

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into between Plaintiff Pablo Macias (“Plaintiff”) acting in his private attorney general capacity, and Defendant ABM Electrical & Lighting Solutions, Inc. (“Defendant” of “ABM”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the action *Macias v. ABM Electrical Lighting & Solutions Inc.*, Case No. 37-2020-00033639-CU-OE-CTL, pending in Superior Court of the State of California, County San Diego.
2. “Aggrieved Employees” means all individuals who are or previously were employed by Defendant as non-exempt employees from July 9, 2019 through September 19, 2021.
3. “Aggrieved Employee List” means the spreadsheet containing the list of Aggrieved Employees with their social security numbers, last known addresses, and their dates of employment and/or pay periods worked as an Aggrieved Employee during the PAGA period.
4. “Court” means the Superior Court of California, County of San Diego.
5. “Individual PAGA Payment” means the amount to be paid to each of the Aggrieved Employees out of 25% of the PAGA Payment under Labor Code section 2699 with such individual shares to be based on the number of pay periods during which an individual worked as an Aggrieved Employee during the PAGA Period divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. 100% of all PAGA penalties will be considered payment of penalties, and Aggrieved Employees will be issued an IRS Form 1099 and will be responsible for payment of any and all taxes that are due as a result of their PAGA penalty settlement payments.
6. “LWDA” means the California Labor Workforce Development Agency.
7. “Gross PAGA Settlement Amount” means the total sum of \$170,000.00 for settlement of claims by the Aggrieved Employees, the release of the PAGA Released Claims (as defined below), payment of the Administration Costs, Attorneys’ Fees, Attorneys’ Expenses and Costs, and the PAGA Payment. The Gross PAGA Settlement Amount shall be all-in with no reversion to Defendant.
8. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698 *et seq.*
9. “PAGA Payment” means the total amount remaining in the Gross PAGA

Settlement Amount after payment of the Attorneys' Fees, Attorneys' Expenses and Costs, and Administration Costs. The PAGA Payment shall be allocated under Labor Code section 2699 with 75% of the Section 2699 payment going to the LWDA and 25% to the Aggrieved Employees.

10. "PAGA Period" means the time period from July 9, 2019 through September 19, 2021.

11. "Parties" means Plaintiff Pablo Macias, individually and as a private attorney general acting on behalf of the State of California and on behalf of other allegedly aggrieved employees, and Defendant ABM Electrical & Lighting Solutions, Inc.

12. "PAGA Counsel" means the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP and The Law Office of Matt Blum.

13. "Released Parties" means Defendant ABM Electrical & Lighting Solutions, Inc., and any of its past, present, and/or future, direct and/or indirect agents, officers, directors, employees, stockholders, members, parent corporations, subsidiaries, affiliates, partners, predecessors and successors in interest, insurers, and assigns But only with respect to the matters alleged in the Action by employees of ABM Electrical & Lighting Solutions, Inc.

14. "Settlement Administrator" means [Simpluris Class Action Settlement Administration.

II. RECITALS

1. On September 23, 2020, Plaintiff filed a representative PAGA action in San Diego Superior Court, department C-68, before judge Richard S. Whitney.

2. On December 7, 2020, Defendant timely filed an Answer to Plaintiff's Complaint.

3. On July 19, 2021, the parties attended a full day mediation with mediator Steven Serratore, Esq. and subsequently engaged in further discussions that resulted in a settlement.

4. Shortly thereafter, the parties drafted and executed a Memorandum of Understanding ("MOU") which memorialized the basic terms of the settlement reached at mediation.

5. As a result of the settlement, the Parties have agreed to fully and finally resolve the PAGA Released Claims alleged in the Action pursuant to this Settlement Agreement.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. Non-Admission. Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that their claims do not have merit or by Defendant of any liability or

wrongdoing as to Plaintiff, the Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. This Settlement Agreement represents a compromise of disputed claims. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Settlement Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, by Defendant or any other Released Party. The Parties themselves agree not to introduce, use, or admit this Settlement Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding before any court that has as its purpose the interpretation, implementation, or enforcement of this Settlement Agreement or any orders or judgments of the Court entered in connection with the Settlement Agreement.

None of the documents produced or created by Defendant or any other Released Party, Plaintiff or the Aggrieved Employees in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant or any other Released Party of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

Neither this Settlement Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided, however, this shall not prevent this Settlement Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Settlement Agreement.

2. Timing. Within thirty (30) days after the Effective Date of this settlement, Defendant shall pay to the Settlement Administrator \$170,000.00 as the Gross PAGA Settlement Amount, and provide the Aggrieved Employee List to the Settlement Administrator. The Effective Date of this settlement is the date on which the settlement is approved and the Court's order approving the settlement ("Judgment") becomes final. For purposes of this agreement, the Court's Judgment "becomes final" upon the latter of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court's Judgment (this time period shall not be less than 60 calendar days after the Court's Judgment is entered); (ii) the date affirmance of an appeal of the Judgment becomes final; or (iii) the date of final dismissal of any appeal from the judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.

3. PAGA Demographics. Defendant has represented that the Aggrieved Employees consist of approximately 67 employees who collectively worked approximately 4000 pay periods during the PAGA Period. Defendant will provide PAGA Counsel a declaration under penalty of perjury confirming the number of Aggrieved Employees and pay periods worked by the Aggrieved Employees during the PAGA Period prior to the filing of the motion for approval of the PAGA settlement. To the extent that the number of pay periods in the PAGA Period exceeds 4,500, Defendant will have the sole option to proportionally increase the Gross PAGA Settlement Amount by the proportion of additional pay periods in excess of 4,500 or exclude such pay periods from the scope of the release.

4. Payments from the Gross PAGA Settlement Amount. The Parties agree to the following allocations to be paid from the Gross PAGA Settlement Amount:

a. PAGA Payment: The PAGA Payment is the total of the Gross PAGA Settlement Amount, less the payments for the Attorneys' Fees, Attorneys' Expenses and the Administration Costs, which shall be paid in full settlement of the PAGA Released Claims. Should the amount of the PAGA Payment increase or decrease, the amount to be distributed shall be adjusted according to the changes made by the Court. The PAGA Payment will be subject to Court approval consistent with Labor Code § 2699. Upon approval, the PAGA Payment shall be distributed as follows:

- (1) The PAGA Payment shall be paid as a Labor Code section 2699 civil penalty payment allocated pursuant to PAGA as follows: 75% of the PAGA Payment will be paid to the LWDA and 25% will be paid to the Aggrieved Employees as their Individual PAGA Payments. Each Individual PAGA Payment shall be based on the number of pay periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period.
- (2) The penalty settlement payments set forth in section 4(a)(1) will be reported on IRS Form 1099s. The Parties acknowledge and agree that all payments under this Settlement Agreement as PAGA Payments are attributable as penalties. None are attributable as wages. Accordingly, the parties acknowledge and agree that Defendant is not responsible for any employer-side taxes in connection with any PAGA Payments under this Settlement Agreement.

b. Attorneys' Fees and Attorneys' Expenses: One-Third of the Gross PAGA Settlement Amount, which is presently \$170,000.00, shall be paid to PAGA Counsel for payment of Attorneys' Fees, and up to \$10,450.00 shall be paid to PAGA Counsel for Attorneys' Expenses as set forth in the clients' billing statement (pursuant to Declarations by PAGA Counsel) in prosecuting the PAGA claims. Defendant shall not oppose Plaintiff's request for Attorneys' Fees and Attorneys' Expenses in these amounts. Even in the event that the Court reduces or does not approve PAGA Counsel's request for Attorneys' Fees and Expenses, PAGA

Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding. The amount paid for the PAGA Counsel Attorneys' Fee Award and Costs shall discharge any and all claims for such fees, costs, and expenses.

c. In the event that Court approval is required and a payment of less than One-Third of the Gross PAGA Settlement Amount in Attorneys' Fees or \$10,450.00 in Attorneys' Expenses to PAGA Counsel is approved, the unawarded difference will be added to the PAGA Payment and not to PAGA Counsel or the Defendant. This payment will be reported on IRS Form 1099 issued to PAGA Counsel. Except as set forth herein, each party shall bear their own costs and fees of the Action.

d. Administration Costs: A Settlement Administrator shall be selected after receipt of bids and shall be mutually agreed to by the Parties. Administration costs shall not exceed the estimate of the Settlement Administrator to administrate the settlement. Administration Costs shall include the cost of the Settlement Administrator selected by the Parties to administer the settlement in the amount of up to \$[____\$2,995____]. In the event that Court approval of these payments is required and a payment of less than \$[____\$2,995_] is approved, or if the actual cost to administer the settlement is less than \$[____\$2,995____], the difference will be added to the PAGA Payment.

e. Representative PAGA Release. In his capacity as a private attorney general "aggrieved employee" acting on behalf of himself, the State of California and the Aggrieved Employees, and in consideration of the PAGA Payment and the payment to PAGA Counsel for Attorneys' Fees and Attorneys' Expenses, upon entry of the Judgment, Plaintiff will release Defendant from any and all PAGA Released Claims.

5. PAGA Released Claims.

a. Upon the Effective Date, the Released Parties shall be entitled to a release from the State of California and the Aggrieved Employees only for any "PAGA Released Claims", which shall mean all claims for Civil Penalties pursuant to Labor Code Section 2699, et seq., alleged in the Action, irrespective of theory, for alleged violations of Labor Code sections 201, 202, 203, 204 et seq., 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Sections 11040(5)(A)-(B) & 11070(14) and the applicable California IWC Wage Order(s) (collectively, the "Released Claims"). The release period will be the PAGA Period. The *res judicata* effect of the Judgment will be the same as that of the Release. The release on behalf of the PAGA Settlement Group expressly excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, class claims, and PAGA claims outside of the PAGA Period. Additionally, the release does not cover an aggrieved employee's individual Labor Code Claims. **In no event shall the release of the PAGA Released Claims in this Settlement Agreement release any individual claims of any individuals other than Plaintiff who is separately settling his individual claim.**

b. The discovery of new facts or legal arguments shall in no way limit the scope or definition of the PAGA Released Claims, and by virtue of this Settlement

Agreement, Plaintiff, on behalf of himself, and as a private attorney general acting on behalf of the State of California, and on behalf of the Aggrieved Employees, shall be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the PAGA Released Claims against the Released Parties.

6. Covenants and Representations by Plaintiff and PAGA Counsel.

a. Plaintiff represents and warrants that Plaintiff has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiff acknowledges that Plaintiff has read this Settlement Agreement, that Plaintiff fully understands his rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that Plaintiff had the opportunity to consult with Plaintiff's attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

c. Plaintiff further agrees to seek a Judgment in the Action on the PAGA Released Claims.

7. No Publicity. Neither Plaintiff nor PAGA Counsel shall issue a press release, hold a press conference, or otherwise publicize the settlement other than in documents submitted to the Court.

8. Court Approval of the PAGA Payment. Subject to Defendant's review and approval prior to filing, PAGA Counsel shall be responsible for preparing and filing a Motion for Approval of the PAGA Payment with the proposed Judgment ("Motion"). PAGA Counsel will provide Defendant's counsel with an opportunity for review and comments at least five business days before filing the Motion. The Motion shall also be served on the LWDA when filed with the Court. PAGA Counsel shall also submit this Agreement with the LWDA, pursuant to Labor Code Section 2699(1)(2). PAGA Counsel shall be solely responsible for complying with all procedural requirements associated with the settlement of a claim for penalties under the PAGA.

9. Court Approval of the PAGA Settlement. The Settlement Agreement is contingent upon the approval by the Court. If the Court should fail to approve this Settlement Agreement in the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court's questions or concerns. If after the Parties make at least three (3) good faith efforts, the Court does not approve this Settlement Agreement, or if appellate review is sought and on such review the Court's decision is materially modified or reversed, or if one or more of the terms of the Settlement Agreement are not approved or is materially modified or reversed or found to be invalid and the Parties in good faith do not believe that it would be possible to make non-material modifications that would address any concerns raised by the Court, then each of the Parties by and through Counsel shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement Agreement, in which event it shall have no force or effect,

and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of the MOU.

10. The Aggrieved Employees described above shall be stipulated solely for the purposes of settlement. Defendant maintains the right, in its sole discretion, to revoke the settlement if the LWDA seeks to object, intervene, or otherwise modify the terms of this Settlement Agreement. In such case, at Defendant's sole option, this Settlement Agreement can be declared to be of no force or effect, and the Parties shall return to their respective previous positions prior to entering the MOU.

IV. ADMINISTRATION OF SETTLEMENT

1. After the execution of this Settlement Agreement, Plaintiff shall file the Motion and will submit the Motion and this Settlement Agreement to the LWDA consistent with Labor Code § 2699(1)(2).

2. Settlement Administrator will administer the settlement and shall be paid for Administration Costs, which are estimated to be up to \$[____\$2,995____]. Defendant will provide the necessary information about the Aggrieved Employees to the Settlement Administrator within 15 days of the approval of the PAGA settlement by the Court.

3. Within fifteen (15) days after receipt of the Gross PAGA Settlement Amount from Defendant, the Settlement Administrator will issue to each Aggrieved Employee a check for their Individual PAGA Payment at their last known home address along with an explanatory letter which will be mutually approved by the parties. Checks will remain negotiable for one hundred eighty (180) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address, Social Security number, phone number, credit reporting and social media of the Aggrieved Employee involved and will then perform a re-mailing. If an Aggrieved Employees' check is not cashed within 120 days after its first mailing to the Aggrieved Employees the Settlement Administrator shall send the affected Aggrieved Employees notice informing them that unless their check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. All checks not cashed within 180 days of payment shall be paid to the State Controller fund in the name of the absent aggrieved employee, subject to Court approval, and the Aggrieved Employees shall remain bound by the Settlement. The Individual PAGA Payments are 100% penalties and shall be reported using IRS tax form 1099.

4. Within fifteen (15) days after receipt of the Gross PAGA Settlement Amount from Defendant, the Settlement Administrator will pay the Attorneys' Fees, the Attorneys' Expenses, the Administration Costs, and the portion of the PAGA Payment allocated to the LWDA from the Gross PAGA Settlement Amount.

5. The Settlement Administrator will provide an accounting under oath to the parties of the amounts paid out.

6. Defendant makes no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. **No Impact on Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff or any Aggrieved Employee under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plans, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

3. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

4. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, mediator fees, and other fees incurred in connection with this Settlement Agreement and in connection with the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

5. **Authority.** Defendant represents and warrants that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement. Plaintiff represents and warrants that Plaintiff has the capacity to act on Plaintiff's own behalf and on behalf of all who might claim through Plaintiff to bind Plaintiff to the terms and conditions of this Settlement Agreement.

6. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in Ventura County, California and all questions of validity, interpretation

or performance of any of its terms or of any rights or obligations of the parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Ventura.

7. Complete Agreement. The Parties acknowledge and represent that this Settlement Agreement contains the entire understanding between them with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings between them, written and oral, with respect to the subject matter hereof. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto or their successors-in-interest.

8. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve the settlement of the Action as provided herein; or (ii) the settlement of the Action does not become final for any other reason, then this Settlement Agreement and the MOU, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

9. Judgment and Continued Jurisdiction. After approval of this settlement, the Parties agree that the Court shall retain continuing jurisdiction over this case under CCP Section 664.6 to ensure the continuing implementation of the provisions of this settlement and that the time within which to bring this action to trial under CCP Section 583.310 shall be extended from the date of the signing of this agreement by all parties until the entry of the final approval order and judgment or if not entered the date this agreement shall no longer be of any force or effect. In the event that the Court does not approve the Settlement, or if the final order and judgment is reversed on appeal, then there shall be no Effective Date and this Agreement shall become null and void.

10. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their Counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement of the Action. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement of the Action, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the mediator to resolve such disagreement.

11. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, this Agreement may be executed in one or more counterparts by facsimile, electronic signature, or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement Agreement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

13. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

14. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

15. Severability. If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

16. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

17. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

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

19. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

20. Denial of Liability. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant or an admission or concession regarding the validity of the claims in the Action. Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation or lack of violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in any court that has as its purpose the interpretation, implementation, or enforcement of the Settlement Agreement or any orders or judgments of the Court entered into in connection therewith.

21. No Admission of Liability or Wrongdoing by Defendant. Defendant contends that all of its employees were compensated in compliance with the law, and that their conduct was not willful with respect to any alleged failure to pay any wages or penalties. Defendant has denied, and continues to deny, each of the claims and contentions alleged in the Action. Defendant has asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Neither this Settlement Agreement, nor any action taken to carry out the terms of this Settlement Agreement, shall ever be construed as, offered, admitted, received or deemed to be evidence in any civil, criminal, administrative, or other proceeding against Defendant or any of the Released Parties, or may be used as an admission, concession, or indication by or against Defendant of any fault, wrongdoing, or liability whatsoever.

22. Waiver of Right to Appeal. Provided that the Judgment is consistent with the material terms and conditions of the Settlement Agreement, Plaintiff and Defendant, inclusive, hereby waive any and all rights to appeal in connection with any issue in the Judgment, including, but not limited to, all rights to any post-judgment proceeding and/or appellate proceeding, such as a motion to vacate or set-aside judgment, a motion for new trial, and any extraordinary writ, and the Judgment will become final and non-appealable at the time it is entered.

23. Stay of Litigation. The Parties agree that the continuing litigation of the Action shall be stayed and that the time within which to bring this action to trial under CCP Section 583.310 shall be extended from the date of the signing of this Settlement Agreement by all Parties until the entry of the final approval order and judgment or if not entered the date this agreement shall no longer be of any force or effect.

24. Confidentiality. The Parties agree this Settlement Agreement is confidential, except for purposes of enforcement. Plaintiff and PAGA Counsel agree not to file a press release regarding the settlement, respond to press/media inquiries regarding the settlement (except to refer the person inquiring to the court file), or otherwise publicize or divulge to any other individual or entity the terms of this settlement, the amount of this settlement, or the negotiations

that resulted in this settlement. This provision does not apply to court filings, submissions to the LWDA, or any needed disclosures by Plaintiff or PAGA Counsel to their accountants.

25. Court Filings. The Parties agree not to object to any Court filings consistent with this Settlement Agreement.

26. Disputes. Any dispute between the Parties as to the remaining terms of the Settlement Agreement shall be presented to the mediator, Steve Serratore, for resolution.

[Signature Page Follows]

PAYNE & FEARS LLP

Dated: 11-30-2021 _____

A handwritten signature in blue ink, appearing to read "Laura Fleming", is positioned above the signature line.

By: _____
LAURA FLEMING
ATTORNEYS FOR DEFENDANT

4858-8756-7361.1