

MARK ROBERTSON (S.B. #200220)
mrobertson@omm.com
ANDREW LICHTENSTEIN (S.B. #279297)
alichtenstein@omm.com
O'MELVENY & MYERS LLP
400 South Hope Street, 18 Floor
Los Angeles, California 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407

Attorneys for Defendant
ENVOY AIR, INC.

GRAHAM HOLLIS (S.B. #120577)
ghollis@grahamhollis.com
VILMARIE CORDERO (S.B. #268860)
vcordero@grahamhollis.com
DAVID LIN (S.B. #312350)
dlin@grahamhollis.com
GRAHAM HOLLIS APC
3555 Fifth Ave
San Diego, California 92103
Telephone: (619) 692-0800
Facsimile: (619) 692-0822

Attorneys for Plaintiff
Stephen Cartwright

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

STEPHEN CARTWRIGHT, on behalf of all
aggrieved employees of Defendants in the
State of California,

Plaintiff,

v.

ENVOY AIR, INC.; and DOES 1 THROUGH
50, inclusive,

Defendants.

Case No.: 21STCV12609

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE**

Date of Filing: April 1, 2021
Trial Date: None Set
Judge: Hon. William F. Highberger
Dept: 10

**I.
PREAMBLE**

1. This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Agreement”) is entered into between Plaintiff Stephen Cartwright (the “Named Plaintiff” or “Plaintiff”) individually and as the representative on behalf of certain additional putative class members and/or represented employees (collectively, with the Named Plaintiff, the “Settlement Class” or “Settlement Class Members”) as further defined in Section III of this Agreement, and defendant Envoy Air Inc. (“Envoy” or “Defendant”). The Settlement Class (including, without limitation, the Named Plaintiff and the PAGA Group, as further defined in Section IV of this Agreement) and Envoy will be referred to collectively herein as the “Settling Parties.”

2. On June 10, 2020, the Named Plaintiff, a former Fleet Service Clerk employed by Envoy at Los Angeles International Airport (“LAX”), submitted a written notice of claims under the California Labor Code Private Attorneys General Act (“PAGA”) to the Labor and Workforce Development Agency (“LWDA”) pursuant to California Labor Code § 2699.3 (“Initial PAGA Notice”). In the Initial PAGA Notice, the Named Plaintiff asserted a claim under PAGA on behalf of himself and other current and former Envoy employees based on alleged violations of the California Labor Code and/or Industrial Welfare Commission (“IWC”) wage orders, including, but not limited to: (1) Failure to Pay Minimum, Regular, and Overtime Wages (Labor Code §§ 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the applicable IWC Wage Order); (2) Failure to Provide Compliant Meal Periods (Labor Code §§ 226.7, 512, 558, 1198, and the applicable IWC Wage Order); (3) Failure to Authorize and Permit Rest Periods (Labor Code §§ 226.7, 512, 558, 1198, and the applicable IWC Wage Order); (4) Failure to Reimburse for Business Expenses (Labor Code §§ 2802 and 2804; (5) Failure to Maintain Accurate Records (Labor Code §§ 1174, 1174.5, 1198, and the applicable IWC Wage Order); (6) Failure to Provide Accurate Itemized Wage Statements and Accurate Written Notice of Sick Leave (Labor Code §§ 226, 226.3, 246, 248.5, and 1198); (6) Failure to Timely Pay All Wages Due During Employment and Upon Termination (Labor Code §§ 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the applicable IWC Wage Order); and (7) Failure to Produce Records (Labor Code §§ 432 and

1 1198.5). Based on these allegations, the Named Plaintiff claimed a right to all civil penalties
2 available under PAGA and attorney's fees, costs, interest, and liquidated damages.

3 3. On December 11, 2020, the Named Plaintiff filed a complaint in the Superior
4 Court of the State of California for the County of Los Angeles, styled as a PAGA representative
5 action, and containing all of the claims and allegations set forth in the Initial PAGA Letter on
6 behalf of all non-exempt employees employed by Envoy in California during the relevant time
7 period (the "Initial PAGA Complaint"). The Initial PAGA Complaint also added a PAGA claim
8 based on alleged violations of the Los Angeles Living Wage Ordinance (the "LWO"), Los
9 Angeles Administrative Code, Division 10, Chapter 1, Article 11, section 10.37 *et seq.* The case,
10 herein referred to as the "PAGA Lawsuit," was given Case No. 20TRCV00925 and assigned to
11 the Torrance Courthouse.

12 4. On December 14, 2020, the Named Plaintiff submitted a second written notice of
13 claims under PAGA to the LWDA pursuant to California Labor Code § 2699.3 (the "Second
14 PAGA Notice"). In the Second PAGA Notice, the Named Plaintiff notified the LWDA of
15 additional claims under PAGA based on alleged unlawful deductions in violation of California
16 Labor Code §§ 221, 224, 224, 225, and 225.5.

17 5. On February 18, 2021, the Named Plaintiff filed an amended complaint (the "First
18 Amended PAGA Complaint") in the PAGA Lawsuit. The First Amended PAGA Complaint
19 restated all of the claims and allegations in the Initial PAGA Complaint and added a PAGA claim
20 based on the unlawful deduction theory described in the Second PAGA Notice.

21 6. On April 1, 2021, the Named Plaintiff filed the initial complaint, styled as a
22 putative class action (the "Initial Class Action Complaint"), in the instant matter, i.e., Case No.
23 21STCV12609 (the "Class Action Lawsuit"). In the Initial Class Action Complaint, the Named
24 Plaintiff sought to represent a putative class of all current and former non-exempt employees who
25 worked for Defendants in the State of California at any time from September 20, 2016 through
26 the present. On behalf of this putative class, the Initial Class Action Complaint asserted eight (8)
27 causes of action for: (1) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, and 1198
28 and the applicable IWC Wage Order; (2) Failure to Provide Rest Periods (Labor Code §§ 226.7

1 and 1198 and the applicable IWC Wage Order); (3) Failure to Pay Minimum and Regular Wages
2 (Labor Code §§ 1194, 1197, and 1198, the LWO, and the Applicable IWC Wage Order); (4)
3 Failure to Indemnify All Necessary Expenditures (Labor Code §§ 2802); (5) Unlawful
4 Deductions from Wages (Labor Code §§ 221, 223, and 224); (6) Failure to Provide Accurate
5 Itemized Wage Statements (Labor Code §§ 226, 246, and 1198); (7) Failure to Timely Pay All
6 Wages Due Upon Separation of Employment (Labor Code §§ 201, 202, and 203); and (8)
7 Violation of Business and Professions Code § 17200 *et seq.*

8 7. On April 6, 2021, the Named Plaintiff filed a second amended complaint in the
9 PAGA Lawsuit (“Second Amended PAGA Complaint”). The Second Amended PAGA
10 Complaint did not include any additional causes of action.

11 8. On June 14, 2021, the Named Plaintiff filed an amended complaint in the Class
12 Action Lawsuit (“First Amended Class Action Complaint”). The First Amended Class Action
13 Complaint did not include any additional causes of action.

14 9. On or around October 11, 2022, the Settling Parties agreed to combine the PAGA
15 Lawsuit and the Class Action Lawsuit into a single case. Accordingly, pursuant to a stipulation
16 between the Settling Parties, the Named Plaintiff dismissed the PAGA Lawsuit and filed a second
17 amended complaint in the Class Action Lawsuit adding a cause of action for penalties under
18 PAGA (“Second Amended Class Action Complaint”). The Settling Parties also stipulated that
19 the PAGA cause of action added in the Class Action Lawsuit would be deemed filed as of the
20 filing date of the Initial PAGA Complaint—i.e., on December 11, 2020.

21 10. The Initial PAGA Notice, Second PAGA Notice, Initial PAGA Complaint, First
22 Amended PAGA Complaint, Second Amended PAGA Complaint, Initial Class Action
23 Complaint, First Amended Class Action Complaint, and Second Amended Class Action
24 Complaint are herein referred to as the “Complaints.” The PAGA Lawsuit and the Class Action
25 Lawsuit, including the Complaints, are herein referred to as the “Action.”

26 11. On August 10, 2022, the Settling Parties attended a private mediation before
27 Steven Rottman, a well-respected mediator of employment-related disputes, and reached an
28

1 agreement to settle this matter on a class and representative action basis, which is now set forth in
2 this Agreement.

3 12. During the course of this Action, the Settling Parties have engaged in significant
4 investigation of the facts at issue, have propounded and responded to numerous discovery
5 requests, and have exchanged extensive documents and information, which have allowed the
6 Settling Parties to fully assess the value of the claims involved. This Agreement comes after
7 more than twenty-two months of litigation, intense settlement negotiations, and a full-day session
8 with a mediator.

9 13. The Settling Parties have now agreed to avoid further litigation and to settle and
10 resolve all existing and potential disputes, actions, lawsuits, charges and claims related to the
11 Complaints and the Action that the Settlement Class has or may have against Envoy, to the fullest
12 extent permitted by law and without any admission of liability or wrongdoing by either party.
13 Plaintiffs and their counsel have concluded that the Settlement reflected herein is fair, reasonable,
14 and in the best interests of the Settlement Class and respectfully request that the Settlement be
15 approved by the Court.

16 14. This Agreement shall become effective upon the "Effective Date," as set forth in
17 Section VII below. The Settling Parties hereby agree to do all things and to engage in all
18 procedures reasonably necessary and appropriate to obtain final Court approval of this
19 Agreement, in consideration for: (a) the payment by Envoy of the consideration described herein,
20 subject to the terms, conditions and limitations of this Agreement; and (b) the release of claims by
21 the members of the Settlement Class (including, without limitation, the Named Plaintiff and the
22 PAGA Group), as described in Paragraphs 63 through 66 of this Agreement, and entry of
23 Judgment thereafter.

24 **II.**
25 **PAYMENTS TO THE SETTLEMENT CLASS, CLASS COUNSEL, THE NAMED**
26 **PLAINTIFF, AND THE CLAIMS ADMINISTRATOR**

27 15. Subject to Court approval and the provisions of this Agreement, Envoy shall pay a
28 total of two million, five hundred thousand U.S. Dollars and no cents (\$2,500,000), in
consideration of the settlement of this Action and the related release of all claims members of the

1 Settlement Class (including, without limitation, the Named Plaintiff and the PAGA Group) may
2 have against Envoy, as contained in Paragraphs 63 through 66 of this Agreement—an amount that
3 shall be referred to in this Agreement as the “Gross Settlement Value” or “GSV.”

4 16. No portion of the Gross Settlement Value shall be disbursed or distributed until
5 after the Effective Date.

6 17. The Gross Settlement Value is the maximum amount that Envoy shall be required
7 to pay for settlement of this Action. The Gross Settlement Value will cover payments to the
8 Settlement Class, as further defined in Section III of this Agreement, payments to the PAGA
9 Group, as defined in Section IV of this Agreement, additional compensation to the Named
10 Plaintiff as representative of the Settlement Class and the PAGA Group, the cost of claims
11 administration and notice, compensation to the LWDA under PAGA, and attorneys’ fees and
12 reimbursement of litigation costs and expenses to Class Counsel. The Gross Settlement Value
13 will not include employer-side payroll taxes, which Envoy will pay separately.

14 18. The Parties agreed to settle this matter for the Gross Settlement Value with the
15 understanding that the Settlement Class worked approximately 96,000 pay periods during the
16 Class Period.

17 **III.**
18 **CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

19 19. Solely for the purposes of this Settlement, and subject to Court approval, the
20 Settling Parties hereby stipulate to class certification of a Settlement Class comprised of all
21 persons who were employed by Envoy within the State of California as non-exempt employees at
22 any time from November 1, 2018 to December 31, 2022 (the “Class Period”), except for the
23 following individuals for whom the “Class Period” will be October 4, 2016 to December 31,
24 2022: William Marin, Keisha Griffin, Sophia Yracheta, Jasmine Young, Francisco Tamayo,
25 Keisha Mulunarey, Gerardo Narvaez, Fabian Cabrera, Edward Alva, Sandra Weathersby, James
26 McClaren, Maria Quintana, David Rolon, Jon Spielberg, Javier Friz, Luis Gomez, Manuel
27 Dimaculangan, Maribel Prado, Allan Soylon, Marco Nunez, Hugo Nunez, Roman A. Feleke,
28 Carlos Padilla, Luis Munoz, John Bien Manalac, Jerold Brooks Jr., Marlon Morton, Martin

1 Martinez, Dionna Smith, Oliver Thomas, Hugo Castro, Jeffrey Arauz Gonzales, Oscar Rodriguez
2 Lopez, Benjamin Ramirez Maldonado, Hiwotie Getaneh, Guillermo Merino, Anthony Diusa, Lorena
3 Gonzalez, Theodisthree Scott, Andre Roman, Souhil Achi, Shehadeh Achi, Matthew Fredericks, and
4 Jovhany Morales. The Settlement Class includes the PAGA Group, as defined below, and the
5 Non-Exempt Class and all subclasses as defined in the Complaint, including the “Waiting Time
6 Penalty Subclass” or “WTP Subclass” which is comprised of all members of the Settlement Class
7 whose employment with Defendant ended at any time within the Class Period.

8 20. If this Agreement is terminated pursuant to its terms, disapproved by any court
9 (including any appellate court), and/or not consummated for any reason, or the Effective Date for
10 any reason does not occur, the order certifying the Settlement Class for purposes of effectuating
11 this Agreement, and all preliminary and/or final findings regarding that class certification order,
12 shall be automatically vacated upon notice of the same to the Court, the Action shall proceed as
13 though the Settlement Class had never been certified pursuant to this Agreement and such
14 findings had never been made, the Action shall return to the procedural status quo in accordance
15 with this Paragraph, and nothing in this Agreement or other papers or proceedings related to the
16 Settlement shall be used as evidence or argument by anyone concerning whether the Action may
17 properly be maintained as a class action, whether the purported class is ascertainable, whether
18 there is sufficient commonality, whether the Named Plaintiff’s claims are typical of that of the
19 class, or whether Class Counsel or the Named Plaintiff can adequately represent any individuals
20 under applicable law.

21 21. Except as otherwise provided in this Agreement, persons who file valid and timely
22 Requests for Exclusion from this Settlement with the Claims Administrator in accordance with
23 the provisions of this Agreement shall are not included in the Settlement Class, shall not share in
24 the distribution of the Gross Settlement Value allocable to class claims, and will not be bound by
25 the terms of this Agreement, except as otherwise provided in this Agreement with respect to
26 members of the PAGA Group, as defined in Section IV below.

**IV.
THE PAGA GROUP**

22. The Settlement Class includes the “PAGA Group,” which consists of all persons who were employed by Envoy within the State of California as non-exempt employees at any time from April 19, 2019 to the date of the Court’s order granting preliminary approval of this Settlement (the “PAGA Period”).

23. The Parties will seek approval from the Court for a “PAGA Payment” of Two Hundred Thousand U.S. Dollars and no cents (\$200,000), which shall be paid from the GSV. Seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA pursuant to California Labor Code § 2699(i) (the “LWDA Payment”) and twenty-five percent (25%) of the PAGA Payment will be distributed to the PAGA Group (the “PAGA Group Payment”) as further set forth herein. All members of the PAGA Group will be sent their share of the PAGA Payment and will be subject to the release of PAGA claims set forth in Paragraph 64 below, whether or not they file Requests for Exclusions with the Claims Administrator. One hundred percent (100%) of the PAGA Payment is in settlement of claims for penalties and not subject to wage withholdings, and shall be reported on an IRS Form 1099.

**V.
APPOINTMENT OF NAMED PLAINTIFF’S COUNSEL AS SETTLEMENT CLASS
AND PAGA COUNSEL AND CLAIMS ADMINISTRATOR**

24. Subject to the Court’s approval, the Settling Parties hereby stipulate to the Court’s appointment of Graham Hollis and David Lin of Graham Hollis APC, 3555 Fifth Avenue, San Diego, California 92103, (619) 692-0800 (phone), (619) 692-0822 (facsimile) as counsel for the Settlement Class and the PAGA Group (“Class Counsel”).

25. Subject to Court approval, the Settling Parties jointly propose Rust Consulting as the third-party company to be appointed as “Claims Administrator” for this Settlement. The Claims Administrator will be responsible for calculating and distributing the share of the Settlement provided to each Settlement Class Member who does not file a Request for Exclusion and to each member of the PAGA Group, regardless of whether he or she files a Request for Exclusion; mailing the Class Notice (of the form attached as Exhibit A) to Settlement Class

1 Members; receiving and logging any Requests for Exclusion and/or written objections submitted;
2 researching and updating addresses through skip-traces and similar means; answering questions
3 from Settlement Class Members and members of the PAGA Group; reporting on the status of the
4 Settlement to the Settling Parties; preparing requested declarations regarding its due diligence in
5 completing and facilitating the claims administration process; providing the Settling Parties with
6 data regarding the filing of Requests for Exclusion and the calculation of distributions;
7 establishing and maintaining a non-interest-bearing distribution account for purposes of
8 distributing settlement checks and attorneys' fees and costs, the Enhancement Award, and the
9 PAGA payment to the LWDA; calculating withholding amounts and other tax obligations; and
10 performing such other tasks as required to administer this Agreement or as directed by the
11 Settling Parties.

12 **VI.**
13 **SETTLEMENT APPROVAL AND ADMINISTRATION PROCEDURES**

14 26. The Settling Parties' settlement of this Action, and their rights and obligations
15 hereunder, are expressly conditioned on both the Court's preliminary and final approval of this
16 Settlement. Preliminary approval shall be through the entry of an "Order of Preliminary
17 Approval," which Class Counsel shall file concurrently with the Motion for Preliminary
18 Approval. Class Counsel shall send drafts of the Motion for Preliminary Approval and Order of
19 Preliminary Approval to Counsel for Defendant at least ten (10) calendar days prior to filing the
20 same.

21 27. Among other things, the Motion for Preliminary Approval shall (a) set forth the
22 terms of this Agreement and/or attach this Agreement as an exhibit, (b) include proposed forms of
23 all notices and other documents necessary to implement the Agreement, and (c) seek a Court
24 order to grant preliminary approval of the Settlement, certify the Settlement Class for settlement
25 purposes only, and set a date for the settlement fairness or final approval hearing ("Final
26 Approval Hearing"). The Proposed Order of Preliminary Approval shall provide for notice of the
27 Settlement and related matters to the Settlement Class as specified in this Agreement.
28

1 28. At the same time Class Counsel files the Motion for Preliminary Approval and
2 Order of Preliminary Approval, Class Counsel shall submit a copy of this Agreement to the
3 LWDA pursuant to California Labor Code § 2699(l)(2).

4 29. Not later than thirty (30) calendar days after receipt of notice of the Court's entry
5 of the Order of Preliminary Approval, and to the extent possible based on the presence of
6 information in its records, Defendant shall provide the Claims Administrator a spreadsheet in
7 electronic format that contains, for each Settlement Class Member, his/her name; Social Security
8 number; last known mailing address, telephone number, and email address; all work locations
9 during the Class Period, the number of pay periods he/she worked during the Class Period; and
10 the number of pay periods he/she worked during the PAGA Period (if any) ("Class Member
11 Contact Information").

12 30. At a mutually convenient time, Defendant shall meet-and-confer with the Claims
13 Administrator regarding the format of the spreadsheet referenced in Paragraph 29 and cooperate
14 to provide any additional information which the Claims Administrator may request that is
15 reasonable and necessary for the purpose of administering the terms of this Agreement.

16 31. Class Counsel shall timely prepare and file all papers related to the Motion for
17 Final Approval of the Settlement ("Final Approval Motion"). At least ten (10) calendar days
18 before doing so, Class Counsel will send drafts of such papers to Defendant's counsel for
19 comments. With the Final Approval Motion, Class Counsel will file a Proposed Order of Final
20 Approval and Final Judgement ("Proposed Final Approval Order"), unless otherwise directed by
21 the Court. The Final Approval Motion and Proposed Final Approval Order shall be consistent
22 with the terms of this Agreement and, inter alia, shall reflect the Settlement, the entry of judgment
23 of this Action, and the approval the Settlement pursuant to the terms of this Agreement.

24 32. Within ten (10) calendar days of the Court's entry of the Final Approval Order and
25 Judgment (as defined in Paragraph 33(d)), Class Counsel will submit a copy of the Final
26 Approval Order and Judgment with the LWDA Pursuant to California Labor Code § 2699(l)(3).

**VII.
THE EFFECTIVE DATE**

33. This Agreement shall become final and effective on the occurrence of all of the following events described in this Paragraph 33, subparagraphs (a) through (e) (the “Effective Date”):

(a) The Settlement is executed by the Settling Parties, Class Counsel, and Defendant’s counsel.

(b) Entry by the Court of an Order of Preliminary Approval as discussed in Paragraph 26 of this Agreement, appointment of Class Counsel as described in Paragraph 24 of this Agreement, appointment of a Claims Administrator as described in Paragraph 25 of this Agreement, and the expiration of the time period for Defendant to withdraw from this Agreement as described in Paragraph 35 of this Agreement (without Defendant withdrawing).

(c) Class Counsel filing, at or before the Final Approval Hearing, a declaration from the Claims Administrator:

(i) Certifying that notice was sent to each Settlement Class member in accordance with Section XII of this Agreement and the Order of Preliminary Approval; and

(ii) Delineating the number of Settlement Class Members who submitted timely Requests for Exclusion.

(d) Entry by the Court of an Order and Judgment Granting Final Approval (the “Final Approval Order and Judgment”).

(e) The occurrence of the “Effective Date of Judgment,” which shall be deemed to be the last to occur of the following:

(i) If an appeal or other review is not sought from the Final Approval Order and Judgment, the sixty-fifth (65th) calendar day after the Final Approval Order and Judgment is signed and entered by the Court; or

(ii) If an appeal or other review is sought from the Final Approval Order and Judgment, five (5) court days after the Final Approval Order and Judgment is affirmed or the appeal or other review is dismissed or denied, and the judgment is no longer subject to judicial review or other challenge.

**VIII.
FAILURE OF THE EFFECTIVE DATE TO OCCUR OR OPT-OUTS IN EXCESS OF
FIVE PERCENT**

34. If the Effective Date does not occur, this Agreement shall be void, except as otherwise stated in Paragraph 70. In such event:

(a) Nothing in this Agreement shall be construed as a determination, admission, or concession of any substantive or procedural issue in this Action, and nothing in this Agreement may be offered into evidence in any hearing or trial, or in any subsequent pleading or in any other judicial, arbitral, or administrative proceeding;

(b) The Settling Parties expressly reserve their rights with respect to the prosecution and defense of this Action as if this Agreement never existed. In particular, Defendant does not waive, but rather expressly reserves, all rights to challenge any and all claims and allegations asserted in this Action upon all procedural and substantive grounds, including, without limitation, the ability to challenge class action treatment on any grounds and to assert any and all potential defenses or privileges. The Settling Parties agree that Defendant retains and reserves these rights, and they agree not to take a position to the contrary. Specifically, the Settling Parties agree that, if this Action were to proceed, they will not present any argument based on this Agreement, or any exhibit, attachment, act performed or document executed related to this Agreement; and

(c) The Settling Parties shall each bear half (50%) of any costs for notice or claims administration incurred by the Claims Administrator through the date that the Settlement is determined to be void. If Defendant, however, revokes this Settlement pursuant to Section 35 below, then Defendant will bear one hundred percent (100%) of notice or claims administration through the date of the revocation.

11

12

13
14
15

16
17
18
19
20
21
22
23
24
25
26
27
28

1 38. Defendant recognizes that, at the same time the application under Paragraph 37 is
2 made, Class Counsel will also apply to the Court for an additional award of five thousand U.S.
3 dollars and no cents (\$5,000.00) for the Named Plaintiff, as reasonable additional compensation
4 for the prosecution of the claims in this Action, the time and effort expended by him in doing so,
5 and in consideration for the claims released herein (the "Enhancement Award"). Defendant will
6 not oppose Class Counsel's application under this Paragraph 38. Any Enhancement Award shall
7 be paid from the GSV. Any Enhancement Award will be in addition to the amount that the
8 Named Plaintiff may be entitled to receive on account of his own individual claim pursuant to
9 Section XI of this Agreement; however, the releases set out in Paragraphs 63 through 66 of this
10 Agreement shall bind the Named Plaintiff regardless of his claims as a Settlement Class Member
11 and/or member of the PAGA Group, and the Enhancement Award shall be adequate consideration
12 for said releases. The Named Plaintiff, Class Counsel, and/or Settlement Class Members shall not
13 seek payment of any additional enhancement awards except as set forth herein.

14 39. As provided in Paragraph 23 above, the Claims Administrator will allocate from
15 the GSV the PAGA Payment, to cover penalties under PAGA. The Claims Administrator will
16 pay seventy-five percent (75%) of the PAGA Payment to the LWDA pursuant to California Labor
17 Code Section 2699(i). The remaining twenty-five percent (25%) of the PAGA Payment will be
18 distributed to the PAGA Group as set forth below.

19 40. Any awards pursuant to Paragraphs 37 and 38, as well as payment to the LWDA
20 and the PAGA Group, will be funded solely and completely from the GSV, and in no event shall
21 Defendant be obligated to pay any payments that would make Defendant's total payment towards
22 the Settlement in excess of the GSV.

23 41. If the Court does not approve the total amount of attorneys' fees, costs, and/or
24 Enhancement Award requested by Class Counsel pursuant to Paragraphs 37 and/or 38, any
25 remaining portion of the requested amount will be added to the Net Settlement Value (as that
26 term is defined in Paragraph 44(g) of this Agreement).

27 42. Any proceedings or Court decisions related to Class Counsel's application for
28 attorneys' fees, costs and expenses, and/or the Enhancement Award, shall not terminate or cancel

1 this Agreement, or otherwise affect the finality of the Final Approval Order and Judgment, or
2 affect the settlement and releases set forth herein concerning this Action. Further, nothing in this
3 Agreement shall prevent, waive, impair or impinge upon Class Counsel's right to appeal the
4 Court's decision related to the application for attorneys' fees, costs and expenses, and/or the
5 Enhancement Award.

6 43. Class Counsel shall have the sole and absolute discretion to allocate the Attorneys'
7 Fees and Expenses amongst Class Counsel and any other attorneys. Defendant shall have no
8 liability or other responsibility for allocation of any such attorneys' fees and expenses awarded,
9 and, in the event that any dispute arises relating to the allocation of fees, Class Counsel agree to
10 hold Defendant harmless from, and indemnify Defendant with respect to, any and all such
11 liabilities, costs, and expenses, including attorneys' fees and dispute costs, of such dispute.

12 **X.**
13 **PLAN OF ALLOCATION AND DISTRIBUTION OF THE GSV**

14 44. The GSV shall be allocated, in order, as follows:

15 (a) First, to any attorneys' fees and reasonable and necessary costs and
16 expenses of Class Counsel, as may be awarded by the Court pursuant to Paragraph 37 of
17 this Agreement.

18 (b) Second, to any Enhancement Award as may be awarded by the Court
19 pursuant to Paragraph 38 of this Agreement.

20 (c) Third, to the costs and expenses incurred by, or fees imposed by, the
21 Claims Administrator in performing its duties under this Agreement, which shall not
22 exceed \$30,000.

23 (d) Fourth, to the LWDA Payment for the payment to the LWDA of penalties
24 under the PAGA.

25 (e) Fifth, to the PAGA Group Payment for the payment to the PAGA Group of
26 penalties under the PAGA.

1 (f) Sixth, to a sum calculated by the Claims Administrator sufficient to cover
2 Defendant's share of any standard federal, state, and local tax deductions and
3 withholdings applicable to the distribution of payments to the Settlement Class.

4 (g) Seventh, to the "Net Settlement Value" or "NSV." The Net Settlement
5 Value or NSV shall be defined as the maximum possible value of the GSV less the items
6 described in Paragraphs 44(a) through 44(f) above. The Net Settlement Value shall be
7 made available to the Settlement Class as described in Section XI of this Agreement. The
8 Claims Administrator shall be responsible for the allocation and distribution of the Net
9 Settlement Value to Settlement Class Members who do not file Requests for Exclusion
10 from the Settlement.

11 45. The Claims Administrator shall make payments only from the GSV, only pursuant
12 to the terms of this Agreement, and only after the Effective Date.

13 46. For the purpose of calculating applicable taxes:

14 (a) Each settlement payment from the NSV ("Class Member Payment") shall
15 be classified as follows: (1) one-third to unpaid wages, (2) one-third to penalties, and (3)
16 one-third to interest.

17 (b) One hundred percent (100%) of the Enhancement Award will be allocated
18 to ordinary income, payable on an IRS Form 1099.

19 (c) One hundred percent (100%) of the PAGA Group Payment is in settlement
20 of claims for penalties and not subject to wage withholdings, and shall be reported on an
21 IRS Form 1099.

22 (d) Each Settlement Class Member and member of the PAGA Group shall be
23 individually responsible for his or her share of taxes attributable to the receipt of any Class
24 Member Payment and/or PAGA Group Payment.

25 (e) The Claims Administrator shall pay from the GSV to the appropriate
26 government authorities Defendant's portion of all taxes and withholdings applicable to the
27 Class Member Payments, including, but not limited to, payroll taxes.
28

XI.
CALCULATION OF PAYMENTS TO THE SETTLEMENT CLASS AND PAGA GROUP

47. As soon as practicable after receiving the spreadsheet referenced in Paragraph 29, the Claims Administrator shall perform the following calculations to determine the payments made to members of the PAGA Group and the Settlement Class.

48. Payments to the PAGA Group:

(a) The Claims Administrator will divide the PAGA Group Payment by the total number of pay periods worked by all members of the PAGA Group during the PAGA period to calculate the "Pay Period PAGA Payment."

(b) The Claims Administrator will calculate each member of the PAGA Group's "Individual PAGA Payment" by multiplying the "Pay Period PAGA Payment" by the number of pay periods that the member of the PAGA Group worked during the PAGA Period. For the purpose of applying this Paragraph 48, a Settlement Class Member will be deemed to have worked during a pay period if the Settlement Class Member has any timekeeping and/or payroll activity during the pay period.

(c) Members of the PAGA Group will receive an Individual PAGA Payment and will release their PAGA claims pursuant to Paragraphs 64 and 66 below whether or not they file a Request for Exclusion from this Settlement.

49. Payments to the Settlement Class:

(a) The Claims Administrator will divide the NSV by the total number of pay periods worked by all Settlement Class Members as well as all of the WTP pay periods described below during the Class Period to calculate the "Pay Period Class Payment."

(b) Each member of the Waiting Time Penalties Subclass will be entitled to receive an allotment of three (3) additional pay periods as a waiting time penalty for calculation of their Individual Class Payments only. These additional three (3) pay periods will be referred to as "WTP pay periods." The entire amount of a Settlement Class Member's Individual Class Payment attributable to WTP pay periods will be allocated as penalties. The additional pay periods allocated to Waiting Time Penalty Subclass

Members will not be considered as additional pay periods attributable to the total pay periods estimated in the Class Period under Paragraph 18.

(c) The Claims Administrator will calculate each Settlement Class Member's "Individual Class Payment" by multiplying the Pay Period Class Payment by the number of pay periods the Settlement Class Member worked during the Class Period and adding WTP pay periods if the Settlement Class Member is also a member of the Waiting Time Penalties Subclass. For the purpose of applying this Paragraph 49, a Settlement Class Member will be deemed to have worked during a pay period if the Settlement Class Member has any timekeeping and/or payroll activity during the pay period.

50. The same person may be both a Settlement Class Member and a member of the PAGA group and, if so, will be entitled to receive both an Individual Class Payment and an Individual PAGA Payment.

XII. GIVING CLASS NOTICE AND PROCESSING REQUESTS FOR EXCLUSION

51. No later than ten (10) calendar days after receipt of the spreadsheet referenced in Paragraph 29, and subject to the requirements of the Preliminary Approval Order and this Agreement, the Claims Administrator shall send a notice by first-class U.S. Mail, proper postage prepaid and postmarked on the same day, to all Settlement Class Members whose addresses are known, substantially in the form attached hereto as Exhibit A ("Settlement Notice"). Prior to the mailing of the Settlement Notice, the Claims Administrator shall perform a search based on the National Change of Address Database and Accurint or similar skip-trace for information to update and correct for any known or identifiable address changes.

52. The Settlement Notice shall advise each Settlement Class Member of his or her rights under this Settlement, provide the date, time, and location of the Final Approval Hearing, and include instructions on how to exclude oneself from the Settlement and how to object to the Settlement. The Settlement Notice shall state the number of pay periods the Settlement Class Member is credited with working during the Class Period. The Settlement Notice shall also contain the estimated dollar value of the Settlement Class Member's share of the Settlement,

1 including both of his or her Individual Class Payment and his or her Individual PAGA Payment,
2 if any, assuming Class Counsel's requests under Paragraphs 37 and 38 of this Agreement in their
3 entirety and the Claims Administrator's fees remain the same as estimated in Paragraph 44(c) of
4 this Agreement.

5 53. The Settlement Notice will indicate that Settlement Class Members may elect to
6 opt out of the Settlement, relinquishing their rights to their Individual Class Payments (but not
7 their Individual PAGA Payments). A Settlement Class Member who opts out of the Settlement
8 will not release his or her claims pursuant to this Agreement, except for PAGA claims, which
9 shall be released pursuant to Paragraphs 64 and 66 of this Agreement, whether or not the
10 Settlement Class Member opts out of the Settlement. Settlement Class Members wishing to opt
11 out of the Settlement must send to the Claims Administrator by U.S. Mail a written "Request for
12 Exclusion," as described in the Settlement Notice, such that it is actually received by the Claims
13 Administrator with a postmark reflecting a date within forty-five (45) calendar days from the date
14 of mailing of the Settlement Notice ("Response Deadline"). The Request for Exclusion must be
15 signed by the Settlement Class Member and include (a) his or her full name; (b) his or her current
16 address and telephone number; (c) a clear statement communicating that he or she elects to be
17 excluded from the Settlement Class; (d) the last four digits of his or her Social Security number;
18 and (e) the case name and case number of the Action. Except as otherwise provided for in this
19 Agreement, Settlement Class Members who fail to submit a valid Request for Exclusion on or
20 before the Response Deadline shall be bound by all terms of this Agreement and the Final
21 Approval Order and Judgment. So-called "mass" or "class" opt outs shall not be allowed.

22 54. The Settlement Notice will indicate that any Settlement Class Member who
23 intends to object to the fairness, reasonableness, and/or adequacy of the Settlement must file the
24 written objection with the Court (or through any other method through which the Court will
25 accept objections, if any) no later than the Response Deadline and/or appear at the Final Approval
26 Hearing to make their objection. Each Settlement Class Member who objects in writing must set
27 forth in his or her written objection: (a) his or her full name; (b) current address; (c) a written
28 statement of his or her objection(s) and the reasons for each objection; (d) a statement of whether

1 he or she intends to appear at the Final Approval Hearing (with or without counsel); (e) his or her
2 signature; and (f) the case name and case number of the Action. If a Settlement Class Member
3 fails to appear at the Final Approval Hearing and fails to file an objection on or before the
4 Response Deadline, he or she shall be deemed to have waived all objections and shall be
5 foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. A
6 Settlement Class Member cannot submit both a Request for Exclusion from and an objection to
7 the Settlement.

8 55. Any Settlement Notices returned to the Claims Administrator as non-deliverable
9 on or before the Response Deadline shall be sent promptly via regular first-class U.S. mail to the
10 forwarding address affixed thereto and the Claims Administrator shall indicate the date of such
11 re-mailing on the Settlement Notice. If no forwarding address is provided, the Claims
12 Administrator shall promptly attempt to determine the correct address using a skip-trace, or other
13 search using the name, address and/or Social Security number of the Settlement Class Member
14 involved, and shall then perform a single re-mailing. Those Settlement Class Members who
15 receive a re-mailed Settlement Notice shall have the latter of (i) an additional ten (10) calendar
16 days from the postmarked date of re-mailing or (ii) the Response Deadline to postmark a Request
17 for Exclusion from or objection to the Settlement.

18 56. Any Settlement Class Member who disagrees with the number of pay periods he or
19 she is credited with working during the Class Period may submit a statement in writing to that
20 effect and enclose documentation supporting said disagreement. The Settlement Notice will
21 provide instructions about how a Settlement Class Member may state his or her disagreement in
22 this regard. The Claims Administrator will be solely responsible for resolving any discrepancies
23 between Defendant's documentation and conflicting information provided by a Settlement Class
24 Member, and said resolution by the Claims Administrator shall be final and binding on all parties,
25 and non-appealable. Once the Claims Administrator resolves a given discrepancy, it will notify
26 the Settlement Class member of its decision in writing within ten (10) calendar days. Defendant
27 agrees to provide additional information which is reasonable and necessary for the Claims
28 Administrator to resolve any such discrepancies, to the extent such information is available within

1 its records and reasonably accessible. Regardless of whether his or her disagreement with the
2 number of pay periods is resolved by the Response Deadline, a Settlement Class Member must
3 still submit a Request for Exclusion by no later than the Response Deadline in order to opt out of
4 the Settlement. Those Settlement Class Members who submitted pay period disputes shall have
5 the latter of (i) an additional ten (10) calendar days from the postmarked date of notice of the
6 Claims Administrator's decision or (ii) the Response Deadline to postmark a Request for
7 Exclusion from or objection to the Settlement.

8 57. The Settlement Notice shall contain the release and waiver of claims against
9 Defendant contained in Paragraphs 63, 64 and 66 of this Agreement, and an easily understood
10 statement alerting Settlement Class Members that by failing to submit a Request for Exclusion the
11 individual is executing a release and waiver of all of the claims related to those alleged in this
12 Action which the Settlement Class Members may have against Defendant. The Settlement Notice
13 shall also contain an easily understood statement explaining that, if the Settlement Class Member
14 is also a member of the PAGA Group (i.e., he or she worked a pay period during the PAGA
15 Period), he or she will be bound by the release of PAGA claims set forth in Paragraph 64 of this
16 Agreement, irrespective of whether he or she submits a Request for Exclusion.

17 58. If a Settlement Class Member submits a timely Request for Exclusion on or before
18 the Response Deadline that is defective as to the requirements listed herein, that Settlement Class
19 Member shall be given an opportunity to cure the defect(s). The Claims Administrator shall mail
20 the Settlement Class Member a cure letter within three (3) court days of receiving the defective
21 submission to advise the Settlement Class Member that his or her submission is defective and that
22 the defect must be cured to render the Request for Exclusion valid. The Settlement Class
23 Member shall have until the later of (i) the Response Deadline or (ii) ten (10) calendar days from
24 the postmarked date of the mailing of the cure letter, to postmark a revised Request for Exclusion
25 such that it is actually received by the Claims Administrator. If the revised Request for Exclusion
26 is not postmarked within that period and received by the Claims Administrator, it shall be deemed
27 untimely.
28

60. Defendant shall pay the GSV to the Claims Administrator not later than fourteen (14) calendar days after the Effective Date. The Claims Administrator shall deposit the GSV in a non-interest-bearing distribution account immediately upon receipt of the fund transfer discussed in this Paragraph 60. Once Defendant pays the GSV to the Claims Administrator, any risk of loss of the GSV shall pass from Defendant to the Claims Administrator.

62. After the Claims Administrator mails out the Member Payments, Settlement Class Members shall have one hundred and eighty (180) calendar days to cash or deposit the check that was mailed to them. After one-hundred and eighty (180) calendar days from the date of mailing, the checks shall become null and void. If the amount of unclaimed funds is not greater than twice the cost of redistribution, the unclaimed funds shall be distributed to the State Controller Unclaimed Property Fund in the names of the Settlement Class Members who did not cash their checks. If the amount of unclaimed funds is greater than twice the cost of redistribution, the

1 remaining unclaimed funds will be redistributed to Settlement Class Members who
2 cashed/deposited their original distribution checks on a pro rata per workweek basis with a void
3 check deadline of one-hundred and eighty (180) calendar days. For the avoidance of doubt, any
4 costs of the Claims Administrator that are incurred as a result of this redistribution will come
5 entirely from the unclaimed funds, and no such costs shall be imposed on or borne by Defendant.
6 Thereafter, any monies remaining in the distribution account shall be distributed to the State
7 Controller Unclaimed Property Fund in the names of the Settlement Class Members who did not
8 cash their checks. The Settling Parties agree that this disposition results in no unpaid residue, as
9 the entire GSV will be paid out, regardless of whether all Settlement Class Members cash their
10 Settlement Checks. Therefore, Defendant will not be required to pay any interest on said amount.

11 **XIV.**
12 **RELEASES**

13 63. In exchange for the for the consideration, undertakings, and covenants agreed to
14 by Defendant in this Agreement, and to the fullest extent permitted by applicable law, effective
15 on the date that Defendant pays the GSV to the Claims Administrator, the Settlement Class
16 hereby releases, discharges, and covenants not to sue Defendant, and all of its respective past and
17 present employees, directors, officers, attorneys, representatives, insurers, agents, parents,
18 subsidiaries, affiliates, related companies, predecessors, successors, lessees, and assigns, and any
19 entity that could be jointly liable with any of these (individually and collectively “Defendant
20 Releasees”) from and with respect to all actions, causes of action, suits, liabilities, claims, and
21 demands whatsoever, and each of them, whether known or unknown, which the Settlement Class
22 or individual members thereof, has, had, or hereafter may claim to have, against Defendant
23 Releasees, or any of them, which arose during the Class Period and are based on, arise from, or in
24 any way relate to any and all claims and allegations in this Action and/or the Complaints, as well
25 as any and all claims and allegations that could have been raised in this Action and/or the
26 Complaints based upon the facts alleged therein, which include, by way of description, but not by
27 way of limitation, claims on behalf of the Settlement Class alleging that Defendant failed to
28 provide Settlement Class Members with legally compliant meal periods, failed to provide

1 Settlement Class Members with legally compliant rest breaks, failed to provide Settlement Class
2 Members with all wages due, including minimum wages, regular wages, and overtime wages,
3 failed to reimburse and/or indemnify Settlement Class Members for all work-related expenses,
4 made unlawful deductions from Settlement Class Members' wages, failed to provide Settlement
5 Class Members with compliant wage statements, and failed to timely pay Settlement Class
6 Members all wages due upon termination, as well as any other claims under constitutional,
7 statutory, and/or common law any way related to any of the claims described in this Paragraph 63
8 ("Released Class Claims").

9 64. In exchange for the for the consideration, undertakings, and covenants agreed to
10 by Defendant in this Agreement, and to the fullest extent permitted by applicable law, effective
11 on the date that Defendant pays the GSV to the Claims Administrator, the PAGA Group hereby
12 releases, discharges, and covenants not to sue Defendant and all Defendant Releasees from and
13 with respect to all actions, causes of action, suits, liabilities, claims, and demands under the
14 California Labor Code Private Attorneys' General Act (i.e., PAGA), whether known or unknown,
15 which the PAGA Group or individual members thereof, has, had, or hereafter may claim to have,
16 against Defendant Releasees, or any of them, which arose during the PAGA Period and are based
17 on, arise from, or in any way relate to any and all claims and allegations in this Action and/or the
18 Complaints, as well as any and all claims and allegations that could have been raised in this
19 Action and/or the Complaints based on the facts alleged therein, which include, by way of
20 description, but not by way of limitation, claims under PAGA on behalf of PAGA Group alleging
21 that Defendant failed to provide members of the PAGA Group with legally compliant meal
22 periods, failed to provide members of the PAGA Group with legally compliant rest breaks, failed
23 to provide members of the PAGA Group with all wages due, including minimum wages, regular
24 wages, and overtime wages, failed to reimburse and/or indemnify members of the PAGA Group
25 for all work-related expenses, made unlawful deductions from members of the PAGA Group's
26 wages, failed to provide members of the PAGA Group with compliant wage statements, and
27 failed to timely pay members of the PAGA Group all wages due upon termination, as well as any
28

1 other claims under constitutional, statutory, and/or common law any way related to any of the
2 claims described in this Paragraph 64.

3 65. In exchange for the consideration, undertakings, and covenants undertaken by
4 Defendant in this Agreement, including but not limited to the payment of the Enhancement
5 Award, and to the fullest extent permitted by applicable law, the Named Plaintiff hereby releases,
6 discharges, and covenants not to sue the Defendant Releasees with respect to and from any and all
7 claims, charges of discrimination, demands, liens, agreements, contracts, covenants, actions, suits,
8 causes of action, disputed wages, obligations, debts, expenses, attorneys' fees, damages,
9 penalties, interest, judgments, orders and liabilities of whatever kind or nature in law, equity or
10 otherwise, whether now known or unknown, suspected or unsuspected, and whether or not
11 concealed or hidden, which they now own or hold or they have at any time heretofore owned or
12 held, arising out of or in any way connected with any relationship with the Defendant Releasees
13 or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatever,
14 known or unknown, suspected or unsuspected, resulting from any act or omission by or on the
15 part of said Defendant Releasees, or any of them, committed or omitted prior to the date of the
16 Court's Order granting Preliminary Approval (collectively, "Named Plaintiff's Claims"). The
17 Settling Parties intend the Named Plaintiff's release to be general and comprehensive in nature
18 and to release all Named Plaintiff's Claims and potential Named Plaintiff's Claims against
19 Defendant Releasees to the maximum extent permitted by law. Named Plaintiff's Claims being
20 released include specifically, by way of description, but not by way of limitation, any and all
21 Named Plaintiff's Claims arising out of or in any way related to: (i) any interactions between the
22 Named Plaintiff and the Defendant Releasees; (ii) the Named Plaintiff and Defendant's
23 employment or independent contractor relationship, including the application therefor and
24 separation thereof; (iii) any allegations as to disputed wages, remuneration, and/or other
25 compensation, due by operation of statute, ordinance, regulation, wage order, contract, or quasi-
26 contract; (iv) any federal, state, or local law prohibiting retaliation, discrimination, or harassment
27 on the basis of age, race, color, ancestry, religion, disability, sex, national origin, citizenship, or
28 any other characteristic or activity, including, without limitation, any such claims under Title VII,

1 the California Fair Employment and Housing Act, the California Labor Code, the California IWC
2 Wage Orders, the Employee Retirement Income Security Act, and the Americans With
3 Disabilities Act or any other similar statutes whatever the city, county, state, or country of
4 enactment; (v) any claims under the Family and Medical Leave Act of 1993 and/or the California
5 Family Rights Act; (vi) any transactions, occurrences, acts, statements, disclosures, or omissions
6 occurring prior to the date of the Court's order granting Preliminary Approval; and (vii) any tort
7 or contract claims.

8 **66. Waiver of California Civil Code Section 1542:** The Named Plaintiff intends that
9 this Agreement should be effective as a bar to any and all of the claims released by Paragraph 65
10 and expressly waives any and all rights or benefits conferred by the provisions of Section 1542 of
11 the California Civil Code, or any similar provisions under state, federal, or local law. California
12 Civil Code Section 1542 provides as follows:

13 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
14 **THAT THE CREDITOR OR RELEASING PARTY DOES**
15 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
16 **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.

17 As to any and all of claims described in Paragraph 65, Plaintiff understands fully the
18 statutory language of California Civil Code Section 1542, and, with this understanding, assume
19 all risks for claims released hereunder that have already arisen or may in the future arise, whether
20 known or unknown, suspected or unsuspected, and specifically waive all rights he may have
21 under California Civil Code § 1542, or any similar provision under state, federal, or local law.
22 The Named Plaintiff understands that, if any of the facts relating in any manner to this Action, or
23 to the release of claims as provided in this Agreement, are hereafter found to be other than or
24 different from the facts now believed to be true, he has expressly accepted and assumed that risk
25 and agree that this Agreement and the release of claims contained herein and as set forth in
26 Paragraph 65 shall nevertheless remain effective. As to any and all of the claims released by
27 Paragraph 65, the Named Plaintiff desires and intends, or is deemed to desire and intend, that this
28 Agreement shall be given full force and effect according to each and all of its express terms and

1 provisions, including those relating to unknown and unsuspected claims, if any, as well as those
2 relating to the claims referred to above.

3 67. Class Counsel and the Named Plaintiff represent and warrant that—aside from this
4 Action and/or the Complaints—it and they have not filed any complaints, charges, lawsuits, or
5 other legal actions with any court or government agency relating to any claims being released by
6 the Settlement Class (including, without limitation, the Named Plaintiff and the PAGA Group) in
7 Paragraphs 63 through 66 of this Agreement. Class Counsel and the Named Plaintiff further
8 represent and warrant that it and they have not heretofore assigned or transferred to any person
9 not a party to this Agreement any released matter.

10 68. The Court shall enter an order retaining jurisdiction over the Parties to this
11 Agreement with respect to the future performance of the terms of this Agreement. In the event
12 that any applications for relief are made, such applications shall be made to the Court.

13 69. Upon the date that Defendant pays the GSV to the Claims Administrator: (a) the
14 Agreement shall be the exclusive remedy for any and all claims released in Paragraphs 63 through
15 66 above; and (b) Named Plaintiff and the Settlement Class Members (including members of the
16 PAGA Group) stipulate to be and shall be permanently barred and enjoined by Court order from
17 initiating, asserting, or prosecuting against the Defendant Releasees in any federal or state court
18 or any tribunal any and all of the claims released in Paragraphs 63 through 66 of this Agreement.

19 **XV.**
20 **MODIFICATION OR TERMINATION OF THE SETTLEMENT**

21 70. If the preconditions necessary to trigger the Effective Date (as set forth in Section
22 VII of this Agreement) are not met, this Agreement shall be cancelled and terminated unless
23 Class Counsel and Defendant's counsel mutually agree in writing to proceed with and effectuate
24 this Agreement. In the event that this Agreement is not approved by the Court or the settlement
25 set forth in this Agreement is terminated or fails to become effective in accordance with its terms,
26 this Paragraph 70, Paragraph 34, and Paragraphs 73 through 76 herein shall survive and be
27 binding on the Parties, but this Agreement shall otherwise be null and void.

72. Final Approval Order and Judgment: The Final Approval Order and Judgment shall contain findings and rulings separately approving the PAGA Payment and the settlement of PAGA claims under the Settlement. The Final Approval Order and Judgment shall further state that all Settlement Class Members who did not submit timely and valid Requests for Exclusion shall be bound by the releases and waivers set forth in Paragraphs 63 and 66 of this Agreement, and that all members of the PAGA Group shall be bound by the releases and waivers set forth in Paragraphs 64 and 66 of this Agreement, whether or not such members of the PAGA Group submitted timely and valid Requests for Exclusion. The Claims Administrator shall maintain a static website to make the Class Notice, Settlement Agreement, and any court orders regarding Preliminary Approval and Final Approval available to potential Class Members.

73. Settlement Not Evidence: The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of California Evidence Code section 1152, Federal Rule of Evidence 408, and/or any equivalent state or federal law or rule. In no event shall this Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a

1 proceeding to enforce this Agreement or the rights of the Parties or their counsel under this
2 Agreement. Without limiting the foregoing, neither this Agreement nor any related negotiations,
3 statements, or court proceedings shall be construed as, offered as, received as, used as or deemed
4 to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the
5 part of any person or entity, including, but not limited to, Defendant, the Defendant Releasees, the
6 Named Plaintiff, the Settlement Class, or the PAGA Group, or as a waiver by any of the
7 foregoing of any applicable privileges, claims or defenses.

8 74. Best Efforts: The Settling Parties shall take all necessary actions to accomplish
9 approval of the Settlement, the Settlement Notice, and entry of Judgment. The Settling Parties
10 (including their counsel, successors, and assigns) agree to cooperate fully and in good faith with
11 one another and to use their best efforts to effectuate the Settlement, including without limitation
12 in seeking preliminary and final Court approval of this Agreement and the Settlement embodied
13 herein, carrying out the terms of this Agreement, and promptly agreeing upon and executing all
14 such other documentation as may be reasonably required to obtain final approval by the Court of
15 the Settlement. The Settling Parties agree to use all reasonable efforts, consistent with this
16 Agreement and subject to Section XV (modification), to cure any defect identified by the Court
17 that must be addressed to obtain the Court's approval of the Settlement.

18 75. Confidential Information: All information marked as "Confidential" provided by
19 Defendant to the Named Plaintiff, Class Counsel, any individual member of the Settlement Class
20 and/or PAGA Group, counsel for any individual Settlement Class Member, and/or the Claims
21 Administrator, pursuant to the implementation of this Agreement, constitutes confidential and
22 proprietary business information and shall be deemed confidential and shall not be used for any
23 purpose other than for the effectuation of this Settlement. Any materials inadvertently produced
24 shall, upon Defendant's request, be promptly returned to Defendant's counsel, and there shall be
25 no implied or express waiver of any privilege, right and defense. The Named Plaintiff and Class
26 Counsel agree that the confidential information made available to them or to the Claims
27 Administrator through the settlement process was made available, as agreed to, on the condition
28 that neither the Named Plaintiff nor Class Counsel may disclose such information, or summaries

1 thereof, to third parties; that it not be the subject of public comment; that it not be used by the
2 Named Plaintiff or Class Counsel in any way in this litigation should the Settlement not be
3 achieved, and that it is to be returned if a Settlement is not concluded.

4 76. Publicity: The Named Plaintiff and Class Counsel (including, without limitation,
5 all counsel listed in Paragraph 24) agree that they will not publicize or announce this Settlement
6 in press releases, marketing materials, or on the internet until after the Effective Date, unless
7 otherwise required by the Court. After the Effective Date, the Named Plaintiff and Class Counsel
8 agree that references to this Settlement on their websites, the internet or in other public
9 communications will not identify the claims asserted (except that reference to the matter as a
10 “wage and hour class action” is not prohibited) or Envoy as the defendant, unless the case is
11 being cited and/or mentioned in a filing with any state or federal court in connection with Class
12 Counsel seeking to obtain approval from the court as appointment as class counsel, or in
13 connection with a fee request.

14 77. Settlement Is Fair and Reasonable: Class Counsel has considerable experience in
15 litigating and settling wage-and-hour class actions of this type, and is sufficiently familiar with
16 the facts of this case and the applicable laws and regulations to make an informed judgment as to
17 the fairness of this Settlement. In light of this experience, and for reasons that will be more fully
18 explained in the Motion for Preliminary Approval, Class Counsel and the Named Plaintiff believe
19 that the settlement terms herein are fair and reasonable with regard to the interests of the
20 Settlement Class. The terms of the Settlement resulted from several months of intense arm’s-
21 length negotiations, including a full-day mediation session with private mediator Steven Rottman.

22 78. Notices: Except as otherwise set forth herein, all notices, requests, demands and
23 other communications related to or in connection with this Agreement shall be in writing, and
24 shall be provided by appropriate method depending on the urgency (e.g., personal delivery, e-
25 mail, facsimile, overnight delivery, or first-class U.S. mail) to:
26
27
28

TO THE SETTLEMENT CLASS:

GRAHAM HOLLIS
ghollis@grahamhollis.com
 DAVID LIN
dlin@grahamhollis.com
 GRAHAM HOLLIS APC
 3555 Fifth Avenue
 San Diego, California 92103
 Telephone: (619) 692-0800
 Facsimile: (619) 692-0822

TO ENVOY AIR INC.

MARK ROBERTSON
mrobertson@omm.com
 ANDREW LICHTENSTEIN
alichtenstein@omm.com
 O'MELVENY & MYERS LLP
 400 S. Hope St., 18th Floor
 Los Angeles, CA 90071
 Telephone: (213) 430-6000
 Facsimile: (213) 430-6407

79. Representations:

(a) The Named Plaintiff, on behalf of himself, the Settlement Class, and the PAGA Group, have expressly authorized Class Counsel to take all appropriate action required or permitted to be taken pursuant to this Agreement to effectuate its terms.

(b) Each attorney executing this Agreement on behalf of any party hereto hereby warrants that full authority to do so has been given by his/her client(s).

(c) Defendant, Class Counsel, and the Named Plaintiff waive their right to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement; provided, however, that Class Counsel and the Named Plaintiff may appeal the Court's determination with regard to the requests for attorneys' fees and costs. Consistent with Paragraph 42, however, any such appeal will have no effect whatsoever on the other terms and provisions of this Agreement, including, by way of example but not of limitation, the releases set out in Paragraphs 63 through 66 of this Agreement.

(d) The Settling Parties represent and agree that neither have received and/or relied upon any advice and/or representations from the other and/or their or its attorneys as to the necessity for withholding or the taxability of the consideration paid pursuant to this Agreement, whether pursuant to federal, state or local income tax statutes or otherwise.

80. Construction and Interpretation: This Agreement, including its exhibits, constitutes the entire agreement and understanding between the Settling Parties, and supersedes

1 any previous agreements or understandings between the Settling Parties. No representations,
2 warranties or inducements have been made to any party concerning the subject matter of this
3 Agreement and/or its exhibits other than the representations, warranties and covenants contained
4 in such documents. This Agreement and related exhibits shall be construed each as a whole, and
5 with reference to one another, according to their fair meaning and intent. Each of the Settling
6 Parties represent that its/their counsel has participated and cooperated in the drafting and
7 preparation of this Agreement and related exhibits; hence, in any construction to be made of this
8 Agreement and/or its exhibits, the same shall not be construed against any party on the basis that
9 said party was the drafter.

10 81. Governing Law: This Agreement and the exhibits hereto shall be deemed to have
11 been negotiated, executed and delivered, and to be wholly performed, in the State of California.
12 The rights and obligations of the parties under the Agreement shall be construed and enforced in
13 accordance with, and be governed by, the laws of the State of California without regard to choice
14 of law principles.

15 82. Counterparts: This Agreement may be executed in one or more counterparts by
16 facsimile, electronic signature or email, which for the purposes of this Agreement shall be
17 accepted as an original, and which may be filed with the Court. All executed counterparts, and
18 each of them, shall be deemed to be one and the same instrument. Once available, a complete set
19 of executed counterparts shall be filed with the Court. Copies of the complete set of executed
20 counterparts may be used for all purposes in lieu of the originals, and shall have the same force
21 and effect as the originals.

22 83. Severability: In the event any one of the provisions contained in this Agreement
23 shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity,
24 illegality, or unenforceability shall not affect other provisions if Defendant's counsel and Class
25 Counsel, on behalf of the Parties, mutually elect to proceed as if such invalid, illegal, or
26 unenforceable provision had never been included in this Agreement.

27 84. Attorneys' Fees, Costs, and Expenses: Except as otherwise specifically provided
28 for herein, each party shall bear his/her/its own attorneys' fees, costs and expenses, taxable or

otherwise, incurred by them in or arising out of this Action, and shall not seek reimbursement thereof from any other party to this Agreement.

85. Calculation of Time: To resolve ambiguity, any reference to a span of “days” in this Agreement should be interpreted as a reference to calendar days unless stated to the contrary. To the extent that a given span of days ends on a national holiday, or weekend, the calculation should be deemed as ending on the next business day, e.g., a calculation that ends on a Saturday will carry forward to the following Monday.

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly-authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

DocuSigned by:

Stephen

2/21/2023

Stephen Cartwright

Date

Plaintiff, individually, and on behalf
of the Settlement Class as Class
Representative and the PAGA Group
as PAGA Representative



2/21/2023

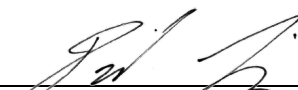
Christopher Pappaioanou
Vice President – Legal, Labor and
Employment, for and on behalf of
Defendant Envoy Air Inc.

Date

APPROVED AS TO CONTENT AND FORM:

GRAHAM HOLLIS APC

Graham Hollis
David Lin



2/21/2023

By: Graham Hollis
Attorneys for Named Plaintiffs, the
Settlement Class, and the PAGA Group

Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

O'MELVENY & MYERS LLP
Mark Robertson
Andrew Lichtenstein

Andrew Lichtenstein

By: Andrew Lichtenstein
Attorneys for Defendant
Envoy Air Inc.

2/21/23

Date