

1        **SETTLEMENT AGREEMENT OF CLASS ACTION AND PRIVATE ATTORNEYS**

2                                **GENERAL ACT CLAIMS**

3                This Settlement Agreement of Class Action and Private Attorneys General Act Claims  
4 (“Settlement” or “Settlement Agreement”) is made between Quinton Fowler (“Plaintiff”), as an  
5 individual and on behalf of all other similarly situated and alleged aggrieved employees, on the  
6 one hand, and Defendant Updike Distribution Logistics, LLC (“Defendant” or “Updike”) on the  
7 other hand (collectively, the “Parties” and individually, a “Party”).

8        **I.        DEFINITIONS**

9                **A.**        “Class Counsel” means James Hawkins, Gregory Mauro, and Michael Calvo of  
10 James Hawkins APLC, 9880 Research Drive, Suite 200, Irvine, California 92618.

11                **B.**        “Class Member Payments” means the amount payable from the Net Distribution  
12 Fund to each Settlement Class Member, 80% of which shall be allocated to penalties and other  
13 non-wage recovery and 20% of which shall be allocated to wages. Class Member Payments are  
14 separate and distinct from PAGA Payments (defined below) that will be paid to PAGA Aggrieved  
15 Employees.

16                **C.**        “Class Payout Fund” means all funds remaining from the Gross Settlement Amount  
17 after deducting the Court-awarded Named Plaintiff Enhancement Payments, Fees Award, Costs  
18 Award, Settlement Administration Costs, and PAGA Payments.

19                **D.**        “Costs Award” means costs of litigation approved by the Court for Class Counsel’s  
20 costs incurred in investigation, litigation, and resolution of the Lawsuit, and administration of the  
21 Settlement, including anticipated costs incurred through Final Approval and disbursement of  
22 payments under this Settlement Agreement and obtaining entry of the judgment terminating the  
23 Lawsuit.

24                **E.**        “Court” means Superior Court for the State of California for the County of Los  
25 Angeles, located at 111 North Hill Street, Los Angeles, California 90012.

26                **F.**        “Defendant’s Counsel” means Paul Cowie, Luis Arias, and John Ellis of Sheppard,  
27 Mullin, Richter & Hampton LLP, Four Embarcadero Center, 17<sup>th</sup> Floor, San Francisco, CA 94111,  
28

1 and Eric J. Erickson and Catherine T. Phan of Wolfe & Wyman LLP, 707 Wilshire Blvd., Suite  
2 4100, Los Angeles, CA 90017,

3 **G.** “Effective Date” means the date by which the final judgment becomes final. For  
4 purposes of this Settlement Agreement, the final judgment “becomes final” only after the Court  
5 grants the motion for final approval of the settlement and upon the latter of (i) the period for filing  
6 any appeal, writ, or other appellate proceeding challenging or opposing the Settlement has elapsed  
7 without any appeal, writ, or other appellate proceeding having been filed; (ii) any appeal, writ or  
8 other appellate proceeding challenging or opposing the Settlement has been dismissed finally and  
9 conclusively with no right to pursue further remedies or relief and without impacting this  
10 Settlement; or (iii) any appeal, writ or other appellate proceeding has upheld the Court’s final  
11 order with no right to pursue further remedies or relief. In this regard, it is the intention of the  
12 parties that the Settlement shall not become effective, and Defendant will not be obligated to fund  
13 this Settlement, until the Court’s order approving the Settlement is completely final, and there is  
14 no further recourse by an appellant, objector, intervenor, or otherwise by anyone who seeks to  
15 contest the Settlement.

16 **H.** “Fees Award” means attorneys’ fees approved by the Court for Class Counsel’s  
17 fees incurred in investigation, litigation, and resolution of the Lawsuit, and administration of the  
18 Settlement, including anticipated fees incurred through Final Approval and disbursement of  
19 payments under this Settlement Agreement and obtaining entry of the judgment terminating the  
20 Lawsuit, and which shall not exceed 1/3 of the Gross Settlement Amount, i.e. up to \$83,333.33.

21 **I.** “Final Approval” means the Court’s order granting final approval of the Settlement  
22 Agreement.

23 **J.** The “Lawsuit” means the action entitled *Quinton Fowler v. Updike Distribution*  
24 *Logistics, LLC*, Case No. 20STCV17074, pending in the Superior Court of the State of California  
25 County of Los Angeles, filed on May 1, 2020, and consolidated for all purposes with entitled  
26 *Quinton Fowler v. Updike Distribution Logistics, LLC*, Case No. 20STCV25837 filed in the same  
27 court on July 7, 2020.

1           **K.**     “Gross Settlement Amount” means a non-reversionary common fund that shall  
2 have a total all-in value of \$250,000.00 and includes without limitation any and all payments  
3 Defendant may be responsible for under the Settlement, including any Fees Award and Costs  
4 Award to Class Counsel, Named Plaintiff Enhancement Payments, the Class Member Payments,  
5 the PAGA Payments (which includes payments to the LWDA), Settlement Administration Costs,  
6 and all payroll taxes (inclusive of employer-side payroll taxes) due and owing as a result of the  
7 Settlement. The total amount that Defendant shall pay for any and all purposes under this  
8 Settlement Agreement is the Gross Settlement Amount.

9           **L.**     “LWDA” means the California Labor and Workforce Development Agency.

10          **M.**     “Named Plaintiff” means Quinton Fowler.

11          **N.**     “Named Plaintiff Enhancement Payment” means the amount to be paid to the  
12 Named Plaintiff for his time and effort spent pursuing the Lawsuit; for the risks associated with  
13 suing Defendant; and for his agreement to enter into a general release of all claims, not to exceed  
14 \$7,500.00.

15          **O.**     “PAGA” means the California Private Attorneys General Act, California Labor  
16 Code §§ 2699 *et seq.*

17          **P.**     “PAGA Aggrieved Employees” means all current and former employee drivers of  
18 Defendant who were California residents or assigned to work out of a location in California during  
19 the PAGA Period.

20          **Q.**     “PAGA Aggrieved Employee List” means the list of all PAGA Aggrieved  
21 Employees that Defendant will diligently and in good faith compile from its records to accurately  
22 reflect employees’ names, last known mailing address, telephone number, Social Security number,  
23 and pay periods worked by the PAGA Aggrieved Employees during the PAGA Period.

24          **R.**     “PAGA Payment” means the payment to the State of California LWDA and the  
25 PAGA Aggrieved Employees in settlement of all claims for PAGA penalties as defined in this  
26 Settlement Agreement.

27          **S.**     “PAGA Period” means the time period beginning June 21, 2019 through December  
28 31, 2022.

1           **T.**       “Settlement Class” means all persons who are or have been employed by  
2 Defendant as employee drivers who were California residents or assigned to work out of a location  
3 in California during the Class Period. Defendant confirms there are approximately 281 Drivers  
4 during the Class Period.

5           **U.**       “Settlement Class Members” means individuals in the Settlement Class who do not  
6 submit a timely and valid request for exclusion from the Settlement Class.

7           **V.**       “Settlement Class Member List” means the list of all Settlement Class Members  
8 that Defendant will diligently and in good faith compile from its records to accurately reflect  
9 employees’ names, last known mailing address, telephone number, Social Security number, and  
10 workweeks worked during the Class Period.

11          **W.**       “Class Period” means the time period from June 21, 2019 through December 31,  
12 2022.

13          **X.**       “Qualified Settlement Account” means the account established by the Settlement  
14 Administrator pursuant to Internal Revenue Code section 1.468B-1.

15          **Y.**       “Released Parties” means Defendant, and each of its past, present and future  
16 agents, employees, servants, owners, officers, directors, partners, trustees, representatives,  
17 shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related  
18 companies/corporations and/or partnerships (defined as a company/corporation and/or partnership  
19 that is, directly or indirectly, under common control with Defendant or any of its parents and/or  
20 affiliates), divisions, assigns, predecessors, successors, insurers, consultants, joint ventures, any  
21 actual or alleged joint employers, affiliates, and alter-egos, and all of their respective past, present  
22 and future employees, directors, officers, agents, owners, attorneys, insurers, stockholders,  
23 fiduciaries, parents, subsidiaries, and assigns.

24          **Z.**       “Settlement Administration Costs” means the costs payable from the Gross  
25 Settlement Amount to the Settlement Administrator for administering this Settlement, including,  
26 but not limited to, the Settlement Administrator’s responsibilities outlined in this Settlement  
27 Agreement.

1           **AA.**   “Settlement Administrator” means ILYM Group, Inc., whom the Parties mutually  
2 agree shall be responsible for the administration of the Settlement, distribution of amounts owed  
3 under this Settlement, and matters necessarily related thereto, pursuant to the terms of this  
4 Settlement Agreement.

5           **II.     RECITALS**

6           **A.     Background and Procedural History**

7                   1.     The operative Second Amended Complaint in the Lawsuit alleges the  
8 following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Provide Meal  
9 Periods; (3) Failure to Provide Rest Periods; (4) Failure to Pay Timely Wages; (5) Failure to  
10 Provide Accurate Itemized Wage Statements; (6) Failure to Indemnify Necessary Business  
11 Expenses; (7) Violation of Unfair Competition Law; (8) Failure to Pay Minimum Wages Under  
12 the Fair Labor Standards Act; and (9) Private Attorney’s General Act of 2004. Defendant  
13 answered the Second Amended Complaint on June 3, 2021.

14                   2.     On August 31, 2021, the Court ordered the parties to attend mediation.  
15 Thereafter, the parties mutually agreed to mediate with Steven Serratore on May 23, 2022, but the  
16 case did not resolve.

17                   3.     Investigation in the Lawsuit. The Parties conducted a significant  
18 investigation of the facts and law during the prosecution of the Lawsuit. Such investigation has  
19 included, *inter alia*, the exchange of information and documents through informal and formal  
20 discovery. Counsel for the Parties investigated the applicable law as applied to the facts  
21 discovered regarding Plaintiff’s alleged claims and potential defenses thereto, and the damages  
22 claimed by Plaintiff. The gist of the Lawsuit is that Named Plaintiff alleges that Defendant  
23 compensated employees on a piece rate basis that did not always equate to minimum wages and  
24 thus failed to compensate for minimum wages under the California Labor Code and the Fair Labor  
25 Standards Act. Named Plaintiff also alleges that Defendant failed to provide meal periods and  
26 failed to permit and authorize paid rest periods to employees or to reimburse business expenses.  
27 Named Plaintiff also alleges a variety of additional claims, including derivative claims for failure  
28 to pay wages upon separation and inaccurate wage statements. For these allegedly improper

1 actions, Named Plaintiff demands various amounts for wages, penalties, interest, attorneys' fees,  
2 and restitution. Named Plaintiff has fully investigated the factual and legal bases for the causes of  
3 action asserted in the Lawsuit. As a result of his investigation Named Plaintiff continues to  
4 believe that Defendant failed to properly compensate drivers for all time worked and failed to  
5 properly provide meal and rest periods, to reimburse expenses, to pay timely wages at separation,  
6 and to provide accurate itemized wage statements. Defendant has denied all allegations.  
7 Defendant contends that it fully and separately paid for all hours worked, including all non-driving  
8 activities, and provided all meal and rest periods in accordance with California law (although not  
9 required to do so), as well as reimbursing expenses. Further, Defendant contends that case law  
10 supports its compensation system, and that it has a good faith argument for paying the putative  
11 class via its compensation method and the wage statements utilized are and were accurate. Given  
12 the disagreement between the Parties as to the viability of these claims, the Parties believe the  
13 Settlement provided for herein is a fair, adequate and reasonable settlement.

14                   4.     Benefits of Settlement to Class Members. Named Plaintiff recognizes the  
15 expense and length of continued proceedings necessary to continue the litigation against  
16 Defendant through trial and through any possible appeals, including the fluid changes in the  
17 regulations and law as applied to the Settlement Class and facts of this of this case. Named  
18 Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation,  
19 and the difficulties and delays inherent in such litigation, as described above. Named Plaintiff is  
20 also aware of the burdens of proof necessary to establish liability for the claims asserted in the  
21 Lawsuit, Defendant's defenses thereto, and the difficulties in establishing damages. Named  
22 Plaintiff has also taken into account the extensive discovery undertaken and settlement  
23 negotiations conducted, which negotiations resulted in the material settlement terms set forth  
24 herein. Based on the foregoing, Named Plaintiff has determined that the Settlement set forth in  
25 this Settlement Agreement is a fair, adequate and reasonable settlement, and is in the best interests  
26 of the Settlement Class and the LWDA.

27                   5.     Defendant's Reasons for Settlement. Defendant has concluded that any  
28 further defense of this litigation would be protracted and expensive for all Parties. Defendant has

1 devoted substantial amounts of time, energy and resources to the defense of the claims asserted by  
2 Named Plaintiff and, unless this Settlement is made, will continue to do so for the foreseeable  
3 future. For these reasons, Defendant has agreed to settle the manner upon the terms set forth in  
4 this Settlement Agreement, to put to rest the claims as set forth in the Lawsuit.

5           6.     Defendant's Denials of Wrongdoing. Defendant has denied and continues  
6 to deny each of the claims and contentions alleged by Named Plaintiff in the Lawsuit. Defendant  
7 has repeatedly asserted and continues to assert defenses thereto, and has expressly denied and  
8 continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct  
9 alleged in the Lawsuit. Defendant also has denied and continues to deny, *inter alia*, the  
10 allegations that Named Plaintiff has suffered damages; that Defendant failed to pay minimum  
11 wages; that Defendant failed to properly provide meal and rest periods; that Defendant failed to  
12 provide accurate itemized wage statements; that Defendant failed to timely pay all wages due at  
13 separation of employment; that Defendant failed to reimburse business expenses; that Defendant  
14 engaged in any unlawful, unfair or fraudulent business practices; that Defendant is subject to civil  
15 penalties pursuant to the PAGA; that Defendant engaged in any other wrongful conduct as alleged  
16 in the Lawsuit; or that The Settlement Class and the PAGA Aggrieved Employees were harmed by  
17 the conduct alleged in the Lawsuit. Neither this Settlement Agreement, nor any document referred  
18 to or contemplated herein, nor any action taken to carry out this Settlement Agreement, is, may be  
19 construed as, or may be used as an admission, concession or indication by or against Defendant of  
20 any fault, wrongdoing or liability whatsoever.

21           7.     Named Plaintiff's Claims. Named Plaintiff claims and continues to claim  
22 that the Released Claims have merit and give rise to liability on the part of Defendant. Neither  
23 this Settlement Agreement nor any documents referred to herein, or any action taken to carry out  
24 this Settlement Agreement is or may be construed as or may be used as an admission by or against  
25 Named Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted.

26           I.     The Parties stipulate, subject to the approval of the Court, that the Lawsuit is being  
27 compromised and settled pursuant to the terms and conditions set forth in this Settlement  
28 Agreement. The Court shall retain jurisdiction with respect to the interpretation, implementation,

1 and enforcement of the terms of this Settlement Agreement and all orders and judgments entered  
2 in connection therewith.

### 3 **III. SETTLEMENT TERMS**

#### 4 **A. Conditional Certification**

5 For the purposes of this Settlement Agreement only, the Parties agree to the certification of  
6 the Settlement Class. If, for any reason, the Settlement Agreement is not approved, the stipulation  
7 to certification will be void. Should the Settlement Agreement not become final, for whatever  
8 reason, the fact that the Parties were willing to stipulate to class certification as part of the  
9 Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of  
10 whether a class should be certified in a non-settlement context in the Lawsuit, and shall have no  
11 bearing on, and shall not be admissible in connection with, the issue of whether a class should be  
12 certified in any other lawsuit.

#### 13 **B. Funding and Allocation of Settlement**

14 1. Gross Settlement Amount. Provided the Court approves the Settlement and  
15 the Effective Date occurs, Defendant will pay the Gross Settlement Amount, which is the  
16 maximum monetary amount payable by Defendant and which shall not exceed the all-inclusive  
17 sum of \$250,000.00.

18 2. Settlement Accounting. No more than fourteen (14) calendar days after the  
19 Effective Date, or at a reasonable time thereafter if not reasonably practicable, the Settlement  
20 Administrator will provide the Parties with an accounting of all anticipated payments from the  
21 Qualified Settlement Account, including: (a) Class Member Payments, (b) the PAGA Payments;  
22 (c) the Named Plaintiff Enhancement Payment; (d) the Fees Award and Costs Award to Class  
23 Counsel, and (f) Settlement Administration Expenses, all as specified in this Settlement  
24 Agreement and approved by the Court.

25 3. Funding the Settlement. Within twenty-one days (21) calendar days after  
26 receipt of the Settlement Accounting from the Settlement Administrator, and solely for purposes  
27 of this Settlement, Defendant shall wire the Gross Settlement Amount into the Qualified  
28 Settlement Account, for distribution in accordance with the terms of this Settlement Agreement

1 (the "Funding"). At no time shall Defendant have the obligation to segregate the funds  
2 comprising the Gross Settlement Amount from other assets and will retain exclusive authority  
3 over, and responsibility for, those funds until the date those amounts are required to be funded  
4 pursuant to this Settlement Agreement.

5 **C. Payments from the Gross Settlement Amount.**

6 1. Named Plaintiff Enhancement Payment. The Settlement Administrator  
7 shall pay any Named Plaintiff Enhancement Payment within thirty (30) calendar days of the  
8 Funding either by check or wire to an account(s) designated by Class Counsel. Named Plaintiff  
9 agrees to provide the Settlement Administrator with an executed IRS Form W-9 within five (5)  
10 calendar days after the Effective Date and before the Named Plaintiff Enhancement Payment is  
11 issued. The Settlement Administrator shall issue an IRS Form 1099 to Named Plaintiff for this  
12 payment. Named Plaintiff shall be solely and legally responsible for paying any and all applicable  
13 taxes on his Named Plaintiff Enhancement Payment and shall hold Released Parties harmless from  
14 any claim or liability for taxes, penalties or interest arising as a result of the Named Plaintiff  
15 Enhancement Payment. The Named Plaintiff Enhancement Payment shall be in addition to any  
16 Class Member Payment or PAGA Payment the Named Plaintiff receives as a Settlement Class  
17 Member and PAGA Aggrieved Employee. If the Court awards a Named Plaintiff Enhancement  
18 Payment less than the amount specified, the unawarded amounts shall remain in the Class Payout  
19 Fund and be distributed to Settlement Class Members.

20 2. Class Counsel's Attorneys' Fees and Costs. Class Counsel may request a  
21 Fees Award of up to \$83,333.33, which constitutes 1/3 of the Gross Settlement Amount and will  
22 seek a Costs Award for reimbursement of Class Counsel's out-of-pocket costs incurred pursuing  
23 the Lawsuit. Class Counsel shall submit a declaration to the Court, in support of the motion for  
24 preliminary approval, detailing the costs incurred and/or expected to be incurred in the Lawsuit to  
25 substantiate the Costs Award. Defendant reserves the right to challenge Class Counsel's requests  
26 for fees and costs if Defendant deems it appropriate after reviewing Class Counsel's motion for  
27 preliminary approval.

1                   a.       The Settlement Administrator shall pay any Fees Award and/or  
2 Costs Award within thirty (30) calendar days of the Funding either by check or wire to an account  
3 designated by Class Counsel. Class Counsel agrees to provide the Settlement Administrator with  
4 an executed IRS Form W-9 within five (5) calendar days after the Effective Date and before  
5 payments for Class Counsel's Fees Award and Costs Award are issued. The Settlement  
6 Administrator shall issue an IRS Form 1099 to Class Counsel for the payments made pursuant to  
7 this section. Class Counsel shall be solely and legally responsible for paying any and all  
8 applicable taxes on their Fees Award or Costs Award and shall hold Released Parties harmless  
9 from any claim or liability for taxes, penalties or interest arising as a result of any payments  
10 received by Class Counsel pursuant to this Settlement Agreement. If the Court awards a Fees  
11 Award or a Costs Award less than the amount requested by Class Counsel, the unawarded  
12 amounts shall remain in the Class Payout Fund and be distributed to Settlement Class Members.  
13 This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in  
14 attorneys' fees and costs.

15                   b.       Neither Class Counsel nor any other current or past counsel for  
16 Named Plaintiff shall be permitted to petition the Court for, or accept, any additional payments for  
17 fees, costs, or interest, and the Fees Award and Costs Award shall be for all claims for attorneys'  
18 fees and costs whenever incurred, including past, present and future fees and costs incurred in the  
19 Lawsuit to date and through and including the Effective Date, as well as final distribution of all  
20 payments under this Settlement Agreement and through and after final judgment. The payment of  
21 the Fees Award and Costs Award to Class Counsel as set forth herein shall constitute full  
22 satisfaction of the obligation to pay any amounts to any person, attorney or law firm for attorneys'  
23 fees, expenses or costs arising out of and/or in connection with the Lawsuit incurred by any  
24 attorney on behalf of Named Plaintiff, any of the Class Settlement Members, and/or PAGA  
25 Aggrieved Employees, and shall relieve Class Settlement Members, PAGA Aggrieved Employees,  
26 Released Parties, the Settlement Administrator, the Qualified Settlement Account, and  
27 Defendant's Counsel of any other claims or liability to any other attorney or law firm for any  
28 attorneys' fees, expenses and/or costs to which any of them may claim to be entitled on behalf of

1 Named Plaintiff, the Class Settlement Members, and/or PAGA Aggrieved Employees in  
2 connection with the claims released in this Settlement.

3           3.     PAGA Payment. The PAGA Payment amount is \$25,000.00, which the  
4 Parties have agreed is to be paid in settlement of all PAGA claims released in this Settlement  
5 Agreement, which shall be allocated as follows.

6                   a.     Within twenty-eight (28) calendar days of the Funding, the  
7 Settlement Administrator shall pay from the Qualified Settlement Account \$18,750.00 to the State  
8 of California LWDA. This amount is 75% of the \$25,000.00 PAGA Payment.

9                   b.     Within twenty-eight (28) calendar days of the Funding, the  
10 remaining 25% of the PAGA Payment (\$6,250.00) shall be distributed to all PAGA Aggrieved  
11 Employees, with each receiving a pro rata share based on the number of pay periods worked  
12 during the PAGA Period. To establish the pay period value, the Settlement Administrator will  
13 first determine the total number of pay periods worked by the PAGA Aggrieved Employees  
14 during the PAGA Period. The pay period value will be equal to 25% of the PAGA Payment  
15 divided by the total number of pay periods worked by PAGA Aggrieved Employees during the  
16 PAGA Period. The pay periods value will be rounded to the nearest cent. The amount of the  
17 PAGA Payment to be paid to each PAGA Aggrieved Employee will be determined by multiplying  
18 the pay periods value by the total number of pay periods each PAGA Aggrieved Employee  
19 worked during the PAGA Period. PAGA Aggrieved Employees will receive their PAGA Payment  
20 even if they request exclusion from the settlement class.

21                   c.     The portion of the PAGA Payment paid to the PAGA Aggrieved  
22 Employees shall be treated entirely as penalties. In the event that the Court awards less than the  
23 full amount requested for the PAGA Payment, the un-awarded amount shall remain in the Class  
24 Payout Fund and be distributed to Settlement Class Members. If for any reason additional funds  
25 are allocated to the PAGA Payment, such monies shall be drawn from other amounts in this  
26 Settlement with the other components of the Gross Settlement Amount being reduced  
27 proportionately, including the Fees Award and the Class Payout Fund, but the Gross Settlement  
28 Amount will not exceed \$250,000.00.

1                   4.       Settlement Administration Costs. The Settlement Administrator shall pay  
2 from the Qualified Settlement Account the Court-approved Settlement Administration Costs,  
3 within thirty (30) calendar days of the Funding, in an amount not to exceed \$8,475.00. In the  
4 event that the Court awards less than the full amount requested for Settlement Administration  
5 Costs, the unawarded amounts shall remain in the Class Payout Fund and shall be distributed to  
6 Settlement Class Members.

7                   5.       Calculation of Class Member Payments. All Settlement Class Members  
8 will receive a Class Member Payment, paid from the Class Payout Fund without the need to make  
9 a claim. The Parties agree that 80% of the Class Member Payments shall be allocated to penalties  
10 and 20% of the Class Member Payments shall be allocated to wages.

11                   a.       The amount of each Class Member Payment will be calculated on a  
12 pro rata basis, based on the number of workweeks each Settlement Class Member worked during  
13 the Class Period. To establish the workweek value, the Settlement Administrator will first  
14 determine the total number of workweeks worked by the Settlement Class Members during the  
15 Class Period. The workweek value will be equal to the Class Payout Fund divided by the total  
16 number of workweeks worked by Settlement Class Members during the Class Period. The  
17 workweek value will be rounded to the nearest cent. The Class Member Payment to each  
18 Settlement Class Member will be determined by multiplying the workweek value by the total  
19 number of workweeks each Settlement Class Members worked during the Class Period. The total  
20 of all Class Member Payments to all Settlement Class Members shall equal the Class Payout Fund.  
21 Settlement Class Members do not need to submit a claim form in order to be eligible for and to  
22 receive a Class Member Payment. Any partial workweek will be rounded up to the nearest  
23 workweek period. Class Member Payments will be reduced by any required deductions for each  
24 Settlement Class Member.

1                   6.       Method and Timing of Payments to Settlement Class Members and PAGA  
2 Aggrieved Employees.

3                   a.       Class Member Payments and the PAGA Aggrieved Employees'  
4 portion of the PAGA Payment will be mailed by the Settlement Administrator by First Class U.S.  
5 Mail within twenty-eight (28) calendar days following the Funding.

6                   b.       Checks paid to PAGA Aggrieved Employees and Settlement Class  
7 Members shall remain valid and negotiable for one-hundred eighty (180) calendar days from the  
8 date of their issuance. After one-hundred eighty (180) calendar days from the date of mailing, the  
9 checks shall become null and void, and any monies remaining in the distribution account shall be  
10 distributed to the Controller of the State of California to be held pursuant to the Unclaimed  
11 Property Law, California Civil Code §§ 1500 *et seq.*, for the benefit of those Settlement Class  
12 Members and PAGA Aggrieved Employees who did not cash their checks until such time that  
13 they claim their property. The Parties agree that this disposition results in no "unpaid residue"  
14 under California Civil Procedure Code § 384, as the entire Class Payout Fund will be paid out to  
15 Class Members, whether or not they all cash their Class Member Payments. Therefore, Defendant  
16 will not be required to pay any interest on said amount.

17                   7.       No Effect on Employee Benefits. The Named Plaintiff Enhancement  
18 Payment, Class Member Payments, and PAGA Payments paid to Named Plaintiff, PAGA  
19 Aggrieved Employees, and Settlement Class Members shall be deemed not to be pensionable  
20 earnings and shall not have any effect on the eligibility for, or calculation of, any employee  
21 benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the respective Named Plaintiff,  
22 PAGA Aggrieved Employees, or Settlement Class Members. The Parties agree that any Named  
23 Plaintiff Enhancement Payment, Class Member Payments, and PAGA Payments paid to Named  
24 Plaintiff, Settlement Class Members, and PAGA Aggrieved Employees under the terms of this  
25 Settlement Agreement do not represent any modification of Named Plaintiff's, Settlement Class  
26 Members', or PAGA Aggrieved Employees' previously credited hours of service or other  
27 eligibility criteria under any employee pension benefit plan or employee welfare benefit plan  
28 sponsored by Defendant or any of the Released Parties. Further, any Named Plaintiff

1 Enhancement Payment, Class Member Payments, or PAGA Payments shall not be considered  
2 “compensation” in any year for purposes of determining eligibility for, or benefit accrual within,  
3 an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant or  
4 any of the Released Parties.

5 **D. Taxation**

6 1. Tax Treatment of Class Member Payments. Each Class Member Payment  
7 shall be allocated between taxable and non-taxable consideration as follows: 20% will be  
8 allocated to alleged unpaid wages for which an IRS Form W-2 will issue, and 80% will be  
9 allocated to alleged penalties, reimbursement of expenses and interest for which an IRS Form  
10 1099 will issue, if required by law. The Settlement Administrator will be responsible for  
11 calculating the employer-side and employee-side taxes owed on the wage portion of each Class  
12 Member Payment and deducting and paying these amounts to the appropriate state and federal  
13 agencies, within the timing required by applicable state and federal law. Each Settlement Class  
14 Member shall be responsible for ensuring that any employee-side taxes due on his or her  
15 settlement are paid.

16 2. Tax Treatment of PAGA Payments. The PAGA Payment distributed to each  
17 PAGA Aggrieved Employee will be treated entirely as civil penalties, and will be reported as such  
18 to each PAGA Aggrieved Employee on an IRS Form 1099 misc., if required.

19 3. Tax Liability. The Parties make no representation as to the tax treatment or  
20 legal effect of the payments called for hereunder, and the Parties, Settlement Class Members, and  
21 PAGA Aggrieved Employees are not relying on any statement, representation, or calculation by  
22 any of the Parties or by the Settlement Administrator in this regard. Named Plaintiff, Settlement  
23 Class Members, and PAGA Aggrieved Employees understand and agree that except for the  
24 employer’s portion of any payroll taxes, Named Plaintiff, Settlement Class Members, and PAGA  
25 Aggrieved Employees will be solely responsible for the payment of any taxes and penalties  
26 assessed on the payments described herein and will hold Named Plaintiff, Class Counsel,  
27 Defendant, the Released Parties, Defendant’s Counsel and the Settlement Administrator free and  
28 harmless from and against any claims resulting from treatment of such payments as non-taxable

1 damages. Each Party to this Settlement Agreement (for purposes of this section, the  
2 “acknowledging party” and each party to this agreement other than the acknowledging party, an  
3 “other party”) acknowledges and agrees that (1) no provision of this Settlement Agreement, and  
4 no written communication or disclosure between or among the Parties or their attorneys and other  
5 advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be  
6 construed or be relied upon as, tax advice within the meaning of United States Treasury  
7 Department Circular 230 (31 C.F.R. Part 10, as amended); (2) the acknowledging party (a) has  
8 relied exclusively upon their own, independent legal and tax counsel for advice (including tax  
9 advice) in connection with this Settlement Agreement, (b) has not entered into this Settlement  
10 Agreement based upon the recommendation of any other party or any attorney or advisor to any  
11 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or  
12 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging  
13 party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the  
14 confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such  
15 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or  
16 tax structure of any transaction, including any transaction contemplated by this Settlement  
17 Agreement.

18 **E. Injunctive Relief**

19 As part of this Settlement, Defendant shall not be required to enter into any consent decree,  
20 nor shall Defendant be required to agree to any provision for injunctive relief, or to modify or  
21 eliminate any of its personnel, compensation, or payroll practices or policies, or adopt any new  
22 personnel, compensation, or payroll practices or policies.

23 **F. Release of Claims**

24 1. Class Member Release. As of the Effective Date, all Settlement Class  
25 Members fully and finally release the Released Parties from any and all claims that arose during  
26 the Class Period based on the facts, factual predicate, theories, and primary rights alleged in the  
27 Lawsuit including without limitation for unpaid wages, including, but not limited to, failure to pay  
28 minimum wages, failure to pay straight time compensation, overtime compensation, double-time

1 compensation, and/or interest; missed, late, short or interrupted meal and/or rest periods or any  
2 allegation that meal or rest periods were not provided, including any claim for any alleged failure  
3 to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay such  
4 premiums at the regular rate of compensation; reimbursement for business expenses or any other  
5 claim that Defendant allowed or required employees to bear any of the costs associated with the  
6 operation of Defendant's business, including without limitation the use of personal cell phones;  
7 inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate  
8 records; unlawful deductions; any claim for unfair business practices arising out of or related to  
9 any or all of the aforementioned claims; any claim for penalties arising out of or related to any or  
10 all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage  
11 statement penalties, minimum wage penalties, liquidated damages, and waiting time penalties; and  
12 attorneys' fees and costs. The claims released by the Settlement Class Members also include any  
13 and all claims that arise out of or arise in connection with the claims and facts alleged in the  
14 Lawsuit, and any claims which could have been asserted in the Lawsuit arising from the alleged  
15 facts, factual predicate, theories, and/or primary rights alleged to have been invaded to the fullest  
16 extent permitted by law. This release includes claims alleging a violation of the Wage Orders of  
17 the California Industrial Welfare Commission; California Business and Professions Code section  
18 17200, *et seq.*; the California Civil Code sections 3287 and 3289; California Code of Civil  
19 Procedure section 1021.5; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") and/or  
20 federal common law; and/or alleging a violation of California Labor Code §§ 200, 201, 201.3,  
21 202, 203, 204, 210, 212, 216, 218.5, 218.6, 221, 223, 224, 225.5, 226, 226.2, 226.3, 226.7, 226.8,  
22 266.3, 510, 512, , 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198,  
23 1199, 2698 *et seq.*, 2800, 2802, and 2804.

24                   2.       Release of PAGA Claims. As of the date of the Effective Date, PAGA  
25 Aggrieved Employees and the LWDA fully and finally release the Released Parties from all  
26 claims under the PAGA associated with any and all claims that arose during the PAGA Period  
27 based on the facts, factual predicate, theories, and primary rights alleged in the Lawsuit including  
28 without limitation for unpaid wages, including, but not limited to, failure to pay minimum wages;

1 failure to pay straight time compensation, overtime compensation, double-time compensation,  
2 and/or interest; missed, late, short or interrupted meal and/or rest periods or any allegation that  
3 meal or rest periods were not provided, including any claim for any alleged failure to pay  
4 premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at  
5 the regular rate of compensation; reimbursement for business expenses or any other claim that  
6 Defendant allowed or required employees to bear any of the costs associated with the operation of  
7 Defendant's business, including without limitation the use of personal cell phones; inaccurate or  
8 otherwise improper wage statements and/or failure to keep or maintain accurate records; unlawful  
9 deductions; any claim for unfair business practices arising out of or related to any or all of the  
10 aforementioned claims; any claim for penalties arising out of or related to any or all of the  
11 aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement  
12 penalties, minimum wage penalties, liquidated damages, and waiting time penalties; and  
13 attorneys' fees and costs. The claims released by the PAGA Aggrieved Employees also include  
14 any and all claims under the California Private Attorneys General Act of 2004, Cal. Lab. Code §  
15 2698 *et seq.* that arise out of or arise in connection with the claims and facts alleged in the  
16 Lawsuit, and any claims which could have been asserted in the Lawsuit arising from the alleged  
17 facts, factual predicate, theories, and/or primary rights alleged to have been invaded to the fullest  
18 extent permitted by law. This release includes claims under the California Private Attorneys  
19 General Act of 2004 alleging a violation of the Wage Order 9 of the California Industrial Welfare  
20 Commission; and/or alleging a violation of California Labor Code §§ 200, 201, 201.3, 202, 203,  
21 204, 210, 212, 216, 218.5, 218.6, 221, 223, 224, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 266.3,  
22 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199,  
23 2698 *et seq.*, 2800, 2802, and 2804.

24                   3.     General Release By Named Plaintiff Only. As of the date of Effective Date,  
25 Named Plaintiff fully and finally releases the Released Parties from any and all claims, known and  
26 unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or  
27 other source of law, including but not limited to claims arising from or related to Named  
28 Plaintiff's employment with Defendant and/or the termination of Named Plaintiff's employment

1 (“Named Plaintiff’s Released Claims”). The Named Plaintiff’s Released Claims include, but are  
2 not limited to, all claims asserted in, arising in connection with, or related in any way to the  
3 Lawsuit, including without limitation any and all claims that could have been asserted as part of  
4 the Lawsuit based on the facts alleged, or the primary rights invoked. Named Plaintiff’s Released  
5 Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum  
6 wages; failure to pay straight time compensation, overtime compensation, double-time  
7 compensation, vacation or PTO, sick pay, reporting time compensation, and/or interest; missed,  
8 late, short or interrupted meal and/or rest periods or any allegation that meal or rest periods were  
9 not provided, including any claim for any alleged failure to pay premiums for missed, late, short or  
10 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;  
11 reimbursement for business expenses or any other claim that Defendant allowed or required  
12 employees to bear any of the costs associated with the operation of Defendant’s business,  
13 including without limitation the use of personal cell phones; inaccurate or otherwise improper  
14 wage statements and/or failure to keep or maintain accurate records; unlawful deductions; secret  
15 underpayment of wages; unlawful payment instruments; any claim for unfair business practices  
16 arising out of or related to any or all of the aforementioned claims; any claim for penalties arising  
17 out of or related to any or all of the aforementioned claims, including, but not limited to,  
18 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time  
19 penalties; and attorneys’ fees and costs. Named Plaintiff’s Released Claims include all claims  
20 arising under the California Labor Code (including, but not limited to, sections 200, 201, 201.3,  
21 202, 203, 204, 210, 212, 216, 218.5, 218.6, 221, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3,  
22 226.7, 226.8, 227.3, 245, 246, 247, 248, 249, 266.3, 450, 510, 511, 512, 558, 1174, 1174.5, 1175,  
23 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, 2802, and 2804); all claims  
24 arising under the Wage Orders of the California Industrial Welfare Commission, including but not  
25 limited to Wage Order 7-2001, Section 14(A) and (B); California Business and Professions Code  
26 section 17200, *et seq.*; the California Labor Code; California Government Code; the California  
27 Civil Code, including but not limited to, sections 3287, 3289, 3336 and 3294; California Code of  
28 Civil Procedure § 1021.5; the California common law of contract; the Fair Labor Standards Act,

1 29 U.S.C. § 201 *et seq.*; federal common law; and the Employee Retirement Income Security Act,  
2 29 U.S.C. § 1001, *et seq.* Named Plaintiff's Released Claims include any and all claims under the  
3 Private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.* ("PAGA"), of any kind, including  
4 but not limited to the PAGA claims asserted in the Lawsuit. Named Plaintiff's Released Claims  
5 also include all claims for lost wages and benefits, emotional distress, punitive damages, and  
6 attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment,  
7 retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C.  
8 section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the  
9 Age Discrimination in Employment Act, and the California Fair Employment and Housing Act;  
10 and the law of contract and tort. This release excludes the release of claims not permitted by law.  
11 Named Plaintiff's Released Claims include all claims, whether known or unknown. Even if  
12 Named Plaintiff discovers facts in addition to or different from those that Named Plaintiff now  
13 knows or believes to be true with respect to the subject matter of Named Plaintiff's Released  
14 Claims, those claims will remain released and forever barred. Thus, Named Plaintiff expressly  
15 waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil  
16 Code, which reads:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
18 **THAT THE CREDITOR OR RELEASING PARTY DOES**  
19 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
20 **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.**

21 4. Notwithstanding the foregoing, Named Plaintiff does not waive or release  
22 any claim which cannot be waived or released by private agreement. Further, nothing in this  
23 Settlement Agreement shall prevent Named Plaintiff from filing a charge or complaint with, or  
24 from participating in, an investigation or proceeding conducted by the SEC, OSHA, EEOC,  
25 DFEH, NLRB or any other federal, state or local agency charged with the enforcement of any  
26 employment or other applicable laws. Named Plaintiff, however, understands that by signing this  
27 Settlement Agreement, Named Plaintiff waives the right to recover any damages or to receive  
28 other relief in any claim or suit brought by or through the EEOC, the DFEH or any other state or

1 local deferral agency on Named Plaintiff's behalf to the fullest extent permitted by law, but  
2 expressly excluding any monetary award or other relief available from the SEC/OSHA, including  
3 an SEC/OSHA whistleblower award, or other awards or relief that may not lawfully be waived.

4 **G. Settlement Administrator Responsibilities**

5 1. The Settlement Administrator shall be responsible for preparing, printing  
6 and mailing to the Settlement Class and the PAGA Aggrieved Employees the Notice of Proposed  
7 Settlement of Class Action attached as Exhibit 1 hereto (the "Class Notice") as directed by the  
8 Court; calculating Class Member Payments and PAGA Payments; calculating and withholding all  
9 required state and federal taxes owed by the Settlement Class Members, PAGA Aggrieved  
10 Employees, and Defendant; keeping track of opt-outs and objections; drafting and mailing checks  
11 to Settlement Class Members and PAGA Aggrieved Employees; distributing Named Plaintiff  
12 Enhancement Payment, the Fees Award, the Costs Award, 75% of the PAGA Payment to the  
13 LWDA, and Settlement Administration Costs; providing weekly status reports to counsel for the  
14 Parties; providing a due diligence declaration for submission to the Court prior to the Final  
15 Approval hearing and as otherwise required by the Court; and for such other tasks as the Parties  
16 mutually agree or the Court orders the Settlement Administrator to perform. The Parties each  
17 represent they do not have any financial interest in the Settlement Administrator or otherwise have  
18 a relationship with the Settlement Administrator that could create a conflict of interest.

19 2. The Settlement Administrator's determination of eligibility for, and the  
20 amounts of, any Class Member Payment and share of the PAGA Payment shall be conclusive,  
21 final and binding on all Parties, including all Settlement Class Members and PAGA Aggrieved  
22 Employees. The Settlement Administrator has no power or ability to increase the amount of the  
23 Gross Settlement Amount.

24 3. To the extent any tax returns must be filed for the Gross Settlement Amount  
25 pursuant to this Settlement Agreement, the Settlement Administrator shall cause to be timely and  
26 properly filed all informational and other tax returns, if any, necessary with respect to the Gross  
27 Settlement Amount. Such returns shall be consistent with this paragraph. Any expenses and/or  
28 costs incurred in connection with the operation and implementation of this paragraph (including,

1 without limitation, reasonable expenses of tax attorneys, accountants or other designees retained  
2 by the Settlement Administrator as required for the preparation and filing of tax returns described  
3 in this paragraph) shall be treated as, and considered to be, a cost of administration of the  
4 Settlement and shall be paid from the Settlement Administration Costs.

5 4. No person shall have any claim against Defendant, the Released Parties,  
6 Defendant's Counsel, Named Plaintiff, Class Counsel or the Settlement Administrator based on  
7 distributions and payments made in accordance with this Settlement Agreement.

8 **H. Notice/Approval of Settlement and Settlement Implementation.** As part of this  
9 Settlement, the Parties agree to the following procedures for obtaining preliminary approval of the  
10 Settlement, notifying the Settlement Class and PAGA Aggrieved Employees, obtaining final Court  
11 approval of the Settlement, and processing the settlement payments:

12 1. Preliminary Approval of Settlement

13 a. Named Plaintiff shall file a motion for preliminary approval of the  
14 Settlement in the Lawsuit within thirty (30) calendar days of the execution of this Settlement  
15 Agreement. Named Plaintiff shall schedule the motion for hearing on the earliest date the Court  
16 has available that complies with notice requirements. Named Plaintiff shall seek the entry of a  
17 Preliminary Approval Order for: (a) conditional certification of the Settlement Class for settlement  
18 purposes only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a  
19 date for a Final Approval hearing.

20 b. In conjunction with the Preliminary Approval Hearing, Named  
21 Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and  
22 will include proposed forms of all notices and other documents as attached hereto necessary to  
23 implement the Settlement. Class Counsel will be responsible for drafting all documents necessary  
24 to obtain Preliminary Approval, subject to review and comment by Defendant's counsel who shall  
25 be provided a minimum of seven (7) calendar days to review prior to filing.

26 2. LWDA Notice. Pursuant to the PAGA, concurrently with the filing of the  
27 motion for Preliminary Approval, Named Plaintiff will, pursuant to California Labor Code §  
28 2699(I), provide notice of the proposed Settlement to the LWDA. The Parties intend and believe

1 that the notice pursuant to the procedures described in this section complies with the requirements  
2 of the PAGA.

3 3. Notice to Settlement Class.

4 a. Delivery of the Settlement Class Member and PAGA Aggrieved  
5 Employee List. Within thirty (30) calendar days of entry of the Preliminary Approval Order of  
6 this Settlement, Defendant will provide the Settlement Class Member List and PAGA Aggrieved  
7 Employee List to the Settlement Administrator, which shall be used solely for the administration  
8 of this Settlement and for no other purpose, and shall be kept confidential and not shared with any  
9 persons or entity not employed by the Settlement Administrator and working on the administration  
10 of this Settlement, including but not limited to Class Counsel. Because sensitive personal  
11 information is included in the Settlement Class Member List and PAGA Aggrieved Employee List  
12 (the "Employee Lists"), the Settlement Administrator shall maintain the Settlement Class Member  
13 List and PAGA Aggrieved Employee List securely and in confidence. Access to such Lists shall  
14 be limited to employees of the Settlement Administrator with a need to use the Lists for  
15 administration of the Settlement. In the event that the Settlement Agreement is not finally  
16 approved by the Court, or if it is in any way altered or disapproved on appeal, the Settlement  
17 Administrator shall not thereafter use the Employee Lists, and shall destroy any and all copies or  
18 versions of the Employee Lists (including any in electronic form).

19 b. Notice By First-Class Mail. Within twenty-one (21) calendar days  
20 after receipt of the Settlement Class Member List, the Settlement Administrator shall mail a class  
21 notice to Settlement Class Members via first-class regular U.S. mail ("Class Notice"). Settlement  
22 Class Members will have thirty (30) calendar days from the mailing of the Class Notice to opt-out  
23 or object to the Class Settlement ("Opt Out/Objection Period"). Prior to mailing, the Settlement  
24 Administrator will perform a search based on the National Change of Address Database  
25 information to update and correct for any known or identifiable address changes and, if necessary,  
26 perform reasonable skip-tracing efforts to locate employees. If a new address is obtained by way  
27 of a returned Class Notice, the Settlement Administrator shall promptly forward the original Class  
28

1 Notice to the updated address via first-class regular U.S. mail indicating on the original Class  
2 Notice the date of such re-mailing.

3 c. Notice Satisfies Due Process. Compliance with the notice  
4 procedures specified in this Settlement Agreement shall constitute due and sufficient notice to the  
5 Settlement Class and PAGA Aggrieved Employees of this Settlement and shall satisfy the  
6 requirements of due process. Nothing else shall be required of, or done by, the Parties, Class  
7 Counsel or Defendant's Counsel to provide notice of the proposed Settlement. In the event that  
8 the procedures in this Settlement Agreement are followed and the intended recipient of a Notice of  
9 Settlement still does not receive the Notice of Settlement, the intended recipient shall be a  
10 Settlement Class Member and will be bound by all the terms of the Settlement and the Final  
11 Approval entered by the Court if the Settlement becomes effective.

12 4. Objections or Exclusions.

13 a. Procedure for Objecting. The Notice shall provide that the  
14 individuals in the Settlement Class who wish to object to the Settlement must submit a written  
15 statement to the Settlement Administrator objecting to the Settlement. Such written objection  
16 must be submitted to the Settlement Administrator no later than thirty (30) calendar days after the  
17 date the Class Notice is first mailed (the "Objection/Exclusion Deadline Date"). A written  
18 objection must contain a statement in substance explaining that the Settlement Class individual  
19 objects to the Settlement Agreement and the reasons for objecting; contain the full name, address,  
20 telephone number, and last four digits of the Social Security number of the objecting Settlement  
21 Class individual; be signed by the Settlement Class individual; and, be postmarked on or before  
22 the Objection/Exclusion Deadline Date. No PAGA Aggrieved Employee may opt out or  
23 otherwise be excluded from the PAGA Payment, as no such right exists under the law. No  
24 individual in the Settlement Class shall be entitled to be heard at the Final Approval hearing  
25 (whether individually or through separate counsel) or to object to the Settlement, and no written  
26 objections or briefs submitted by any individual in the Settlement Class shall be received or  
27 considered by the Court at the Final Approval hearing, unless written notice of intention to appear  
28 at the Final Approval hearing, and any written objections, have been provided to the Settlement

1 Administrator on or before the Objection/Exclusion Deadline Date. The Parties will be permitted  
2 to respond in writing to such objections prior to the Final Approval hearing. Any individual in the  
3 Settlement Class who fails to submit written objections in the manner specified above shall remain  
4 Settlement Class Members and shall be deemed to have waived any objections and shall be  
5 foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

6 b. Procedure for Requesting Exclusion. The Class Notice shall provide  
7 that individuals in the Settlement Class who wish to exclude themselves from the Settlement Class  
8 must submit a personally signed, written statement requesting exclusion from the Settlement Class  
9 on or before the Objection/Exclusion Deadline Date. The opt-out request must state in substance,  
10 words to the effect:

11 "I have read the Class Notice and I wish to opt out of the Settlement  
12 Class in *Quinton Fowler v. Updike Distribution Logistics, LLC*,  
13 Case No. 20STCV17074. I understand that by requesting to be  
14 excluded from the Settlement Class, I will not receive a Class  
15 Member Payment. I also understand that I will still receive a PAGA  
16 Payment for my share of the PAGA Payment, if I am entitled to  
17 such payment, because I cannot object or exclude myself from the  
18 PAGA Payment."

19 (1) Such written request for exclusion must contain the name, address,  
20 telephone number and last four digits of the Social Security number of the person requesting  
21 exclusion, must be returned by mail to the Settlement Administrator at the specified address, must  
22 be signed by the objecting individual in the Settlement Class personally, and must be postmarked  
23 on or before the Objection/Exclusion Deadline Date. The date of the postmark on the return  
24 mailing envelope shall be the exclusive means used to determine whether a request for exclusion  
25 has been timely submitted. If the postmark is illegible then the request for exclusion must arrive  
26 within three (3) calendar days after the Objection/Exclusion Deadline Date to be considered  
27 timely.

28 (2) Any individual in the Settlement Class who opts out of the  
Settlement Class will not be entitled to any recovery under the Class Settlement (which refers to  
claims encompassed by the Class Payout Fund and excludes the PAGA claims) and will not be  
bound by the Settlement as it relates to the Class Settlement or have any right to object, appeal or  
comment in court on the Class Settlement. Any and all individuals in the Settlement Class who

1 fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion  
2 Deadline Date shall be Settlement Class Members and shall be bound by all terms of the  
3 Settlement and any final judgment entered in the Lawsuit if the Settlement is approved by the  
4 Court.

5 c. PAGA Aggrieved Employees will not have the opportunity to opt  
6 out of, or object to, the PAGA Payment and release of the PAGA claims set forth in this  
7 Settlement Agreement.

8 d. No Solicitation of Settlement Objections or Exclusions. The Parties  
9 agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the  
10 Parties, or their counsel, seek to directly or indirectly solicit or otherwise encourage the Settlement  
11 Class to submit written objections to the Settlement or requests for exclusion from the Class  
12 Settlement, or appeal from the Court's final judgment.

13 5. Certification Reports by the Settlement Administrator.

14 a. The Settlement Administrator will, on a weekly basis during and for  
15 a reasonable period following distribution of the Class Notice, provide updates to Class Counsel  
16 and Defendant's Counsel as to the number of individuals in the Settlement Class who submitted (i)  
17 valid opt-out requests for exclusion; and (ii) objections. All written objections shall be provided  
18 to the Parties' counsel within five (5) calendar days of receipt by the Settlement Administrator.  
19 The Settlement Administrator shall also provide the names of any opt-outs to Defendant's counsel  
20 within five (5) calendar days of receipt. To the extent practicable, the weekly updates shall also  
21 provide updated data on the number of Class Notices that are returned undeliverable and any re-  
22 mailing efforts.

23 b. Within ten (10) calendar days after the Objection/Exclusion  
24 Deadline Date, the Settlement Administrator will prepare a declaration to be provided to Class  
25 Counsel and Defendant's Counsel for filing in support of Named Plaintiff's motion for final  
26 approval setting forth its compliance with its obligations under this Settlement Agreement,  
27 including related to the following: (i) its mailing efforts regarding the Class Notice; (ii) its receipt  
28 of any valid and timely requests for exclusion, and its inability to deliver the Class Notice to the

1 Settlement Class, if any; (iii) the number of Settlement Class Members; and (iv) the highest  
2 estimated Class Member Payment and PAGA Aggrieved Employees' portion of the PAGA  
3 Payment. The Settlement Administrator will also prepare and submit to Class Counsel and  
4 Defendant's Counsel for filing in support of the motion any supplemental declaration as may be  
5 needed.

6 6. Right of Defendant to Reject Settlement.

7 a. Option to Void Settlement. If, after the Objection/Exclusion  
8 Deadline Date, the number of employees in the Settlement Class who have timely submitted  
9 requests for exclusion total in number more than five (5) percent of the Settlement Class,  
10 Defendant shall have, in its sole discretion, the option to void this Settlement. In order to exercise  
11 this option, Defendant must notify Class Counsel in writing within fifteen (15) calendar days after  
12 the later of the Objection/Exclusion Deadline Date, or of learning in writing from the Settlement  
13 Administrator that the number of individuals in the Settlement Class who have timely submitted  
14 requests for exclusion total in number more than five (5) percent of the Settlement Class.

15 b. Nullification of Settlement Agreement. In the event: (i) the Court  
16 does not enter the Order specified herein; (ii) the Court does not finally approve the Settlement as  
17 provided herein; (iii) the Court does not enter a final judgment as provided herein which becomes  
18 final as a result of the occurrence of the Effective Date; or (iv) the Settlement does not become  
19 final for any other reason, this Settlement Agreement shall be null and void and any order or  
20 judgment entered by the Court in furtherance of this Settlement shall be treated as void ab initio.  
21 In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to  
22 their respective statuses as of the date and time immediately prior to the execution of this  
23 Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement  
24 had not been executed, except that any fees already incurred by the Settlement Administrator shall  
25 be borne equally by the Parties. In the event an appeal is filed from the Court's final judgment, or  
26 any other appellate review is sought prior to the Effective Date, administration of the Settlement  
27 shall be stayed pending final resolution of the appeal or other appellate review, pending the  
28 Effective Date.

1                   7.       Final Approval Hearing and Entry of Final Judgment.

2                   a.       Upon expiration of the Opt Out/Objection Period, with the Court's  
3 permission, a Final Approval hearing shall be conducted to determine final approval of the  
4 Settlement along with the amount properly payable for (i) the Fees Award and Costs Award, (ii)  
5 Named Plaintiff Enhancement Payment, (iii) Settlement Administrator's Expenses, and (iv) Class  
6 Member Payments; and (v) the PAGA Payments. Class Counsel will be responsible for drafting  
7 all documents necessary to obtain Final Approval, including a proposed order and judgment.

8                   b.       The Settlement Administrator shall keep counsel for the Parties  
9 apprised of all distributions from the Qualified Settlement Account and upon completion of  
10 administration of all distributions related to the Settlement, the Settlement Administrator shall  
11 provide written certification, under penalty of perjury, of such completion to the Court and counsel  
12 for all Parties.

13                  c.       Upon completion of administration of the Settlement, Named  
14 Plaintiff and Class Counsel shall provide written certification, under penalty of perjury, of such  
15 completion to the Court and Defendant's Counsel.

16                  8.       Administration Costs. All of Defendant's own legal fees, costs and  
17 expenses incurred in the Lawsuit shall be borne by Defendant. As set forth above, claims  
18 administration expenses will be paid from the Gross Settlement Amount. The Parties agree to  
19 cooperate in the Settlement administration process and to make all reasonable efforts to control  
20 and minimize the costs and expenses incurred in administration of the Settlement.

21 **IV.   Other Provisions**

22                  A.       **Publicity.** The Parties agree that neither Named Plaintiff nor Class Counsel shall  
23 issue any press release or announcement of any kind related in any way to the Settlement. Named  
24 Plaintiff and Class Counsel agree that, prior to preliminary approval of the Settlement, they will  
25 keep the terms of the Settlement confidential except for purposes of communicating with Named  
26 Plaintiff only. Named Plaintiff shall be informed that the Settlement is confidential and shall be  
27 advised to keep the Settlement confidential. From and after preliminary approval of the  
28 Settlement, Named Plaintiff and Class Counsel may comment regarding the specific terms of the

1 Settlement (1) as required by law; (2) as required under the terms of the Settlement; or (3) as  
2 required under counsel's duties and responsibilities as Class Counsel. In all other cases, Named  
3 Plaintiff and Class Counsel agree to limit their statements regarding the terms of the Settlement,  
4 whether oral, written or electronic (including the world wide web), to say the Lawsuit has been  
5 resolved and that Named Plaintiff and Class Counsel are satisfied with the terms of the Settlement.  
6 Class Counsel shall not, at any time, advertise or mention the terms of the Settlement on personal  
7 or firm website(s); shall not discuss the terms of the Settlement with media, general public, or  
8 issue press releases; and shall limit any statements regarding the terms of the Settlement to that  
9 information that is publicly available. Nothing in this Paragraph is intended to interfere with Class  
10 Counsel's duties and obligations to faithfully discharge their duties as Class Counsel.

11 **B. Privacy of Documents and Information.** Named Plaintiff and Class Counsel  
12 agree that none of the documents and information provided to them by Defendant or as part of this  
13 Settlement shall be used for any purpose other than settlement of the Lawsuit.

14 **C. No Admission By the Released Parties.**

15 1. The Released Parties, including Defendant, deny any and all claims alleged  
16 in the Lawsuit and deny any and all wrongdoing whatsoever. This Settlement Agreement is not a  
17 concession or admission, and shall not be used against Defendant or any of the Released Parties as  
18 an admission or indication with respect to any claim of any fault, concession or omission by  
19 Defendant or any of the Released Parties. Whether or not the Settlement is finally approved,  
20 neither the Settlement, nor any document, statement, proceeding or conduct related to this  
21 Settlement Agreement, nor any reports or accounts thereof, shall in any event be: (1) construed as,  
22 offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse  
23 to the Released Parties, including, but not limited to, evidence of a presumption, concession,  
24 indication or admission by any of the Released Parties of any liability, fault, wrongdoing,  
25 omission, concession or damage; or (2) disclosed, referred to or offered or received in evidence  
26 against any of the Released Parties, in any further proceeding in the Lawsuit, or any other civil,  
27 criminal or administrative action or proceeding, except for purposes of settling the Lawsuit  
28 pursuant to this Settlement Agreement.

1                   2.       The Released Parties, including Defendant, shall have the right to use this  
2 Settlement, including the Releases set forth above, to defend against any claims asserted by or on  
3 behalf of Settlement Class Members, PAGA Aggrieved Employees, or the LWDA, that are  
4 encompassed within the Releases, whether such claims are asserted in the Lawsuit or any other  
5 lawsuit.

6           **D.       Exhibits and Headings.** The terms of this Settlement Agreement include the terms  
7 set forth in any attached Exhibit, which is incorporated by this reference as though fully set forth  
8 herein. The Exhibit to this Settlement Agreement is an integral part of the Settlement. The  
9 descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for  
10 convenience of reference only and do not constitute a part of this Settlement Agreement.

11           **E.       Interim Stay of Proceedings.** The Parties agree to hold all proceedings in the  
12 Lawsuit, except such proceedings necessary to implement and complete the Settlement, in  
13 abeyance pending the Final Approval hearing to be conducted by the Court.

14           **F.       Amendment or Modification.** This Settlement Agreement may be amended or  
15 modified only by a written instrument signed by all Parties or their successors-in-interest.

16           **G.       Entire Settlement Agreement.** This Settlement Agreement and any attached  
17 Exhibits constitute the entire agreement among these Parties with respect to resolution of the  
18 Lawsuit. To the extent there are any other oral or written agreements relating to the subject matter  
19 of this Settlement Agreement, this Settlement Agreement controls and supersedes all such  
20 agreements. No oral or written representations, warranties or inducements have been made to any  
21 Party concerning this Settlement Agreement or its Exhibit other than the representations,  
22 warranties and covenants contained and memorialized in this Settlement Agreement and attached  
23 Exhibit.

24           **H.       Authorization to Enter Into Settlement Agreement.** Counsel for all Parties  
25 warrant and represent they are expressly authorized by the Parties whom they represent and who  
26 are signing this Settlement Agreement, to negotiate this Settlement Agreement and to take all  
27 appropriate action required or permitted to be taken by such Parties pursuant to this Settlement  
28 Agreement to effectuate its terms, and to execute any other documents required to effectuate the

1 terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other  
2 and use their best efforts to effect the implementation of the Settlement.

3 **I. Binding on Successors and Assigns.** This Settlement Agreement shall be binding  
4 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously  
5 defined.

6 **J. California Law Governs.** All terms of this Settlement Agreement and the  
7 Exhibits hereto shall be governed by and interpreted according to the laws of the State of  
8 California.

9 **K. Counterparts.** This Settlement Agreement may be executed in one or more  
10 counterparts. All executed counterparts and each of them shall be deemed to be one and the same  
11 instrument provided that counsel for the Parties to this Settlement Agreement shall exchange  
12 among themselves original signed counterparts.

13 **L. This Settlement is Fair, Adequate and Reasonable.** The Parties believe this  
14 Settlement is a fair, adequate and reasonable settlement of the Lawsuit and have arrived at this  
15 Settlement in arms-length negotiations, taking into account all relevant factors, present and  
16 potential. This Settlement was reached after extensive negotiations.

17 **M. Jurisdiction.** The Court shall retain jurisdiction with respect to the interpretation,  
18 implementation and enforcement of the terms of this Settlement Agreement and all orders and  
19 judgments entered in connection therewith, and the parties and their counsel hereto submit to the  
20 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement  
21 embodied in this Settlement Agreement and all orders and judgments entered in connection  
22 therewith.

23 **N. Cooperation and Drafting.** Each of the parties has cooperated in the drafting and  
24 preparation of this Settlement Agreement. Hence, in any construction made to this Settlement  
25 Agreement, the same shall not be construed against any of the Parties.

26 **O. Invalidity of Any Provision.** Before declaring any provision of this Settlement  
27 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest  
28

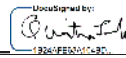
1 extent possible consistent with applicable precedents so as to define all provisions of this  
 2 Settlement Agreement valid and enforceable.

3 **P. Severability.** Should any clause or provision of this Settlement Agreement be  
 4 declared illegal or unenforceable, it shall be modified or reformed as minimally necessary to be  
 5 enforceable. If the provision cannot be modified or reformed to be enforceable, such provision  
 6 shall be severed and deemed null and void, leaving the remainder of this Settlement Agreement in  
 7 full force and effect.

8 **Q. Named Plaintiff General Release Remains Effective.** Named Plaintiff agrees to  
 9 sign this Settlement Agreement, and by signing this Settlement Agreement is bound by the terms  
 10 herein stated upon final approval, including without limitation the general release set forth above.  
 11 Named Plaintiff shall retain his rights to participate as a Settlement Class Member under this  
 12 Settlement Agreement, and agrees that he may not opt out of the Settlement Class.

13 **PLAINTIFF**

14  
 15 Date: 2/9/2023

14  
 15 

15 QUINTON FOWLER

16 **DEFENDANT UPDIKE DISTRIBUTION**  
 17 **LOGISTICS, LLC**

18 Date: \_\_\_\_\_

18 By: \_\_\_\_\_  
 19 Its: \_\_\_\_\_

20 **APPROVED AS TO FORM**

21 **JAMES HAWKINS, APLC**

22 Date: 2/9/2023

22 

23 James R. Hawkins  
 23 Attorney for Plaintiff Quinton Fowler

24 **SHEPPARD, MULLIN, RICHTER & HAMPTON**  
 25 **LLP**

26 Date: \_\_\_\_\_

27 Paul S. Cowie  
 28 Attorney for Defendant Updike Distribution Logistics,  
 28 LLC

1 extent possible consistent with applicable precedents so as to define all provisions of this  
2 Settlement Agreement valid and enforceable.

3 **P. Severability.** Should any clause or provision of this Settlement Agreement be  
4 declared illegal or unenforceable, it shall be modified or reformed as minimally necessary to be  
5 enforceable. If the provision cannot be modified or reformed to be enforceable, such provision  
6 shall be severed and deemed null and void, leaving the remainder of this Settlement Agreement in  
7 full force and effect.

8 **Q. Named Plaintiff General Release Remains Effective.** Named Plaintiff agrees to  
9 sign this Settlement Agreement, and by signing this Settlement Agreement is bound by the terms  
10 herein stated upon final approval, including without limitation the general release set forth above.  
11 Named Plaintiff shall retain his rights to participate as a Settlement Class Member under this  
12 Settlement Agreement, and agrees that he may not opt out of the Settlement Class.

13 **PLAINTIFF**

14  
15 Date: \_\_\_\_\_

\_\_\_\_\_  
QUINTON FOWLER

16 **DEFENDANT UPDIKE DISTRIBUTION  
LOGISTICS, LLC**

17  
18 Date: 2/16/2023 \_\_\_\_\_

DocuSigned by:  
*Greg Updike*  
88DAB688109E140...  
\_\_\_\_\_  
By: Greg Updike  
Its: Vice President

19  
20 **APPROVED AS TO FORM**

21 **JAMES HAWKINS, APLC**

22  
23 Date: \_\_\_\_\_

\_\_\_\_\_  
James R. Hawkins  
Attorney for Plaintiff Quinton Fowler

24 **SHEPPARD, MULLIN, RICHTER & HAMPTON  
LLP**

25  
26 Date: 2/16/2023 \_\_\_\_\_

DocuSigned by:  
*Paul Cowie*  
24FA649B980D470...  
\_\_\_\_\_  
Paul S. Cowie  
Attorney for Defendant Updike Distribution Logistics,  
LLC