agreement, regardless of whether the Named Plaintiff, Participating Class Members, Aggrieved
19 Employees, or Class Counsel receive the payments from the Settlement Administrator set forth in
20 this Agreement.

21 a. The distribution of Individual Settlement Payments to Participating Class
22 Members and PAGA Payments to Aggrieved Employees will occur no later than 15 business days
23 after receipt of the Settlement Fund from Defendant ("Settlement Proceeds Distribution
24 Deadline"). The Settlement Administrator shall be deemed to have timely distributed Individual
25 Settlement Payments and PAGA Payments if it places in the mail Individual Settlement Payments
26 for all Participating Class Members and PAGA Payments for all Aggrieved Employees by the
27 Settlement Proceeds Distribution Deadline. No person will have any claim against the Settlement
28 Administrator, Defendant, Class Counsel, Defendant's counsel, or any other agent designated by

1 the Named Plaintiff or Class Counsel based upon the distribution of Individual Settlement
2 Payments and PAGA Payments made substantially in accordance with this Agreement or further
3 orders of the Court.

4 b. The distribution of the LWDA Payment, Attorneys' Fees and Costs, and the
5 Enhancement Award shall occur no later than 15 business days after the Settlement Administrator
6 receives the Settlement Fund from Defendant.

7 c. If a Participating Class Member's or Aggrieved Employee's check is
8 returned to the Settlement Administrator, the Settlement Administrator will make reasonable
9 efforts to re-mail it to the Participating Class Member or Aggrieved Employee at the correct
10 address. It is expressly understood and agreed that the checks for the Individual Settlement
11 Payments and PAGA Payments will become void and no longer available if not cashed within 180
12 days after mailing. The funds from uncashed and voided checks will be transferred to the State of
13 California's Unclaimed Property Fund in the name of the Participating Class Member/Aggrieved
14 Employee.

15 d. Defendant will not be obligated to make any payments contemplated by this
16 Agreement unless and until the Court enters the Final Order and Judgment, and after the Effective
17 Date of the Agreement.

18 51. Binding Effect Of Agreement On Class Members. Subject to final Court approval
19 and the occurrence of the Effective Date, and unless otherwise provided in this Agreement, all
20 Participating Class Members will be bound by this Agreement.

21 52. Binding Effect Of Agreement On Aggrieved Employees and State of California.
22 The Aggrieved Employees and the State of California are deemed by operation of the Final Order
23 and Judgment to have agreed not to sue or otherwise make a claim against any of the Released
24 Parties for civil penalties under Labor Code § 558 and Labor Code §§ 2698 *et seq.* for the Released
25 Claims.

26 53. Provisional Approval Of Settlement. Named Plaintiff will file a motion in the
27 Action requesting that the Court enter the Preliminary Approval Order within 30 days of the
28 complete execution of this Agreement. Defendant will not oppose Class Counsel's motion for

1 preliminary approval of the settlement so long as the motion and supporting papers are consistent
2 with the terms of this Agreement. Class Counsel will provide Defendant's counsel with a
3 reasonable opportunity to review, and provide comments to, the motion for preliminary approval
4 of the settlement before the motion and supporting papers are filed with the Court.
5 Notwithstanding the foregoing, Defendant may, without opposing the preliminary approval
6 motion, advise the Court if Defendant disagrees with any of the factual statements included by the
7 Named Plaintiff in the motion and supporting papers. Defendant's counsel will meet and confer
8 with Class Counsel regarding any disputed factual statements before notifying the Court of any
9 disputes.

10 54. Non-Interference With Claims Procedure. The Parties and their counsel agree that
11 they will not advise, solicit, or otherwise encourage any Class Members to submit requests for
12 exclusion or objections to the settlement or to appeal from the Final Order or Final Judgment.

13 55. Final Order and Judgment. The Named Plaintiff will request that the Court enter,
14 after the Settlement Hearing finally approving this Agreement, a Final Order and Judgment.
15 Named Plaintiff will request that the Final Order and Judgment certify the Participating Class; find
16 that this Agreement is fair, just, equitable, reasonable, adequate and in the best interests of the
17 Class and the Aggrieved Employees, list the employees (if any) who opted-out of the settlement,
18 order that Participating Class Members and Aggrieved Employees, and the State of California
19 release the Released Parties from the Released Claims arising during the class period and require
20 the Parties to carry out the provisions of this Agreement.

21 56. Automatic Voiding Of Agreement If Settlement Not Finalized. If for any reason
22 the settlement set forth in this Agreement does not become final, the settlement will be null and
23 void and the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be
24 vacated, and the Parties will be returned to the status quo prior to entering this Agreement with
25 respect to the Action, as if the Parties had never entered into this Agreement, and the class certified
26 pursuant to this Agreement will be decertified for all purposes. In addition, in such event, the
27 Agreement and all negotiations, court orders and proceedings relating to this Agreement shall be
28 without prejudice to the rights of any and all parties to this Agreement, and evidence relating to

1 the Agreement and all negotiations shall not be admissible or discoverable in the Action or
2 otherwise.

3 57. No Double Recovery. No person who has already released, assigned, or otherwise
4 forfeited the claims asserted in the Action will be considered a Class Member or entitled to recover
5 under this Agreement.

6 58. No Publicity. The Named Plaintiff and Class Counsel agree that they shall not
7 discuss, answer questions about, promote, or publicize the filing of the Action, the Parties'
8 settlement, this Agreement and its terms, or the negotiations leading to this Agreement with anyone
9 other than the Court or those individuals necessary to effectuate the terms of the Agreement. The
10 prohibition set forth in this Section 58 includes, but is not limited to: (i) publication by Named
11 Plaintiff or Class Counsel on any website (including, without limitation, publishing on any Twitter
12 account, Facebook, other social media, or blog, or business website) of the amount or terms of the
13 settlement, with or without identifying information; and (ii) the submission of information to
14 Verdicts & Settlements or any other publication that summarizes the results of jury verdicts and
15 settlements.

16 a. Notwithstanding the foregoing, Class Counsel may respond to questions
17 received from, and discuss any aspect of this Agreement with the Class Members or their legal
18 representatives, the Settlement Administrator, the Court, and representatives of the California
19 Labor and Workforce Development Agency.

20 b. Notwithstanding the foregoing nothing in this section shall prohibit or the
21 filing of information relating to the Settlement in public court documents or from being posted
22 online through the filing of the settlement and approval documents with the California Labor and
23 Workforce Development Agency or the online posting of documents relating to the Action by the
24 Settlement Administrator including the Judgment entered by the Court.

25 c. The Named Plaintiff and Class Counsel agree that all data and information
26 informally produced by Defendant in connection with this Action will be maintained in
27 confidence, and will be returned or destroyed within 15 calendar days after the Effective Date.

28

59. Invalidation Of Agreement For Failure To Satisfy Conditions. If the Court makes material changes to the material terms or conditions of Sections 1 through 58 of this Agreement that are not agreed to by the Parties, either Party shall have the right to terminate this Agreement, in which case Defendant would not be obligated to make any payments to any Class Member, to Class Counsel, or to the Named Plaintiff. The Parties shall meet and confer before exercising such right.

60. Modification In Writing. This Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by Class Counsel and Defendant's counsel. This Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

61. Ongoing Cooperation. The Named Plaintiff and Defendant will execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement. The execution of such documents must take place prior to the Final Hearing Date. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

62. Notices. All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered personally or by first class mail to the Settlement Administrator approved by the Court and the undersigned persons at their respective addresses as set forth below:

CLASS COUNSEL

LAWYERS FOR JUSTICE, PC
Edwin Aiwarzian
Arby Aiwarzian
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: 818-265-1020

PROTECTION LAW GROUP LLP
Heather Davis, Esq.
Amir Nayebdadash, Esq.
237 California Street
El Segundo, California 90245

1 **COUNSEL FOR DEFENDANT**

2 Brian C. Sinclair, Esq.
3 RUTAN & TUCKER, LLP
4 18575 Jamboree Road, 9th Floor
5 Irvine, California 92612
6 Telephone: (714) 641-5100

7 63. Binding on Successors. This Agreement will be binding upon and will inure to the
8 benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and
9 legal representatives.

10 64. Entire Agreement. This Agreement constitutes the full, complete and entire
11 understanding, agreement and arrangement between the Named Plaintiff, the Class Members, and
12 the Aggrieved Employees, on the one hand, and Defendant, on the other hand, with respect to the
13 settlement of the Action. This Agreement supersedes any and all prior oral or written
14 understandings, agreements and arrangements between the Parties with respect to the settlement
15 of the Action. Except for those set forth expressly in this Agreement, there are no other
16 agreements, covenants, promises, representations or arrangements between the Parties with respect
17 to the settlement of the Action and the Settled Claims against the Released Parties. The Parties
18 explicitly recognize California Civil Code § 1625 and California Code of Civil Procedure §
19 1856(a), which provide that a written agreement is to be construed according to its terms, and may
20 not be varied or contradicted by extrinsic evidence, and agree that no such extrinsic oral or written
21 representations or terms shall modify, vary, or contradict the terms of this Agreement.

22 65. Execution In Counterparts. This Agreement may be signed in one or more
23 counterparts. All executed copies of this Settlement Agreement, and photocopies of the
24 Agreement (including facsimile and e-mail copies of the signature pages), shall have the same
25 force and effect and shall be as legally binding and enforceable as the original.

26 66. Captions. The captions, section numbers, and paragraph numbers, in this
27 Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or
28 describe the scope or intent of the provisions of this Agreement.

67. Governing Law. This Agreement shall be interpreted, construed, enforced, and

1 administered in accordance with the laws of the State of California, without regard to conflict of
2 law rules.

3 68. Reservation Of Jurisdiction. Notwithstanding the dismissal of the Action and entry
4 of the Final Order and Judgment, the Court shall retain jurisdiction for purposes of interpreting
5 and enforcing the terms of this Agreement.

6 69. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
7 and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly
8 against one Party than another merely by virtue of the fact that it may have been prepared by
9 counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
10 between the Parties, all Parties have contributed to the preparation of this Agreement.

11 70. Representation and Warranties. Class Counsel and the Named Plaintiff represent
12 and warrant to Defendant that they are not aware of any attorneys beyond those named as Class
13 Counsel who have claims for fees arising out of the Action or the Settlement contemplated by this
14 Agreement.

15 71. Authorization to Act. Each Party to this Agreement covenants and warrants that
16 (a) such Party has full power and authority to enter into and consummate all transactions
17 contemplated by this Agreement and have duly authorized the execution, delivery and performance
18 of this Agreement and (b) the person executing this Agreement for such Party has the full right,
19 power and authority to enter into this Agreement on behalf of such Party, and the full right, power
20 and authority to execute any and all necessary instruments in connection with the Settlement, and
21 to fully bind such Party to the terms and obligations of this Agreement.

22 72. Representation By Counsel. The Parties acknowledge that each of them has been
23 represented by their respective counsel throughout all negotiations that preceded the execution of
24 this Agreement, and that this Agreement has been executed with the consent and advice of their
25 respective counsel. Further, the Named Plaintiff and Class Counsel warrant and represent that
26 there are no liens on the Settlement Agreement, and that after entry by the Court of the Final Order
27 and Judgment, the Settlement Administrator may distribute funds to Participating Class Members,
28 Aggrieved Employees, Class Counsel, the LWDA, and the Named Plaintiff as provided by this

1 Agreement.

2 73. Representation By The Named Plaintiff. The Named Plaintiff agrees not to request
3 to be excluded from the Class and not to object to any terms of this Agreement. Any such request
4 by the Named Plaintiff for exclusion or objection shall be void and of no force or effect.

5 74. Additional Attorneys' Fees and Costs. No Participating Class Member, Aggrieved
6 Employee, or Class Counsel, or any other attorney acting for any Participating Class Member or
7 Aggrieved Employee, may recover or seek to recover any amounts for fees, costs, or disbursements
8 arising from the Action or the Gross Settlement Amount from the Released Parties except as
9 expressly provided in this Agreement.

10 75. No Reliance on Representations. The Parties have made such investigations of the
11 facts and the law pertaining to the matters described in this Agreement as they deem necessary,
12 and have not relied, and do not rely, on any statement, promise, or representation of fact or law,
13 made by any other Party, or any of their agents, employees, attorneys, or representatives, with
14 regard to any of their rights or asserted rights, or with regard to the advisability of making and
15 executing this Agreement, or with respect to any such matters. No representations, warranties, or
16 inducements have been made to any Party concerning this Agreement.

17 76. No Collateral Attack. This Agreement will not be subject to collateral attack by
18 any Class Member or any recipient of the Class Notice after the Final Order and Dismissal. Such
19 prohibited collateral attacks shall include but not be limited to claims that the Class Member failed
20 for any reason to receive timely notice of the procedure for disputing the calculation of his or her
21 Individual Settlement Payment, PAGA Payment, or for opting out of the Settlement.

22 IT IS SO AGREED:
23
24

25 PLAINTIFF GABRIEL ONTIVEROS

26 Dated: 05/14/2021

By:

Electronically Signed 2021-05-14 16:24:38 UTC - 72080cd1-b442-4ad0-a354-4d8010b7391

AssureSign® 72080cd1-b442-4ad0-a354-4d8010b7391

Gabriel Ontiveros
Named Plaintiff

1 Dated: _____

DEFENDANT JELLCO CONTAINER, INC.

2

By: _____

3

Title: _____

4

5

6 APPROVED AS TO FORM AND CONTENT AND
7 AGREE TO BE BOUND BY PARAGRAPH 58:

7

8 Dated: May 21, 2021

LAWYERS FOR JUSTICE, P.C.

9

By: 
Attorney for Plaintiff

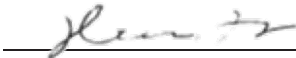
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11

12 Dated: May 24, 2021

PROTECTION LAW GROUP, LLP.

13

By: 
Attorney for Plaintiff

14

15

16 APPROVED AS TO FORM AND CONTENT:

17

18 Dated: _____

RUTAN & TUCKER, LLP

19

By: _____
Attorney for Defendant

20

21

22

23

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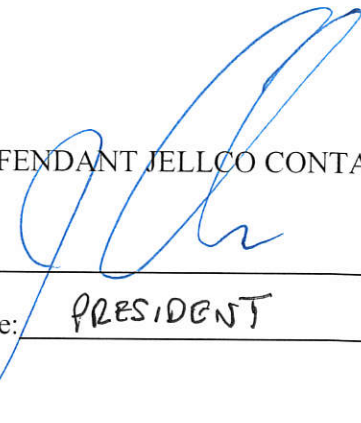
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28

1 Dated: 5/19/21

DEFENDANT JELLCO CONTAINER, INC.

By: 

Title: PRESIDENT

6 APPROVED AS TO FORM AND CONTENT AND
7 AGREE TO BE BOUND BY PARAGRAPH 58:

8 Dated: _____

LAWYERS FOR JUSTICE, P.C.

9
10 By: _____
Attorney for Plaintiff

11
12 Dated: _____

PROTECTION LAW GROUP, LLP.

13
14 By: _____
Attorney for Plaintiff

15
16 APPROVED AS TO FORM AND CONTENT:

17
18 Dated: May 21, 2021

RUTAN & TUCKER, LLP

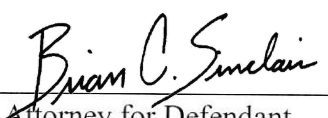
19
20 By: 
Attorney for Defendant

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Ontiveros v. Jellco Container, Inc.

Orange County Superior Court, Case No. 30-2020-01145687-CU-OE-CXC

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To: All current and former employees who worked in a non-exempt position for Jellco Container, Inc. within the state of California at any time between June 30, 2016 and [date of preliminary approval]

BASIC INFORMATION

1. What is this settlement about?

A lawsuit was commenced by Gabriel Ontiveros (“Plaintiff”), a former employee of Jellco Container, Inc. (“Defendant”), on June 30, 2020. The case is currently pending in the Orange County Superior Court, Case No. 30-2020-01145687-CU-OE-CXC

The lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods and associated premium pay, did not properly pay employees all wages owed for time worked, did not provide accurate wage statements, did not timely pay all wages during employment and all wages owed at termination of employment, and failed to reimburse employees for necessary business expenses. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit claims that the Defendant violated the California Labor Code and the California Business and Professions Code, entitling Class Members to, *inter alia*, damages, penalties and restitution. Defendant denies all alleged violations and denies that it owes the Class Members any remedies. The Court has not made a ruling on the merits of the case.

2. Why is this a class action?

In a class action, one or more people called the Class Representative (in this case, Gabriel Ontiveros) sue on behalf of people who appear to have similar claims. All these people are referred to here as Class Members. In a class action, the court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Orange County Superior Court is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims (“Agreement” or “Settlement”). On [date of preliminary approval], the Court granted preliminary approval of the Settlement, appointed Plaintiff Gabriel Ontiveros as the Class Representative, and appointed his attorneys at Lawyers for Justice and Protection Law Group as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendant as non-exempt employee in the state of California at any time between June 30, 2016 and [date of preliminary approval]

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Seven Hundred Thousand Dollars (\$700,000) (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 35% of the Gross Settlement Amount or Two Hundred and Forty-Five Thousand Dollars (\$245,000);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty-Five Thousand Dollars (\$25,000);
- C. **Enhancement Payment to the Class Representative** in an amount not to exceed Five Thousand Dollars (\$5,000);
- D. **Settlement Administration Costs** which are currently estimated to be Ten Thousand Dollars (\$10,000); and
- E. **PAGA Payment** in the amount of Twenty-Five Thousand Dollars (\$25,000) for the settlement of claims arising under the Private Attorney’s General Act of 2004 (PAGA). Seventy-Five percent (75%) of this amount (\$18,750) shall be paid to the LWDA. The remaining twenty-five percent (25%) of this amount (\$6,250) will be distributed to non-exempt employees who worked for Defendant in California at any time between April 23, 2019, and [date of preliminary approval] for the release of their claims arising under PAGA.

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment” will be determined on a *pro rata* basis, based on the number of weeks you worked in California as a, non-exempt employee of Defendant from June 30, 2016 and [date of preliminary approval] (“Workweeks”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Payment.

Your Individual Settlement Payment will be apportioned as twenty percent (20%) wages, forty percent (40%) interest and forty percent (40%) penalties. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Both employee and employer-side payroll taxes on the wage portion of Individual Settlement Payments shall be deducted from the Net Settlement Amount. The penalties and interest portions of each class member’s settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

You worked XXX workweeks during the class period. Your Individual Settlement Payment is \$XXX.XX. This amount is an estimate and is subject to change.

This Amount was determined based on Defendant's records of your employment between June 30, 2016 and [date of preliminary approval] and is presumed correct. If you dispute the accuracy of Defendant's records as to the number of weeks worked during the Class Period, provide any documentation you have supporting such dispute by [DATE]. All disputes regarding your workweeks will be resolved and decided by the Settlement Administrator subject to review by the Court. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]

[Address]

[Telephone No].

[Fax No.]

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

7. What am I giving up if I do not request to be excluded from the Settlement?

Upon the funding of the Gross Settlement Amount by Defendant, in exchange for the consideration set forth by the Settlement, Class Members who do not submit a timely request for exclusion will release the "Released Parties" from the "Released Claims" that arose during the "Class Period."

The "Released Parties" include Jellco Container, Inc. and its past, present, and future predecessors, successors, assigns, shareholders, members, owners, officers, directors, investors, employees, managers, managing agents, partners, affiliated companies or entities, parents, holding companies, agents, attorneys, insurers, and representatives.

The "Released Claims" include any and all claims, known or unknown, contingent or accrued, against Defendant and the other Released Parties that (a) arise from the facts, matters, transactions or occurrences alleged in the Action or that could have been alleged in the Action based on such facts; or (b) arise from the facts, matters, transactions or occurrences alleged, or that could have been alleged, in the letter sent by Class Counsel to the Labor and Workforce Development Agency ("LWDA") on or about April 23, 2020, asserting that Defendant violated various provisions of the Labor Code. Without limiting the foregoing, and in addition to the foregoing, the Settled Claims include claims for failure to pay the minimum wage, failure to pay regular wages, failure to pay overtime compensation and other premium wages, off-the-clock work, failure to provide and maintain complete and accurate itemized wage statements that included all information required by the California Labor Code; failure to provide meal periods and rest breaks or additional pay in lieu thereof; failure to reimburse business expenses; untimely payment of wages during and at the time of termination; violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.6, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, the applicable California Wage Orders, and all related or corresponding federal laws; violation of California Business and Professions Code Section 17200 et seq.; and claims under California Labor Code Section 2698 et seq.

The "Class Period" during which the release of Released Claims pertains is from June 30, 2016 and [date of preliminary approval]

All Class Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Released Claims arising under PAGA with respect to all of the Released Parties irrespective of whether a Class Member submits an Opt-Out Request.

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Claims (other than those which arise under the Private Attorney General Act (California Labor Code sections 2698 *et seq.*), then you must submit an “Opt-Out Request” in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim.

8. How can I not participate in the Settlement?

To exclude yourself from the release of Released Claims, you must submit a written Opt-Out Request to the Settlement Administrator. A valid Opt-Out Request should be mailed to the Settlement Administrator and must: (i) contain your full name, current address, and signature; (ii) the Action name and case number (see page 1); (iii) a written request clearly expressing the Class Member’s desire to be excluded from (or opt out of) the Settlement; and (iv) be returned so that it is postmarked on or before [end of notice period].

As noted above, your written Opt-Out Request containing the information above must be mailed to the Settlement Administrator at the address listed below, post-marked by [end of notice period]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No.]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You will not be legally bound by the release of Released Claims (except for Released Claims that arise under the Private Attorney General Act (California Labor Code sections 2698 *et seq.*)).

You may be able to sue Defendant and/or the Released Parties or continue any suit you have pending against Defendant or the Released Parties, regarding the Released Claims (except for Released Claims that arise under the Private Attorney General Act (California Labor Code sections 2698 *et seq.*)).

9. If I don’t exclude myself, can I sue Defendant for the same thing later?

No. Unless you submit an Opt-Out Request requesting to be excluded from the settlement, you give up the right to sue Defendant and Released Parties for the Released Claims. If you have a pending lawsuit involving the Released Claims, speak to your lawyer in that lawsuit immediately.

10. If I exclude myself, can I get money from this settlement?

No. You will not receive money from the Net Settlement Amount. If you worked between April 23, 2019, and [date of preliminary approval] you will still receive a share of the PAGA Payment as an Opt-Out Request does not apply to this claim.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has approved *LAWYERS for JUSTICE*, P.C. and PROTECTION LAW GROUP, LLP. as Class Counsel. The firms' contact information are as follows:

Lawyers for Justice, PC
Edwin Aiwarzian, Esq.
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Facsimile: (818) 265-1021

PROTECTION LAW GROUP LLP
Heather Davis, Esq.
Amir Nayebdadash, Esq.
237 California Street
El Segundo, California 90245
Telephone: (424) 290-3095
Facsimile: (866) 264-7880

Class Counsel will ask the Court for attorneys' fees of up to \$245,000 and reimbursement of litigation cost/expenses of up to \$25,000. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

12. How do I tell the Court if I don't like the settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Settlement Administrator no later than [DATE]. Your objection must include (i) your full name, current address, and signature; (ii) a clear reference to the Action; and (iii) a statement of the specific reasons why you believe the Settlement is unfair or object to the Settlement. All objections shall be signed by the objecting Class Member or the Class Member's legally authorized representative. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection.

13. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing at [] a.m./p.m. on [], 2021], at the Orange County Superior Court located at 751 W Santa Ana Blvd, Santa Ana, CA 92701 in Department CX103.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

15. Do I have to come to the hearing?

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf.

16. How will I learn if the settlement was approved?

A notice of final judgment will be posted on the Settlement Administrator's website located at www._____.com.

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or the Released Parties about the Released Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund. You may then claim these funds from there.

GETTING MORE INFORMATION

18. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting the Settlement Administrator or Class Counsel. You may also review the documents that have been filed in this matter with the Court (for a fee) on the Court's website: <https://www.occourts.org/online-services/case-access>

WHAT IF MY INFORMATION CHANGES?

19. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR
THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE**