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and aggrieved

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JOSE JR. TARIN, on behalf of himself and all
others similarly situated and aggrieved,

Plaintiff,

v.

TPS SOLUTIONS, INC., a California
corporation; INDU-ELECTRIC NORTH
AMERICA, INC., a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 21STCV07844

[Assigned to the Hon. Maren E. Nelson in
Dept. 17]

**FIRST AMENDED PAGA
SETTLEMENT AGREEMENT**

Action Filed: March 1, 2021

Trial Date: None set

1 This First Amended PAGA Settlement Agreement (“Settlement,” “Agreement” or
2 “Settlement Agreement”) is made by and between plaintiff Jose Jr. Tarin (“Plaintiff”),
3 individually and on behalf of the Aggrieved Employees; and defendants TPS Solutions, Inc.
4 (“TPS”), and Indu-Electric North America, Inc. (“Indu-Electric,” collectively with TPS,
5 “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or
6 individually as “Party.”

7 **1. DEFINITIONS**

8 **1.1. “Action”** means Plaintiff’s PAGA lawsuit alleging wage and hour violations
9 against Defendants captioned *Jose Tarin Jr. v. TPS Solutions, Inc. et al.*, Case No. Case No.
10 21STCV07206 initiated on March 1, 2021 in the Superior Court of the State of California, County
11 of Los Angeles.

12 **1.2. “Administrator”** means ILYM Group, Inc, the neutral entity the Parties have
13 agreed to appoint to administer the Settlement.

14 **1.3. “Administration Expenses Payment”** means the amount the Administrator will
15 be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
16 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
17 with approval of this Settlement.

18 **1.4. “Aggrieved Employee”** means a person placed by TPS to work for Indu-Electric,
19 or directly hired by Indu-Electric, in California and classified as a non-exempt, hourly-paid
20 employee during the PAGA Period.

21 **1.5. “Aggrieved Employee Data”** means Aggrieved Employee identifying
22 information in Defendants’ possession including the Aggrieved Employee’s name, last-known
23 mailing address, Social Security number, and hire dates, termination dates (as applicable) and re-
24 hire dates (as applicable).

25 **1.6. “Aggrieved Employee Address Search”** means the Administrator’s
26 investigation and search for current Aggrieved Employees’ mailing addresses using all
27 reasonably available sources, methods and means, including, but not limited to, the National
28

1 Change of Address database, skip traces and direct contact by the Administrator with Aggrieved
2 Employees.

3 **1.7. “Court”** means the Superior Court of California, County of Los Angeles.

4 **1.8. “Defense Counsel”** means Shannon Marie Jenkins of Tredway, Lumsdaine &
5 Doyle, LLP.

6 **1.9. “Effective Date”** means the date by when both of the following have occurred:
7 (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the
8 Judgment is final. The Judgment is final on the day the Court enters Judgment.

9 **1.10. “Gross Settlement Amount”** means Five Hundred Seventy-Five Thousand
10 Dollars (\$575,000.00), which is the total amount Defendants agree to pay under the settlement
11 except as provided in Paragraph 8.1 below. The Gross Settlement Amount will be used to pay
12 Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA
13 Counsel Litigation Expenses Payment and the Administrator’s Expenses Payment.

14 **1.11. “Individual PAGA Payment”** means the Aggrieved Employee’s pro rata share
15 of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved
16 Employee worked during the PAGA Period.

17 **1.12. “Judgment”** means the judgment entered by the Court based upon the Final
18 Approval.

19 **1.13. “LWDA”** means the California Labor and Workforce Development Agency, the
20 agency entitled, under Labor Code section 2699, subd. (i).

21 **1.14. “LWDA PAGA Payment”** means the 75% of the PAGA Penalties paid to the
22 LWDA under Labor Code section 2699, subd. (i).

23 **1.15. “Net Settlement Amount”** means the Gross Settlement Amount, less the
24 following payments in the amounts approved by the Court: Individual PAGA Payments, the
25 LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses
26 Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved
27 Employees as Individual PAGA Payments.

1 **1.16. “PAGA Counsel”** means, David D. Bibiyan of Bibiyan Law Group, P.C. The
2 term “PAGA Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

3 **1.17. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses**
4 **Payment”** mean the amounts allocated to PAGA Counsel for reimbursement of reasonable
5 attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

6 **1.18. “PAGA Pay Period” or “Pay Period”** means any Pay Period during which an
7 Aggrieved Employee worked for Defendants during the PAGA Period, based on hire dates,
8 termination dates (if applicable) and re-hire dates (if applicable).

9 **1.19. “PAGA Period”** means the period from July 30, 2019 through January 27, 2022.

10 **1.20. “PAGA”** means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

11 **1.21. “PAGA Notice”** means Plaintiff’s letter to Defendants and the LWDA providing
12 notice pursuant to Labor Code section 2699.3, subd. (a).

13 **1.22. “PAGA Penalties”** means the total amount of PAGA civil penalties to be paid
14 from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to
15 LWDA in settlement of PAGA claims.

16 **1.23. “Plaintiff”** means Jose Jr. Tarin, the named plaintiff in the Action.

17 **1.24. “Approval Order”** means the proposed Court Order Granting Approval of
18 PAGA Settlement.

19 **1.25. “Released PAGA Claims”** means the claims being released by the Plaintiff and
20 PAGA Counsel and as described in Paragraph (5) below.

21 **1.26. “Released Parties”** means the Defendants, and each of its former and present
22 directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,
23 assigns, subsidiaries and affiliates.

24 **1.27. “Reserve Fund”** means the \$5,000.00 that will be held in reserve to address any
25 Pay Period disputes by Aggrieved Employees. The remainder from the Reserve Fund shall be
26 distributed to the Aggrieved Employees as part of a second set of checks mailed by the
27 Administrator.
28

1 **1.28. “Settlement”** means the disposition of the Action effected by this Agreement and
2 the Judgment.

3 **1.29. “Defendants”** means the named Defendants, TPS Solutions, Inc., and Indu-
4 Electric North America, Inc., collectively.

5 **2. RECITALS**

6 **2.1.1.** On July 30, 2020, Plaintiff filed with the LWDA and served on Defendant a notice
7 under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to
8 recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations
9 (“PAGA Notice”).

10 **2.2.** On March 1, 2021, Plaintiff commenced this Action by filing a Complaint alleging
11 causes of action against Defendants for failure to pay overtime wages, failure to pay minimum
12 wages, failure to provide meal periods, failure to provide rest periods, waiting time penalties,
13 wage statement violations, failure to indemnify, unfair competition, and penalties per Labor Code
14 sections 210, 226.3, 558, 1197.1 and 2699. The Complaint is the operative complaint in the
15 Action (the “Operative Complaint.”). Defendants deny the allegations in the Operative
16 Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and
17 denies any and all liability for the causes of action alleged.

18 **2.3.** After Plaintiff’s filing of the complaint, Defendants filed a motion to compel
19 individual arbitration of all claims and stay the PAGA action pending arbitration. The Court
20 granted the motion to compel arbitration of all claims except the PAGA claims and denied staying
21 the PAGA action pending arbitration.

22 **2.4.** On June 2, 2022, the parties participated in an all-day mediation on a PAGA-only
23 basis presided over by Deborah Crandall Saxe, Esquire, which was unsuccessful. On August 22,
24 2022, the parties participated in a second mediation presided again by Deborah Crandall Saxe,
25 Esquire, which lead to the present settlement of this case on a PAGA basis only.

26 **2.5.** Prior to first mediation, Defendants agreed to informally produce the following:
27 (1) hire dates, termination dates (if applicable), and rates of pay for the approximately 1,030 non-
28 exempt, hourly paid employees placed by TPS to work for Indu-Electric, as well as direct hires

1 of Indu-Electric during the PAGA Period in California; (2) employee handbooks and applicable
2 policies in effect during the PAGA Period; (3) time and payroll records for approximately 20%
3 of Aggrieved Employees over the relevant time period; and (4) all documents related to Plaintiff's
4 employment with Defendants. Based on these records and in consultation with expert
5 consultants, Plaintiff's counsel was able to extrapolate all pertinent data through the second
6 mediation, including number of Aggrieved Employees, number of Pay Periods, number of shifts
7 worked, the number of meal period violations, the number of rest period violations, the number
8 of Aggrieved Employees eligible for wage statement penalties and waiting time penalties, among
9 others.

10 **2.6.** The Parties, PAGA Counsel and Defense Counsel represent that they are not
11 aware of any other pending matter or action asserting claims that will be extinguished or affected
12 by the Settlement.

13 **3. MONETARY TERMS**

14 **3.1. Gross Settlement Amount.** Except as otherwise provided by Paragraph 8.1
15 below, Defendants promise to pay \$575,000.00 and no more as the Gross Settlement Amount.
16 Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated
17 in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement
18 Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of
19 payment. None of the Gross Settlement Amount will revert to Defendants.

20 **3.2. Payments from the Gross Settlement Amount.** The Administrator will make
21 and deduct the following payments from the Gross Settlement Amount, in the amounts specified
22 by the Court in the Final Approval:

23 **3.2.1 To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than
24 35% which is currently estimated to be \$201,250.00 and PAGA Counsel
25 Litigation Expenses Payment of not more than \$30,000.00. Defendants
26 will not oppose requests for Court approval of these payments provided
27 that they do not exceed these amounts unless, in the event of a material
28 breach of this Agreement by Defendants, Plaintiff is required to move the

1 Court for enforcement of this Agreement. Plaintiff and/or PAGA Counsel
2 will file an application or motion for PAGA Counsel Fees Payment and
3 PAGA Litigation Expenses Payment. If the Court approves a PAGA
4 Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
5 Payment less than the amounts requested, the Administrator will allocate
6 the remainder to the Net Settlement Amount. Released Parties shall have
7 no liability to PAGA Counsel or any other Plaintiff's Counsel arising from
8 any claim to any portion any PAGA Counsel Fees Payment and/or PAGA
9 Counsel Litigation Expenses Payment. The Administrator will pay the
10 PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses
11 Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full
12 responsibility and liability for taxes owed on the PAGA Counsel Fees
13 Payment and the PAGA Counsel Litigation Expenses Payment and holds
14 Defendants harmless, and indemnifies Defendants, from any dispute or
15 controversy regarding any division or sharing of any of these Payments.

16 **3.2.2 To the Administrator:** An Administrator Expenses Payment not to
17 exceed \$12,250.00 except for a showing of good cause and as approved by
18 the Court. To the extent the Administration Expenses are less or the Court
19 approves payment less than \$12,250.00, the Administrator will retain the
20 remainder in the Net Settlement Amount.

21 **3.2.3 To the LWDA and Aggrieved Employees:** PAGA Penalties in the
22 amount of \$331,500.00 to be paid from the Gross Settlement Amount, with
23 75% (\$248,625.00) allocated to the LWDA PAGA Payment and 25%
24 (\$82,875.00) allocated to the Individual PAGA Payments.

25 **3.2.3.1** The Administrator will calculate each Individual PAGA Payment
26 by (a) dividing the amount of the Aggrieved Employees' 25% share
27 of PAGA Penalties (\$82,875) by the total number of PAGA Period
28 Pay Periods worked by all Aggrieved Employees during the PAGA

Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING PAYMENTS

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 1,030 Aggrieved Employees who worked a total of 21,560 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 14 days of the Effective Date, Defendants will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 7 days after the Effective Date.

1 **4.4. Payments from the Gross Settlement Amount.** Within 7 days after Defendants
2 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
3 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA
4 Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment. Disbursement of the
5 PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual
6 PAGA Payments.

7 **4.4.1.** The Administrator will issue checks for the Individual PAGA Payments
8 and send them to the Aggrieved Employees via First Class U.S. Mail,
9 postage prepaid. The face of each check shall prominently state the date
10 (not less than 180 days after the date of mailing) when the check will be
11 voided. The Administrator will cancel all checks not cashed by the void
12 date. Before mailing any checks, the Settlement Administrator must update
13 the recipients' mailing addresses using the National Change of Address
14 Database.

15 **4.4.2.** The Administrator must conduct an Aggrieved Employee Address Search
16 for all Aggrieved Employees whose checks are returned undelivered
17 without USPS forwarding address. Within 3 days of receiving a returned
18 check, the Administrator must re-mail checks to the USPS forwarding
19 address provided or to an address ascertained through the Aggrieved
20 Employee Address Search. The Administrator need not take further steps
21 to deliver checks to Aggrieved Employees whose re-mailed checks are
22 returned as undelivered. The Administrator shall promptly send a
23 replacement check to any Aggrieved Employee whose original check was
24 lost or misplaced, requested by the Aggrieved Employee prior to the void
25 date.

26 **4.4.3.** For any Aggrieved Employee whose Individual PAGA Payment check is
27 uncashed and cancelled after the void date, the Administrator shall
28

transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS

Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1. Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors and assigns generally release and discharge Released Parties from all claims, transactions or occurrences that occurred prior to the execution of this Agreement, including, but not limited to, all claims for civil penalties that were, or reasonably could have been alleged based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release herein does not extend to any claims or actions to enforce this Agreement or to any claims for individual wage and hour claims, vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of

1 executing the release, and that if known by him or her would have
2 materially affected his or her settlement with the debtor or Released Party.

3 **5.1.2.** The above release expressly excludes Plaintiff's individual wage and hour
4 claims which were compelled to arbitration.

5 **5.2. Release by Aggrieved Employees.** All Aggrieved Employees are deemed to
6 release, on behalf of themselves and their respective former and present representatives, agents,
7 attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for
8 PAGA penalties that were alleged or reasonably could have been alleged, based on the PAGA
9 Period facts stated in the Operative Complaint and the PAGA Notice.

10 **5.3. Release by PAGA Counsel:** PAGA Counsel release on behalf of their present
11 and former attorneys, employees, agents, successors and assigns the Released Parties from all
12 claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA
13 Period facts stated in the Operative Complaint and the PAGA Notice.

14 **6. MOTION OR APPLICATION FOR APPROVAL OF**
15 **SETTLEMENT**

16 The Parties agree to jointly prepare and file an application or motion for approval of this
17 Settlement.

18 **6.1. Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel
19 all documents necessary for obtaining approval of this Settlement under Labor Code Section
20 2699, subd. (f)(2) including (i) a draft proposed Order Granting Approval of PAGA Settlement;
21 (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering
22 the Settlement and attesting to its willingness to serve; competency; operative procedures for
23 protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data
24 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
25 conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any
26 financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed
27 declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all
28 necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),

1 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
2 section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all
3 modifications made to the Model Agreement ready for filing with the Court; and (v) all facts
4 relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the
5 Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not
6 aware of any other pending matter or action asserting claims that will be extinguished or
7 adversely affected by the Settlement.

8 **6.2. Responsibilities of PAGA Counsel.** PAGA Counsel and Defense Counsel are
9 jointly responsible for expeditiously finalizing and filing the application or motion for approval
10 of this Settlement after the full execution of this Agreement and, if necessary, obtaining a prompt
11 hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA
12 Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

13 **6.3. Duty to Cooperate.** If the Parties disagree on any aspect of the proposed
14 application or motion for approval of this Settlement and/or the supporting declarations and
15 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
16 the Parties by meeting and conferring, and in good faith, to resolve the disagreement. If the Court
17 does not grant the motion for approval of this Settlement or conditions its approval on any
18 material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work
19 together on behalf of the Parties by meeting and conferring, and in good faith, to modify the
20 Agreement and otherwise satisfy the Court's concerns.

21 **6.4. LWDA Notice.** Labor Code section 2699(l)(3) requires notice to the LWDA of
22 an order of judgment approving the settlement. PAGA Counsel shall submit the Judgment to the
23 LWDA.

24 **7. SETTLEMENT ADMINISTRATION**

25 **7.1. Selection of Administrator.** The Parties have jointly selected ILYM Group, Inc.
26 to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.
27 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
28 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel

1 represent that they have no interest or relationship, financial or otherwise, with the Administrator
2 other than a professional relationship arising out of prior experiences administering settlements.

3 **7.2. Employer Identification Number.** The Administrator shall have and use its own
4 Employer Identification Number for purposes of calculating payroll tax withholdings and
5 providing reports state and federal tax authorities.

6 **7.3. Qualified Settlement Fund.** The Administrator shall establish a settlement fund
7 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
8 Regulation section 468B-1.

9 **7.4. Administrator Duties.** The Administrator has a duty to perform or observe all
10 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

11 **8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR**
12 **CLAUSE**

13 Based on its records, Defendants estimate that, as of the date of this Settlement Agreement
14 there are approximately 1,030 Aggrieved Employees who worked 21,560 Pay Periods during the
15 PAGA Period.

16 **8.1 Increase in the Gross Settlement Amount.** Defendants represent that there are
17 approximately 21,560 Pay Periods at issue during the PAGA Period. In the event the number of
18 Pay Periods worked by Aggrieved Employees during the PAGA Period increases by more than
19 10% or more than 23,716 Pay Periods, then: (1) the Gross Settlement Amount shall be increased
20 proportionally by the Pay Periods in excess of 23,716 Pay Periods multiplied by the Pay Period
21 Value; or (2) Defendants, at their sole discretion, may elect to end the PAGA Period on the date
22 the number of Pay Periods worked by Aggrieved Employees reaches 23,716 Pay Periods. The
23 Pay Period Value shall be calculated by dividing the Gross Settlement Amount by the estimate
24 of Pay Periods at issue, meaning that the parties agree that the Pay Period Value shall be \$26.67
25 (\$575,000.00 / 21,560 Workweeks). Thus, for example, if the Pay Periods worked by Aggrieved
26 Employees during the PAGA Period amount to 25,000 Pay Periods, Defendants may choose
27 either that: (1) the Gross Settlement Amount to be paid will be increased by \$33,730.68 ((25,000
28 - 23,716 Workweeks) x \$26.27)); or (2) the PAGA Period will end on the date on which 23,716

1 Pay Periods are reached. Defendants shall make their decision within 5 days of being informed
2 by the Settlement Administrator of the increase in Pay Periods, and shall pay the corresponding
3 chosen amounts according to the timeline in Paragraph 4.3 of this Agreement. The Parties shall
4 also request the Court set a status conference 120 days after approval of the Settlement to
5 determine whether all funds have been distributed in accordance with the Court's order, as well
6 as determine if the above provision applied and if so, determine which election Defendants chose.

7 **9. CONTINUING JURISDICTION OF THE COURT**

8 The Parties agree that, as per Code Civ. Proc. Section 664.6, after entry of Judgment, the
9 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
10 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
11 and (iii) addressing such post-Judgment matters as are permitted by law.

12 The Parties agree that Plaintiff will dismiss Plaintiff's PAGA claims with prejudice, after
13 the check cashing period has passed, and all uncashed funds has been transmitted to the
14 Unclaimed Property Fund.

15 **9.1. Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms
16 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
17 PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all
18 rights to appeal from the Judgment, including all rights to post-judgment and appellate
19 proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary
20 writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such
21 motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to
22 perform under this Agreement will be suspended until such time as the appeal is finally resolved
23 and the Judgment becomes final, except as to matters that do not affect the amount of the Net
24 Settlement Amount.

25 **10. PAGA PAYMENT LETTER**

26 Within ten (10) calendar days after the PAGA Approval Date, Defense Counsel shall
27 provide the Settlement Administrator with information with respect to each Aggrieved
28 Employee, the Aggrieved Employee Data. The Settlement Administrator shall perform an

1 address search using the United States Postal Service National Change of Address (“NCOA”)
2 database and update the addresses contained on the Class List with the newly-found addresses,
3 if any. Within ten (10) calendar days, or soon thereafter, of receiving the Aggrieved Employee
4 Data from Defendants, the Settlement Administrator shall mail the PAGA Payment Letter in
5 English and Spanish to the Aggrieved Employees via first-class regular U.S. Mail using the most
6 current mailing address information available. The Settlement Administrator shall maintain the
7 PAGA List and digital copies of all the Settlement Administrator’s records evidencing the giving
8 of notice to any Aggrieved Employees, for at least four (4) years from the Effective Date.

9 The PAGA Payment Letter will set forth the following:

- 10 (1) the Aggrieved Employee’s estimated Individual PAGA Payment and its
11 basis;
- 12 (2) the material terms of the Settlement;
- 13 (3) the proposed Settlement Administration Costs;
- 14 (4) the definition of the Aggrieved Employees;
- 15 (5) a statement that the Court has approved the Settlement.

16 If a PAGA Notice from the initial notice mailing is returned as undeliverable, the
17 Settlement Administrator will attempt to obtain a current address for the Aggrieved Employee to
18 whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the
19 returned PAGA Payment Letter, by: (1) contacting the Aggrieved Employee by phone, if
20 possible, and (2) undertaking skip tracing. If the Settlement Administrator is successful in
21 obtaining a new address, it will promptly re-mail the PAGA Payment Letter to the Aggrieved
22 Employee. Further, any PAGA Payment Letters that are returned to the Settlement Administrator
23 with a forwarding address shall be promptly re-mailed to the forwarding address affixed thereto.

24 No later than fourteen (14) calendar days prior to the status conference following the
25 Court’s approval of the settlement, the Settlement Administrator shall provide counsel for the
26 Parties with a declaration attesting to the completion of the notice process, including the number
27 of attempts to obtain valid mailing addresses for and re-sending of any returned PAGA Payment
28 Letters.

11. **Disputes Regarding Settlement Class Members' Pay Period Data and Secondary Distribution**

Each Aggrieved Employee may dispute the number of Pay Periods attributed to him or her on his or her PAGA Payment Letter ("Pay Period Dispute"). Any such disputes must be mailed to the Settlement Administrator by the Aggrieved Employee within 45 days of mailing of the PAGA Payment Letter ("Response Deadline"). The Settlement Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve all such disputes directly with relevant Aggrieved Employee(s) with the assistance of Defendants and Class Counsel. If it is determined by the Settlement Administrator that the Pay Periods attributed to an Aggrieved Employee who disputed the Pay Period count was correct, the Settlement Administrator shall issue a secondary check to the Aggrieved Employee from the Reserve Fund. If there is a dispute between Defendants and the Aggrieved Employee as to the correct number of Pay Periods, the Settlement Administrator shall make the final determination as to the correct number of Pay Periods.

Any funds remaining from the Reserve Fund shall be distributed to the Aggrieved Employees in a secondary distribution as follows: the Settlement Administrator shall mail, within seven (7) calendar days of the Response Deadline, a second check to all Aggrieved Employees which will be each Aggrieved Employee's pro rata share from Reserve Fund based upon the formula set forth in paragraph 3.2.3.1 of this Agreement.

12. **ADDITIONAL PROVISIONS**

10.1. No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint or PAGA letter have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this

1 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
2 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
3 Settlement and this Agreement).

4 **10.2. Integrated Agreement.** Upon execution by all Parties and their counsel, this
5 Agreement together with its attached exhibits shall constitute the entire agreement between the
6 Parties relating to the Settlement, superseding any and all oral representations, warranties,
7 covenants, or inducements made to or by any Party.

8 **10.3. Attorney Authorization.** PAGA Counsel and Defense Counsel separately
9 warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take
10 all appropriate action required or permitted to be taken by such Parties pursuant to this
11 Agreement.

12 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
13 terms of this Agreement including any amendments to this Agreement.

14 **10.4. Cooperation.** The Parties and their counsel will cooperate with each other and
15 use their best efforts, in good faith, to implement the Settlement by, among other things,
16 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
17 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
18 the form or content of any document necessary to implement the Settlement, or on any
19 modification of the Agreement that may become necessary to implement the Settlement, the
20 Parties will seek the assistance of a mediator and/or the Court for resolution.

21 **10.5. No Prior Assignments.** The Parties separately represent and warrant that they
22 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
23 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
24 action, or right released and discharged by the Party in this Settlement.

25 **10.6. No Tax Advice.** Neither Plaintiff, PAGA Counsel, Defendants nor Defense
26 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
27 Settlement be relied upon as such within the meaning of United States Treasury Department
28 Circular 230 (31 CFR Part 10, as amended) or otherwise.

1 **10.7. Modification of Agreement.** This Agreement, and all parts of it, may be
2 amended, modified, changed, or waived only by an express written instrument signed by all
3 Parties or their representatives, and approved by the Court.

4 **10.8. Agreement Binding on Successors.** This Agreement will be binding upon, and
5 inure to the benefit of, the successors of each of the Parties.

6 **10.9. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
7 be governed by and interpreted according to the internal laws of the state of California, without
8 regard to conflict of law principles.

9 **10.10. Cooperation in Drafting.** The Parties have cooperated in the drafting and
10 preparation of this Agreement. This Agreement will not be construed against any Party on the
11 basis that the Party was the drafter or participated in the drafting.

12 **10.11. Confidentiality.** To the extent permitted by law, all agreements made, and orders
13 entered during Action and in this Agreement relating to the confidentiality of information shall
14 survive the execution of this Agreement.

15 **10.12. Use and Return of Aggrieved Employee Data.** Information provided to PAGA
16 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
17 provided to PAGA Counsel by Defendants in connection with the mediation, other settlement
18 negotiations, or in connection with the Settlement, may be used only with respect to this
19 Settlement, and no other purpose, and may not be used in any way that violates any existing
20 contractual agreement, statute, or rule of court.

21 **10.13. Headings.** The descriptive heading of any section or paragraph of this Agreement
22 is inserted for convenience of reference only and does not constitute a part of this Agreement.

23 **10.14. Calendar Days.** Unless otherwise noted, all reference to “days” in this Agreement
24 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
25 weekend or federal legal holiday, such date or deadline shall be on the first business day
26 thereafter.

27 **10.15. Notice.** All notices, demands or other communications between the Parties in
28 connection with this Agreement will be in writing and deemed to have been duly given as of the

1 third business day after mailing by United States mail, or the day sent by email or messenger,
2 addressed as follows:

3 To Plaintiff:

4 Bibiyan Law Group, P.C.

5 8484 Wilshire Boulevard, Suite 500

6 Beverly Hills, CA 90211

7
8 To Defendant:

9 Tredway, Lumsdaine & Doyle, LLP

10 2010 Main Street, Suite 1000

11 Irvine, California 92614

12 **10.16. Execution in Counterparts.** This Agreement may be executed in one or more
13 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
14 Agreement shall be accepted as an original. All executed counterparts and each of them will be
15 deemed to be one and the same instrument if counsel for the Parties will exchange between
16 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
17 prove the existence and contents of this Agreement.

18 **10.17. Stay of Litigation.** The Parties agree that upon the execution of this Agreement
19 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
20 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
21 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
22 process.

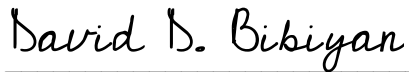
23 **10.18. Severability.** In the event that one or more of the provisions contained in this
24 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
25 invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants'
26 Counsel and PAGA Counsel, on behalf of the Parties and the Aggrieved Employees, mutually
27 elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
28 included in this Agreement.

1 **IT IS SO AGREED:**

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3 
4 Jose Jr. Tarin (May 18, 2023 15:36 PDT)

5 For Plaintiff, Jose Jr. Tarin

For Defendants, TPS Solutions, Inc., and Indu-
Electric North America, Inc.

6 

7 David D. Bibiyan
8 Vedang J. Patel
9 Counsel for Plaintiff

Shannon Marie Jenkins
Counsel for Defendants

1 **IT IS SO AGREED:**



2
3
4 For Plaintiff, Jose Jr. Tarin

For Defendants, TPS Solutions, Inc., and Indu-
Electric North America, Inc.

Shannon Marie Jenkins, Esq.

5
6
7 David D. Bibiyan
Vedang J. Patel
8 Counsel for Plaintiff

Shannon Marie Jenkins
Counsel for Defendants