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on behalf of himself and all others similarly situated

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California Limited Partnership

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

ANTONIO HERNANDEZ, on behalf of
himself and all others aggrieved,

Plaintiff,

v.

SC COMMERCIAL, LLC d.b.a. SC FUELS,
a Delaware limited liability company;
SOUTHERN COUNTIES OIL CO., A
CALIFORNIA LIMITED PARTERSHIP,
a California limited partnership; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 30-2020-01166961-CU-OE-CXC
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Glenda Sanders, Dept. CX101*

**FIRST AMENDED JOINT STIPULATION
RE: CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT**

Complaint: October 23, 2020

Trial Date: n/a

This First Amended Joint Stipulation of Class and Representative Action Settlement
("Settlement" or "Agreement" or "Settlement Agreement") is made by and between plaintiff
ANTONIO HERNANDEZ ("Plaintiff" or "Named Plaintiff"), individually and on behalf of the
Settlement Class, as defined below, on the one hand; and SC COMMERCIAL, LLC and

1 SOUTHERN COUNTIES OIL CO., a California Limited Partnership (“Defendants”), on the
2 other hand, in the lawsuit entitled *Antonio Hernandez v. SC Commercial, LLC, et al.* filed in the
3 Orange County Superior Court, Case No. 30-2020-01166961-CU-OE-CXC (the “Action”).
4 Plaintiff and Defendants shall be, at times, collectively referred to as the “Parties”. This
5 Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle
6 the claims as set forth herein, based upon and subject to the terms and conditions of this
7 Agreement.

8 **1. DEFINITIONS**

9 **A. “Action”** means *Antonio Hernandez v. SC Commercial, LLC, et al.* filed in the
10 Orange County Superior Court, Case No. 30-2020-01166961-CU-OE-CXC and the July 28, 2020
11 letter submitted by Class Counsel to the Labor & Workforce Development Agency (“LWDA”),
12 inclusive of all allegations made therein.

13 **B. “Aggrieved Employees”** means all Settlement Class Members employed by
14 Defendants during the PAGA Period.

15 **C. “Class Counsel”** means: David Bibiyan, Esq. and Diego Aviles, Esq. of Bibiyan
16 Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
17 “Plaintiff’s Counsel”.

18 **D. “Class Period”** means the period from January 28, 2019 up to and including
19 October 1, 2021. This is not the same class period as applies to the “FCRA/ICRAA Settlement
20 Class” (see definition below), which will run from the period of January 28, 2018 up to and
21 including October 1, 2021 (defined as “FCRA/ICRAA Class Period” below).

22 **E. “Court”** means the Superior Court of the State of California for the County of
23 Orange.

24 **F. “Defendants”** means SC Commercial, LLC and Southern Counties Oil Co., a
25 California Limited Partnership.

26 **G. “Defendants’ Counsel”** means Christine Baran, Esq. and Colin Calvert, Esq. of
27 Fisher Phillips, LLP.

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2 **H. “Effective Final Settlement Date”** means the effective date of this Settlement,
3 which shall be: (1) the date of final affirmation of the Final Approval from any appeal, the
4 expiration of the time for, or the denial of, a petition to review the Final Approval, or if review
5 is granted, the date of final affirmation of the Final Approval following review pursuant to that
6 grant; or (2) the date of final dismissal of any appeal from the Final Approval or the final
7 dismissal of any proceeding to review the Final Approval, provided that the Final Approval is
8 affirmed and/or not reversed in any part; or (3) if no class members intervene but objections are
9 filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Final
10 Approval of the Settlement, as determined under Rule 8.104(a)(3) of the California Rules of
11 Court or (4) if no class members intervene and there are no objections, the date the Court enters
12 the Final Approval Order and Final Judgment.

13 **I. “Employer Taxes”** means employer-funded taxes and contributions imposed on
14 the wage portions of the Individual Settlement Payments (defined below) under the Federal
15 Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and
16 federal taxes and contributions required of employers, such as for unemployment insurance.

17 **J. “FCRA/ICRAA Class Period”** means the period from January 28, 2018 up to
18 and including October 1, 2021.

19 **K. “FCRA/ICRAA Settlement Class” or “FCRA/ICRAA Settlement Class**
20 **Members”** means all current and former employees who worked for Defendants at any time
21 during the FCRA/ICRAA Class Period.

22 **L. “FCRA/ICRAA Settlement Payments”** means a payment to a Participating
23 Class Member (defined below) of his or her share of the FCRA/ICRAA Settlement Amount
24 relating to disputed violations of FCRA/ICRAA during the FCRA/ICRAA Class Period. The
25 Parties have agreed that the FCRA/ICRAA Settlement Amount will be divided equally among
26 the Participating Class Members from the Net Settlement Amount.

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1 **M. “FCRA/ICRAA Settlement Amount”** means the non-reversionary allocation of
2 Twenty Thousand Dollars and Zero Cents (\$20,400) from the Net Settlement Amount toward
3 FCRA/ICRAA Settlement Payments, as penalties, which will be divided equally among the
4 FCRA/ICRAA Settlement Class Members (hereinafter “FCRA/ICRAA allocation”).

5 **N. “General Release”** means the general release of all claims brought by Plaintiff
6 in the Action, which is in addition to the release of claims as a Participating Class Member.

7 **O. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Four
8 Hundred Fifty Thousand Dollars and Zero Cents (\$450,400.00), which shall be paid by
9 Defendants, from which all payments of the Individual Settlement Payments and FCRA/ICRAA
10 Settlement Payments (both defined herein) to Participating Class Members and the Court-
11 approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses to Class
12 Counsel, Settlement Administration Costs, Service Awards, and the PAGA Payment, shall be
13 made. It expressly excludes Employer Taxes, which shall be paid by Defendants separate and
14 apart from the Gross Settlement Amount.

15 **P. “Individual Settlement Payment”** means a payment to a Participating Class
16 Member (defined below) of his or her net share of the Net Settlement Amount (defined below)
17 during the Class Period, which share and payment shall be determined by the calculations
18 provided in this Agreement.

19 **Q. “LWDA Payment”** means the payment to the State of California Labor and
20 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
21 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
22 Settlement Amount. The Parties have agreed that Twenty-Five Thousand Dollars and Zero Cents
23 (\$25,000.00) shall be allocated toward PAGA penalties, of which Eighteen Thousand, Seven
24 Hundred, Fifty Dollars and Zero Cents (\$18,750.00) will be paid to the LWDA (the “LWDA
25 Payment”) and Six Thousand, Two Hundred, Fifty Dollars and Zero Cents (\$6,250.00) will
26 remain a part of the Net Settlement Amount for payment to Participating Class Members on a
27 *pro rata* basis (hereinafter “PAGA Payment”).

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1 **R. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
2 that is available for distribution to the Participating Class Members after deductions for the Court-
3 approved allocations for Settlement Administration Costs, Service Award to the Named Plaintiff,
4 an award of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, and
5 the LWDA Payment.

6 **S. “Operative Complaint” or “Complaint”** means, collectively, the Complaint and
7 any amended Complaint (including the First Amended Complaint to be filed with the Court
8 pursuant to this Agreement), in the lawsuit entitled *Antonio Hernandez v. SC Commercial, LLC,*
9 *et al.*, filed in the Orange County Superior Court, Case No. 30-2020-01166961-CU-OE-CXC and
10 to all claims asserted in Plaintiff’s separate written notice to the Labor and Workforce
11 Development Agency dated July 28, 2020.

12 **T. “PAGA Payment”** means the Six Thousand Two Hundred Fifty Dollars and Zero
13 Cents (\$6,250.00) of the amount allocated to PAGA that will remain a part of the Net Settlement
14 Amount for payment to Participating Class Members on a *pro rata* basis (hereinafter “PAGA
15 Payment”).

16 **U. “PAGA Period”** means the period from July 28, 2019 up to and including
17 October 1, 2021.

18 **V. “Participating Class Members”** means all FCRA/ICRAA Settlement Class and
19 Settlement Class Members who do not submit a timely and valid Request for Exclusion.

20 **W. “Plaintiff”** means Antonio Hernandez. The term “Plaintiff” shall be used
21 synonymously with the terms “Named Plaintiff” and “Class Representative”.

22 **X. “Preliminary Approval Date”** means the date on which the Court enters an
23 Order granting preliminary approval of the Joint Stipulation Re: Class Action and Representative
24 Action Settlement.

25 **Y. “Released Parties”** shall mean Defendants and each of its past, present, and
26 future respective subsidiaries, dba’s, affiliates, parents, predecessors, successors, investors, and
27 their current and former employees, managing agents, servants, consultants, agents, directors,
28 officers, members, independent contractors, representatives, insurers, reinsurers, attorneys, and

1 company-sponsored employee benefit plans of any nature and their successors and predecessors
2 in interest, including all of their officers, directors, shareholders, members, employees, agents,
3 principals, heirs, representatives, accountants, auditors, consultants, attorneys, administrators,
4 fiduciaries, trustees, and agents.

5 **Z. “Response Deadline”** means the deadline for FCRA/ICRAA Settlement Class
6 and Settlement Class Members to mail any Requests for Exclusion, objections, or Workweek
7 Disputes to the Settlement Administrator, which is forty-five (45) calendar days from the date
8 that the Class Notice (see Exhibit A attached hereto) is first mailed in English and Spanish by the
9 Settlement Administrator. The date of the postmark shall be the exclusive means for determining
10 whether a Request for Exclusion, objection, or Workweek Dispute was submitted by the
11 Response Deadline.

12 **AA. “Request for Exclusion”** means a written request to be excluded from the
13 FCRA/ICRAA Settlement Class and Settlement Class pursuant to Section 9.C below.

14 **BB. “Service Award”** means monetary amount to be paid to Plaintiff, of up to Seven
15 Thousand, Five Hundred Dollars (\$7,500), which is subject to Court approval, will be paid out
16 of the Gross Settlement Amount.

17 **CC. “Settlement Administration Costs”** means all costs incurred by the Settlement
18 Administrator in the administration of the Settlement, including, but not limited to, translating
19 the Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
20 and Spanish, calculating FCRA/ICRAA Settlement Payments and Individual Settlement
21 Payments and associated taxes and withholdings, providing declarations, generating
22 FCRA/ICRAA Settlement Payment checks and Individual Settlement Payment checks and
23 related tax reporting forms, doing administrative work related to unclaimed checks, transmitting
24 payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement
25 of litigation costs and expenses, Plaintiff’s Service Award, the PAGA Payment, providing
26 weekly reports of opt-outs, objections and related information, and any other actions of the
27 Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this
28 Agreement. The Settlement Administration Costs are estimated not to exceed \$8,950.00. If the

1 actual amount of the Settlement Administration Costs is less than \$8,950.00, the difference
2 between \$8,950.00 and the actual Settlement Administration Costs shall be made a part of the
3 Net Settlement Amount. If the Settlement Administration Costs exceed \$8,950.00, then such
4 excess will be paid solely from the Gross Settlement Amount and Defendants will not be
5 responsible for paying any additional funds to pay these additional costs.

6 **DD. “Settlement Administrator”** means the Third-Party Administrator mutually
7 agreed upon by the Parties that will be responsible for the administration of the Settlement
8 including, without limitation, translating the Class Notice in Spanish, the distribution of the
9 FCRA/ICRAA Settlement Payments and Individual Settlement Payments to be made by
10 Defendants from the Gross Settlement Amount and related matters under this Agreement.

11 **EE. “Settlement Class” or “Settlement Class Members”** means all current and
12 former non-exempt, hourly paid employees who worked in California for Defendants at any time
13 during the Class Period.

14 **FF. “Workweeks”** means the number of workweeks that a Settlement Class Member
15 was employed by Defendants in a non-exempt, hourly position during the Class Period, or PAGA
16 Period. If a Settlement Class Member disputes his/her Individual Settlement Payment, it shall be
17 termed a “Workweek Dispute.”

18 **2. BACKGROUND**

19 **A.** On July 28, 2020, Plaintiff submitted a letter to the LWDA alleging Defendants
20 violated the Labor Code with respect to Plaintiff and other non-exempt employees of Defendants
21 for: (1) failure to pay overtime and double time, including failure to pay overtime and double
22 time at the proper rate, (2) failure to pay all hours worked, including on call pay, (3) failure to
23 pay for reporting time pay, (4) failure to pay split shift premiums, (5) failure to provide meal
24 breaks, or compensation in lieu thereof, (6) failure to provide rest breaks, or compensation in lieu
25 thereof, (7) failure to provide cooldown rest periods, (8) failure to keep adequate or accurate time
26 and payroll records, (9) failure to provide payroll and personnel records upon request, (10) failure
27 to comply with itemized employee wage statement, (11) failure to pay all wages due at the time
28 of termination of employment, (12) failure to comply with notice requirements of the Wage Theft

1 Protection Act, (13) failure to reimburse employees for expenses incurred, (14) failure to
2 reimburse for deposits made, (15) failure to provide paid sick leave in compliance with the law,
3 and (16) failure to pay timely wages.

4 **B.** On October 23, 2020, Plaintiff filed a representative action against Defendants.
5 Plaintiff alleges that during the PAGA Period, with respect to Plaintiff and the Settlement Class
6 Members, Defendants, *inter alia*, failed to pay any and all of the Settlement Class Members'
7 overtime wages and minimum wages for all hours worked and/or recorded. Plaintiff further
8 alleges that Defendants failed to provide compliant meal and rest periods and associated premium
9 payments; failed to issue compliant and accurate itemized wage statements; failed to timely pay
10 all wages due and owing at the time of termination or resignation; failed to provide
11 reimbursements for necessary work-related expenses; failed to timely pay wages based on the
12 alleged Labor Code Violations, and thus liable for penalties under PAGA, including for
13 violations of Labor Code 210, 226.3, 558, 1197.1, and 2699.

14 **C.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
15 mediation, in which Plaintiff was provided with, among other things: Settlement Class and
16 PAGA data points to permit pertinent calculations of workweeks, pay periods, and employee
17 numbers within the Class Period and PAGA Period; (2) written policies, including employee
18 handbooks in place during the Class Period and PAGA Period; (4) a sampling of time and pay
19 records from the Class Period and PAGA Period; (5) Plaintiff's FCRA/ICRAA disclosure forms
20 and notices in place during the FCRA/ICRAA Class Period; and (6) exemplars of the purported
21 arbitration agreements in place during the Class Period, PAGA Period, and FCRA/ICRAA Class
22 Period.

23 **D.** Thereafter, on July 19, 2021, the Parties participated in a full-day mediation
24 before mediator Marc Feder, Esq., a well-regarded mediator experienced in mediating complex
25 labor and employment matters. During mediation, issues relating to disputed violations of
26 FCRA/ICRAA disclosures were raised by Class Counsel based on the informal discovery
27 exchanged by the Parties. With the aid of the mediator's evaluation and a proposal, the Parties
28 reached the Settlement to resolve the Action.

1 **E.** Class Counsel conducted significant investigation of the law and facts relating to
2 the claims asserted in the Action and concluded that that the Settlement set forth herein is fair,
3 reasonable, adequate, and in the best interests of the FCRA/ICRAA Settlement Class and
4 Settlement Class, taking into account the sharply contested issues involved, the expense and time
5 necessary to litigate the Action through trial and any appeals, the risks and costs of further
6 litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation,
7 the purported arbitration agreements signed by putative class members and Aggrieved
8 Employees, including the Plaintiff, the information learned through discovery regarding
9 Plaintiff's allegations, and the substantial benefits to be received by the FCRA/ICRAA
10 Settlement Class and Settlement Class Members.

11 **F.** Defendants concluded that, because of the substantial expense of defending
12 against the Action, the length of time necessary to resolve the issues presented herein, the
13 inconvenience involved, and the concomitant disruption to its business operations, it is in their
14 best interests to accept the terms of this Agreement. Defendants deny each of the allegations and
15 claims asserted against them in the Action. However, Defendants nevertheless desire to settle
16 the Action for the purpose of avoiding the burden, expense, and uncertainty of continuing
17 litigation and for the purpose of putting to rest the controversies engendered by the Action.
18 Defendants entering into this Agreement does not constitute an admission of liability as to any
19 allegation or claim asserted against Defendants in the Action.

20 **G.** This Agreement is intended to and does effectuate the full, final, and complete
21 resolution of all Released Claims of Plaintiff, FCRA/ICRAA Settlement Class Members and
22 Settlement Class Members, other than those FCRA/ICRAA Settlement Class Members and
23 Settlement Class Members who submit a timely and valid Request for Exclusion.

24 **3. JURISDICTION**

25 The Court has jurisdiction over the Parties and the subject matter of this Action. The
26 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
27 applicable statutes. Upon the Effective Final Settlement Date, the Court shall retain jurisdiction
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over the Parties to enforce the terms of the judgment pursuant to California Rule of Court, rule 3.769, subdivision (h).

4. STIPULATION OF CLASS CERTIFICATION

The Parties stipulate to the certification of the FCRA/ICRAA Settlement Class and Settlement Class under this Agreement for purposes of settlement only. This stipulation is contingent upon the Preliminary and Final approval and certification of the FCRA/ICRAA Settlement Class and Settlement Class only for purposes of settlement. If the Settlement does not become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to certification as part of the Settlement, shall have no bearing on and shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in the Action or in any other lawsuit. Defendants expressly reserve the right to oppose class certification and/or to proactively move to deny class certification should this Settlement be materially modified or reversed on appeal or otherwise not become final.

5. AMENDMENT AND MOTION FOR PRELIMINARY APPROVAL

The Parties will stipulate to the filing of a First Amended Complaint in the Action that includes all the allegations raised at mediation, and in the submission to the LWDA, thereby effectively consolidating all allegations into this Action. Shortly thereafter, Plaintiff will move for an order granting preliminary approval of the Settlement, approving and directing the mailing of the proposed Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally certifying the FCRA/ICRAA Settlement Class and Settlement Class for settlement purposes only, and approving the deadlines proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and objections, the papers in support of Final Approval of the Settlement, and any responses to objections or opposition papers to the Motion for Final Approval.

6. STATEMENT OF NO ADMISSION

Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff, the FCRA/ICRAA Settlement Class, and the Settlement Class with respect to any claims or

1 allegations asserted in the Action. This Agreement shall not be deemed an admission by
2 Defendants of any claims or allegations asserted in the Action. Except as set forth elsewhere
3 herein, in the event that this Agreement is not approved by the Court, or any appellate court, is
4 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
5 limited, or affected in any way any claims, rights or remedies, or defenses in the Action and
6 Defendants will not be deemed to have waived, limited, or affected in any way any of their
7 objections or defenses in the Action. The Parties shall be restored to their respective positions in
8 the Action prior to the entry of this Settlement.

9 **7. RELEASE OF CLAIMS**

10 **A. Release by All Participating Class Members.**

11 Upon the Effective Final Settlement Date and payment by Defendants to the Settlement
12 Administrator of the Gross Settlement Amount and Employers' Taxes necessary to effectuate the
13 Settlement, Plaintiff and all Participating Class Members waive, release, discharge and promise
14 never to assert in any forum against the Released Parties all claims against the Released Parties
15 asserted in the Operative Complaint, in the letter submitted to the LWDA dated July 28, 2020,
16 claims raised at mediation including FCRA/ICRAA violations, or any and all claims that could
17 be asserted against the Released Parties based on the factual allegations in the Operative
18 Complaint and letter submitted to the LWDA dated July 28, 2020, as follows:

19 **1. FCRA/ICRAA:** For FCRA/ICRAA Settlement Class Members
20 employed during the FCRA/ICRAA Class Period, the release includes, for the duration of the
21 FCRA/ICRAA Class Period, all claims that could have been asserted in the Operative Complaint
22 pursuant to the Fair Credit Reporting Act (15 U.S.C. §§ 1681 *et seq.*) and the Investigative
23 Consumer Reporting Agencies Act (Cal. Civ. Code §§ 1786 *et seq.*) (the "Released Claims").

24 **2. Class Claims:** For Settlement Class Members employed during the Class
25 Period, the release includes, for the duration of the Class Period, all claims asserted in the
26 Operative Complaint, or that could have been asserted in the Operative Complaint based on the
27 facts alleged therein, including, without limitation, (1) failure to pay overtime and double time,
28 including failure to pay overtime and double time at the proper rate, (2) failure to pay all hours

1 worked at the minimum wage, including reporting time pay, time in connection with split shifts,
2 and on-call time, (3) failure to provide meal breaks, or compensation in lieu thereof, (4) failure
3 to provide rest breaks, or compensation in lieu thereof, (5) failure to comply with itemized
4 employee wage statement, (6) failure to pay all wages due at the time of termination of
5 employment, (7) failure to reimburse employees for expenses incurred, (8) failure to reimburse
6 for deposits made, (9) failure to pay timely wages; and (10) failure to comply with
7 FCRA/ICRAA.

8 **3. PAGA Claims:**

9 For Aggrieved Employees employed during the PAGA Period, the release includes, for
10 the duration of the PAGA Period, all claims asserted in the letter submitted to the LWDA dated
11 July 28, 2020, or any and all claims that could be asserted against the Released Parties based on
12 the factual allegations therein and/or in the Operative Complaint, including, without limitation:
13 (1) failure to pay overtime and double time, including failure to pay overtime and double time at
14 the proper rate, (2) failure to pay all hours worked, including on call pay, (3) failure to pay for
15 reporting time pay, (4) failure to pay split shift premiums, (5) failure to provide meal breaks, or
16 compensation in lieu thereof, (6) failure to provide rest breaks, or compensation in lieu thereof,
17 (7) failure to provide cooldown rest periods, (8) failure to keep adequate or accurate time and
18 payroll records, (9) failure to provide payroll and personnel records upon request, (10) failure to
19 comply with itemized employee wage statement, (11) failure to pay all wages due at the time of
20 termination of employment, (12) failure to comply with notice requirements of the Wage Theft
21 Protection Act, (13) failure to reimburse employees for expenses incurred, (14) failure to
22 reimburse for deposits made, (15) failure to provide paid sick leave and associated pay in
23 compliance with the law, and (16) failure to pay timely wages. The release also includes a release
24 from the State of California (to the extent Plaintiff is permitted to provide such a release for the
25 State of California for the PAGA period) of all PAGA claims alleged in the Operative Complaint
26 which occurred during the PAGA Period.

27 **B. General Release.**

28 Upon the Effective Final Settlement Date, and payment by Defendants to the Settlement

1 Administrator of the Gross Settlement Amount and Employers' Taxes necessary to effectuate the
2 Settlement, in addition to the Released Claims, Plaintiff makes the additional following General
3 Release: Plaintiff, for himself and his respective spouse, heirs, successors and assigns, fully and
4 finally releases the Released Parties from any and all charges, complaints, claims, liabilities,
5 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
6 demands, costs, losses, debts, penalties and expenses of any nature and description whatsoever,
7 known or unknown, suspected or unsuspected, asserted or that might have been asserted, whether
8 in tort, contract, equity, or otherwise, arising out of Plaintiff's respective employment with
9 Defendants, payment of wages during that employment and the cessation of that employment
10 and/or violation of any federal, state or local statute, rule, ordinance or regulation. Such claims
11 include but are not limited to, all claims for unpaid wages; failing to provide meal and/or rest
12 breaks and payments for violations; wage statements; failure to pay all wages due to non-exempt
13 employees; unfair business practices; penalties, including, but not limited to, wage statement
14 penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs.
15 Plaintiff's Released Claims also include, but are not limited to, all claims arising under the Labor
16 Code (including, but not limited to, §§200, 201, 201.1, 201.3, 202, 203, 204, 206, 210, 216, 218,
17 218.5, 218.6, 221, 222, 225.5, 226, 226.3, 226.7, 256, 510, 512, 516, 550, 551, 552, 558, 1174,
18 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2698 *et seq.*, 2699 *et seq.*, 2802, and
19 2810.5); all claims arising under: the Wage Orders of the California Industrial Welfare
20 Commission; the California Private Attorneys General Act of 2004 (PAGA) that may be released
21 by way of this Agreement; California Business and Professions Code §§17200, *et seq.*; California
22 Civil Code, to include §§3287, 3336 and 3294; 12 CCR §11040; 8 CCR § 11060; California
23 Code of Civil Procedure §1021.5; California common law of contract; 29 CFR §778.223; 29
24 CFR §778.315; federal common law and the Employee Retirement Income Security Act, 29
25 U.S.C. §§1001, *et seq.* (ERISA) §778.315 (to the extent permitted by law); federal common law;
26 the Fair Credit Reporting Act (15 U.S.C. §§ 1681 *et seq.*); and the Investigative Consumer
27 Reporting Agencies Act (Cal. Civ. Code §§ 1786 *et seq.*). Plaintiff's Released Claims also
28 include, but are not limited to, all claims for lost wages and benefits, emotional distress,

1 retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local
2 laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of
3 example only, (as amended) 42 U.S.C. §1981, Title VII of the Civil Rights Act of 1964, the
4 Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA),
5 and the California Fair Employment and Housing Act (FEHA); and the law of contract and tort.
6 This release excludes the release of claims not permitted by law.

7 Plaintiff's released claims include, all claims released in the General Release, whether
8 known or unknown. Even if Plaintiff discover facts in addition to or different from those that he
9 now knows or believes to be true with respect to the subject matter of Plaintiff's General Release,
10 those claims will remain released and forever barred. Thus, as of the Effective Final Settlement
11 Date, Plaintiff shall be deemed to have, expressly waived and relinquished, to the fullest extent
12 permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code,
13 or any other similar provision under federal or state law, which provides:

14 "A general release does not extend to claims that the creditor or releasing
15 party does not know or suspect to exist in his or her favor at the time of
16 executing the release, and that, if known by him or her would have materially
17 affected his or her settlement with the debtor or released party."

18 The foregoing release is intended to be as broad as the Parties can possibly create and
19 includes but is not limited to any liability whatsoever:

20 - which arises directly or indirectly out of or is in any manner related to Plaintiff's
21 employment by Defendants;

22 - which arises directly or indirectly out of or is in any manner related to the causes of
23 action or injuries or damages alleged in the Action or Operative Complaints; or

24 - which arises directly or indirectly out of or is in any manner related to any of the matters,
25 occurrences or transactions which were raised or could have been raised in the Action or
26 Operative Complaint, including without limitation, any and all claims for compensatory,
27 economic, non-economic, punitive, or other damages.

28 To the extent permitted by law, if any claim is not subject to release, Plaintiff waives any

right or ability to be a class, representative or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendants or any of the other Released Parties identified in this Settlement Agreement is a party.

8. SETTLEMENT ADMINISTRATOR

Plaintiff and Defendants, through their respective counsel, selected Phoenix Settlement Administrators to administer the Settlement, which includes but is not limited to translating the Class Notice to Spanish, distributing and responding to inquiries about the Class Notice and calculating all amounts to be paid from the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is less than \$8,950.00, the difference between \$8,950.00 and the actual Settlement Administration Costs shall be made a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$8,950.00, then such excess will be paid solely from the Gross Settlement Amount and Defendants will not be responsible for paying any additional funds to pay these additional costs.

9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION
PROCESS

A. Notice to the Settlement Class Members.

(1) Within ten (10) calendar days after the Preliminary Approval Date, Defendants' Counsel shall provide the Settlement Administrator the following information: (1) name, last known address(es) and last known telephone number(s) currently in Defendants' possession, custody, or control with respect to each FCRA/ICRAA Settlement Class Member during the FCRA/ICRAA Class Period and each Settlement Class Member during the Class Period; (2) Social Security Number in Defendants' possession, custody, or control with respect to each FCRA/ICRAA Settlement Class Member and Settlement Class Member; and (3) number of Workweeks worked during the Class Period by the Settlement Class Member ("Class List"). The Settlement Administrator

1 shall perform an address search using the United States Postal Service
2 National Change of Address (“NCOA”) database and update the addresses
3 contained on the Class List with the newly found addresses, if any. Within
4 seven (7) calendar days of receiving the Class List from Defendants, the
5 Settlement Administrator shall mail the Class Notice in English and
6 Spanish to the FCRA/ICRAA Settlement Class Members and Settlement
7 Class Members via first-class regular U.S. Mail using the most current
8 mailing address information available. The Settlement Administrator shall
9 maintain a list with names and all addresses to which notice was given,
10 and digital copies of all the Settlement Administrator’s records evidencing
11 the giving of notice to any FCRA/ICRAA Settlement Class Members and
12 Settlement Class Member, for at least four (4) years from the Effective
13 Final Settlement Date.

14 (2) The Class Notice will set forth:

- 15 (a) the FCRA/ICRAA Settlement Class and Settlement Class
- 16 Member’s estimated payment and the basis for it;
- 17 (b) the information required by California Rule of Court, rule
- 18 3.766, subdivision (d);
- 19 (c) the material terms of the Settlement;
- 20 (d) the proposed Settlement Administration Costs;
- 21 (e) the definition of the respective Settlement Classes;
- 22 (f) a statement that the Court has preliminarily approved the
- 23 Settlement;
- 24 (g) how the FCRA/ICRAA Settlement Class Member and
- 25 Settlement Class Member can obtain additional
- 26 information, including contact information for Class
- 27 Counsel;
- 28 (h) information regarding opt-out and objection procedures;

- 1 (i) the date and location of the Final Approval Hearing; and
- 2 (j) that the Settlement Class Member must notify the
- 3 Settlement Administrator no later than the Response
- 4 Deadline if the Settlement Class Member disputes the
- 5 accuracy of the number of Workweeks as set forth on his
- 6 or her Class Notice (“Workweek Dispute”). If a Settlement
- 7 Class Member fails to timely dispute the number of
- 8 Workweeks attributed to him or her in conformity with the
- 9 instructions in the Class Notice, then he or she shall be
- 10 deemed to have waived any objection to its accuracy and
- 11 any claim to any additional settlement payment based on
- 12 different data.

13 (3) If a Class Notice from the initial notice mailing is returned as

14 undeliverable, the Settlement Administrator will attempt to obtain a

15 current address for the FCRA/ICRAA Settlement Class Member or

16 Settlement Class Member to whom the returned Class Notice had been

17 mailed, within five (5) calendar days of receipt of the returned Class

18 Notice, by: (1) contacting the FCRA/ICRAA Settlement Class Member or

19 Settlement Class Member by phone, if possible, and (2) undertaking skip

20 tracing. If the Settlement Administrator is successful in obtaining a new

21 address, it will promptly re-mail the Class Notice to the FCRA/ICRAA

22 Settlement Class Member or Settlement Class Member. Further, any

23 Class Notices that are returned to the Settlement Administrator with a

24 forwarding address before the Response Deadline shall be promptly re-

25 mailed to the forwarding address affixed thereto. Class members who are

26 re-mailed a Class Notice shall have an additional fifteen (15) calendar days

27 to submit a Request for Exclusion, objection or to dispute estimated

28 payments.

1 (4) No later than seven (7) calendar from the Response Deadline, the
2 Settlement Administrator shall provide counsel for the Parties with a
3 declaration attesting to the completion of the notice process, including the
4 number of attempts to obtain valid mailing addresses for and re-sending
5 of any returned Class Notices, as well as the identities, number of, and
6 copies of all exclusion requests (opt-outs) and objections/comments
7 received by the Settlement Administrator.

8 **B. Objections.**

9 Only FCRA/ICRAA Settlement Class Members and Settlement Class Members who do
10 not opt out of the Settlement (*i.e.*, Participating Class Members) may object or comment
11 regarding the Settlement. For any Participating Class Member to object or comment to this
12 Settlement, or any term of it, he or she should do so by mailing a written objection or comment
13 to the Settlement Administrator at the address or phone number provided on the Class Notice no
14 later than the Response Deadline. The Settlement Administrator shall email a copy of the
15 objection/comment forthwith to Class Counsel and Defendants' counsel. Class Counsel shall
16 lodge a copy of the objection or comment with the Court with the Motion for Final Approval.
17 The objection or comment should set forth in writing: (1) the objector's/commenter's name and
18 address; (2) the dates of employment of the objector; (3) the last four digits of the Class Member's
19 Social Security number and/or their employee I.D. number; and (4) the reason(s) for the
20 objection/comment, along with whatever legal authority, if any, the objector/commenter asserts
21 supports the objection. If a Participating Class Member objects to this Settlement, the
22 Participating Class Member will remain a member of the FCRA/ICRAA Settlement Class and
23 Settlement Class and if the Court approves this Agreement, the Participating Class Member will
24 be bound by the terms of the Settlement in the same way and to the same extent as a Participating
25 Class Member who does not object. The date of mailing of the Class Notice to the objecting
26 Participating Class Member shall be conclusively determined according to the records of the
27 Settlement Administrator. Participating Class Members do not need to object in writing to object
28 or comment to the Settlement at the Final Approval Hearing.

1 **C. Requesting Exclusion.**

2 Any FCRA/ICRAA Settlement Class Member or Settlement Class Member may request
3 exclusion from (i.e., “opt out” of) the Settlement by mailing a written request to be excluded
4 from the Settlement (“Request for Exclusion”) to the Settlement Administrator, postmarked on
5 or before the Response Deadline. To be valid, a Request for Exclusion must further include the
6 FCRA/ICRAA Settlement Class Member or Settlement Class Member’s name, current address,
7 telephone number, the last four digits of their social security number, their signature, and the
8 following statement or something to its effect: “Please exclude me from the Settlement in the
9 *Antonio Hernandez v. SC Commercial, LLC* matter. I understand by excluding myself, I will not
10 receive any money from the settlement reached in this matter other than that money allotted for
11 the PAGA Settlement” or a statement of similar meaning. The Settlement Administrator shall
12 immediately provide copies of all Requests for Exclusion to Class Counsel and Defendants’
13 Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its
14 declaration to be provided in advance of the Final Approval Hearing. Any FCRA/ICRAA
15 Settlement Class Member or Settlement Class Member who requests exclusion using this
16 procedure will not be entitled to receive any payment from the Settlement and will not be bound
17 by the Settlement Agreement or have any right to object to, appeal, or comment on the
18 Settlement. Any FCRA/ICRAA Settlement Class Member or Settlement Class Member who
19 does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will
20 be bound by all terms of the Settlement, including those pertaining to the Released Claims, as
21 well as any Judgment that may be entered by the Court if Final Approval of the Settlement is
22 granted.

23 The Parties agree that neither they nor their counsel will solicit or otherwise encourage
24 directly or indirectly any FCRA/ICRAA Settlement Class Member or Settlement Class Member
25 to request exclusion from the settlement, object to the settlement, or appeal from the Court’s
26 Final Judgment.

27 **D. Disputes Regarding Settlement Class Member Workweek Data.**

28 Each Settlement Class Member may dispute the number of Workweeks contained on his

1 or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to the Settlement
2 Administrator by the Settlement Class Member, postmarked on or before the Response Deadline
3 along with any evidence in their favor, if any. The Settlement Administrator shall immediately
4 provide copies of all disputes to Class Counsel and counsel for Defendants and shall immediately
5 attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the
6 assistance of Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the
7 Court shall adjudicate the dispute.

8 **10. NULLIFICATION OF THE SETTLEMENT AGREEMENT.**

9 **A. Defendants’ Option to Nullify the Settlement Agreement.** If either ten percent
10 (10%) or more of the FCRA/ICRAA Settlement Class or ten percent (10%) or more of the
11 Settlement Class Members opt out of the Settlement, Defendants, in their sole discretion, shall
12 have the option of nullifying the Settlement Agreement. Defendants, either at their own option
13 or collectively, shall give written notice to Class Counsel within five (5) business days after the
14 Settlement Administrator informs the Parties that the opt out rate exceeds ten percent (10%). In
15 such a case, the Parties and any funds to be awarded under this Settlement Agreement shall be
16 returned to their respective statuses as of the date and time immediately prior to the execution of
17 this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had
18 not been executed, except that any fees already incurred by the Settlement Administrator shall
19 be paid by Defendants, including any fees necessary for any additional notice provided to
20 FCRA/ICRAA Settlement Class and Settlement Class Members as a result of Defendants’ option
21 to nullify.

22 **B. Nullification of the Settlement Agreement.** In the event: (i) the Court does not
23 enter the Preliminary Approval Order and approve the Released Claims specified herein; (ii) the
24 Court does not finally approve the Settlement as provided herein; (iii) Defendants exercise their
25 option to nullify the Settlement Agreement based on an excessive number of opt-outs, as
26 described in the above Section; or (iv) the Settlement does not become final for any other reason
27 (e.g., an objection by the LWDA), this Settlement Agreement shall be null and void. Any order
28 or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as

void from the beginning, and the Stipulations and Recitals contained herein shall be of no force or effect and shall not be treated as an admission by the Parties or their counsel. In such a case, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed.

11. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS MEMBERS

A. FCRA/ICRAA Settlement Payments to Participating Class Members. The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,400.00) of the Net Settlement Amount toward FCRA/ICRAA Settlement Payment as penalties which will be divided equally among the FCRA/ICRAA Settlement Class Members (“**FCRA/ICRAA allocation**”).

B. Individual Settlement Payments for claims not related to alleged violations of FCRA/ICRAA. Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount (minus the FCRA/ICRAA allocation) on a *pro rata* basis, based on the Participating Class Members’ respective number of Workweeks during the respective Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees’ respective number of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement Payments and Individual PAGA Payments will be made as follows:

The Settlement Administrator will determine the total number of Workweeks worked by each Participating Settlement Class Member and the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period (“Class Workweeks”), as reflected on the Class List provided by Defendants. Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period (“Aggrieved Employee’s Workweeks”), as well as the aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period (“PAGA

Workweeks”).

To determine each Participating Class Member’s Individual Settlement Payment, the Settlement Administrator will determine the aggregate number of Workweeks worked by all Participating Class Members during the Class Period (“Participating Class Workweeks”) and use the following formula: Individual Settlement Payment = (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × (Net Settlement Amount – FCRA/ICRAA allocation).

This net amount is to be paid out to Participating Class Members by way of check and is referred to as “Individual Settlement Payment(s).”

To determine each Aggrieved Employee’s Individual PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee’s Individual PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee’s Individual PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$6,250.00 (the PAGA Payment).

This net amount to be paid out to Participating Class Members by way of check and is referred to as “Individual PAGA Payment(s).” Aggrieved Employees shall receive their Individual PAGA Payments regardless of whether they are also a Settlement Class Member and elect to opt out of Settlement. When a Participating Class Member is also an Aggrieved Employee, one check may be issued that aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

12. DISTRIBUTION OF PAYMENTS

A. Distribution of FCRA/ICRAA Settlement Payments and Individual Settlement Payments.

FCRA/ICRAA Settlement Class Members and Settlement Class Members who do not submit a timely and valid Request for Exclusion (i.e., Participating Class Members) will receive a FCRA/ICRAA Settlement Payment and Individual Settlement Payment. FCRA/ICRAA Settlement Payment and Individual Settlement Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)

1 calendar days after expiration of the 180-day period, checks for such payments shall be canceled
2 and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash
3 residue pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid
4 Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall
5 be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco,
6 California 94104, the *cy pres* recipient, for use in Orange County. The Settlement Administrator
7 shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure section
8 384 and the report shall be presented to the Court by Class Counsel along with a proposed
9 amended judgment that is consistent with the provisions of Code of Civil Procedure section 384.

10 **B. Funding of Settlement.**

11 Defendants shall, within twenty-one (21) calendar days after the Effective Final
12 Settlement Date to make payment to the Settlement Administrator pursuant to Internal Revenue
13 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”)
14 with an FDIC insured banking institution, for distribution in accordance with this Agreement and
15 the Court’s orders and subject to the conditions described herein. FCRA/ICRAA Settlement
16 Payments and Individual Settlement Payments for Participating Class Members shall be paid
17 exclusively from the QSA, pursuant to the settlement formula set forth herein, and shall be mailed
18 within seven (7) calendar days after Defendants deliver the sum of Four Hundred Fifty Thousand
19 Dollars and Zero Cents (\$450,400.00) representing the Gross Settlement Amount as required by
20 this Agreement. In addition, and separate from the Gross Settlement Amount, Defendants are
21 also required to pay, and will deliver into the QSA, Employers Taxes. The Employer Taxes must
22 be paid separate, apart, and on top of the Gross Settlement Amount.

23 Payments from the QSA shall be made for (1) the Service Award to the Named Plaintiff,
24 as specified in this Agreement and Approved by the Court; (2) the Attorneys’ Fees and Cost
25 Award to be paid to Class Counsel, as specified in this Agreement and approved by the Court;
26 (3) the Settlement Administrator Costs; and (4) the LWDA Payment. The balance remaining
27 shall constitute the Net Settlement Amount from which FCRA/ICRAA Settlement Payments and
28 Individual Settlement Payments shall be made to Participating Class Members, less applicable

1 taxes and withholdings. All interest accrued shall be for the benefit of the class members and
2 distributed in a pro-rata basis.

3 **C. Time for Distribution.**

4 Within seven (7) calendar days after payment of the Gross Settlement Amount by
5 Defendants, as well as Employer Taxes, or as soon thereafter as practicable, the Settlement
6 Administrator shall distribute all payments due under the Settlement, including the
7 FCRA/ICRAA Settlement Payments and Individual Settlement Payments to Participating Class
8 Members, as well as the Court-approved payments for the Service Award to Plaintiff, attorneys'
9 fees and litigation costs and expenses to Class Counsel, Administration Costs to the Settlement
10 Administrator, and the LWDA Payment.

11 **13. ATTORNEYS' FEES AND LITIGATION COSTS**

12 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
13 fees not in excess of thirty-five percent (35%) of the Gross Settlement Amount, which, unless
14 escalated as set forth in Paragraph 18 below, shall amount to One Hundred Fifty-Seven
15 Thousand, Six Hundred Forty Dollars and Zero Cents (\$157,640.00). Class Counsel shall further
16 apply for, and Defendants shall not oppose, an application or motion by Class Counsel for
17 reimbursement of reasonable verified litigation costs and expenses associated with Class
18 Counsel's prosecution of this matter as set forth by declaration testimony, not to exceed Twenty-
19 Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees and costs shall
20 be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and costs
21 necessary to prosecute, settle, and obtain Final Approval of the settlement in the Action. The
22 "future" aspect of the amounts stated herein includes, without limitation, all time and expenses
23 expended by Class Counsel (including any appeals therein). There will be no additional charge
24 of any kind to either the Participating Class Members or request for additional consideration from
25 Defendants for such work. Should the Court approve attorneys' fees and/or litigation costs and
26 expenses in amounts that are less than the amounts provided for herein, then the unapproved
27 portion(s) shall be a part of the Net Settlement Amount.

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1 **14. SERVICE AWARD TO PLAINTIFF**

2 Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an amount not
3 to exceed Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), for participation
4 in and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from
5 the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves
6 the Service Award to Plaintiff in less than the amount sought herein, then the unapproved
7 portion(s) shall be a part of the Net Settlement Amount.

8 **15. TAXATION AND ALLOCATION**

9 **A.** Each Individual Settlement Payment shall be allocated as follows: 20% as wages
10 (to be reported on an IRS Form W2); 80% as interest and penalties (to be reported on an IRS
11 Form 1099). The Parties agree that the employees' share of taxes and withholdings with respect
12 to the wage-portion of the Individual Settlement Payments will be withheld from each such
13 Individual Settlement Payments. The amount of federal income tax withholding will be based
14 upon a flat withholding rate for supplemental wage payments in accordance with Treasury
15 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
16 be made pursuant to applicable state and/or local withholding codes or regulations. The parties
17 agree that the FCRA/ICRAA allocation will be deemed 100% penalties.

18 **B.** Forms W-2 and/or Forms 1099 will be distributed by the Settlement
19 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
20 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
21 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
22 set forth in this Section may be modified in a manner to bring Defendants into compliance with
23 any such changes.

24 **C.** All Employer Taxes shall be paid by Defendants separate, apart and above from
25 the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
26 payroll taxes as described above.

27 **16. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

28 The Parties agree to allocate Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of

the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA (\$18,750.00) will be paid to the LWDA (the LWDA Payment), and twenty-five percent (25%) (\$6,250.00) will remain a part of the Net Settlement Amount to be distributed to Participating Class Members on a *pro rata* basis, based upon their respective Workweeks (the PAGA Payment).

17. COURT APPROVAL

This Agreement is contingent upon an order by the Court granting Final Approval of the Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties shall be restored to their respective positions in the Action prior to entry of this Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive the Settlement Agreement being voided or not approved, and which control in such an event.

18. INCREASE IN WORKWEEKS

Defendants represent that there are approximately 56,050 Workweeks during the Class Period. In the event the number of Workweeks increases by more than 10%, or 5,605 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the Workweek Value. The Workweek Value shall be calculated by dividing the Gross Settlement Amount (\$450,000.00) by 56,050, which amounts to a Workweek value of \$8.03. Thus, for example, should there be 65,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by \$71,868.50. (65,000 Workweeks – 56,050 Workweeks = 8,950 Workweeks x \$8.03/Workweek.)

19. NOTICE OF JUDGMENT

In addition to any duties set out herein, the Settlement Administrator shall provide notice of the Final Judgment entered in this Action by posting the same on its website.

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1 **20. MISCELLANEOUS PROVISIONS**

2 **A. Interpretation of the Agreement.**

3 This Agreement constitutes the entire agreement between Plaintiff and Defendants with
4 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
5 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
6 oral or written representations or terms shall modify, vary, or contradict its terms. In entering
7 into this Agreement, the Parties agree that this Agreement is to be construed according to its
8 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
9 interpreted and enforced under the laws of the State of California, both in its procedural and
10 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
11 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
12 in the Superior Court of the State of California for the County of Orange, and Plaintiff and
13 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
14 in connection therewith. The foregoing is only limited to disputes concerning this Agreement
15 and in no way limits or negates the enforceability and effect of any underlying arbitration
16 agreements signed by employees of Defendants purportedly obligating them to arbitrate any and
17 all claims on an individual (and not on a class, collective, or representative) basis. Plaintiff, on
18 behalf of himself and on behalf of the Settlement Classes, and Defendants participated in the
19 negotiation and drafting of this Agreement and had available to them the advice and assistance
20 of independent counsel. As such, neither Plaintiff nor Defendants may claim that any ambiguity
21 in this Agreement should be construed against the other. The Agreement may be modified only
22 by a writing signed by counsel for the Parties and approved by the Court.

23 **B. Further Cooperation.**

24 Plaintiff, Defendants, and their respective attorneys shall proceed diligently to prepare
25 and execute all documents, to seek the necessary approvals from the Court, and to do all things
26 reasonably necessary to consummate the Settlement as expeditiously as possible.

27 **C. Counterparts.**

28 The Agreement may be executed in one or more actual or non-original counterparts, all

1 of which will be considered one and the same instrument and all of which will be considered
2 duplicate originals.

3 **D. Authority.**

4 Each individual signing below warrants that he or she has the authority to execute this
5 Agreement on behalf of the party for whom or which that individual signs.

6 **E. No Third-Party Beneficiaries.**

7 Plaintiff, Participating Class Members, Class Counsel, and Defendants are direct
8 beneficiaries of this Agreement, but there are no third-party beneficiaries.

9 **F. Deadlines Falling on Weekends or Holidays.**

10 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
11 or legal holiday, that deadline shall be continued until the following business day.

12 **G. Severability.**

13 In the event that one or more of the provisions contained in this Agreement shall for any
14 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
15 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
16 Counsel, on behalf of the Parties and the Settlement Classes, mutually elect in writing to proceed
17 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

18 **H. Non-Admission of Liability; No Waiver of Purported Arbitration**
19 **Agreements.**

20 The Parties enter into this Settlement Agreement to resolve the dispute that has arisen
21 between them and to avoid the burden, expense, and risk of continued litigation. In entering into
22 this Settlement Agreement, Defendants do not admit, and specifically deny, they have violated
23 any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to
24 any statute or any other applicable laws, regulations or legal requirements; breached any contract;
25 violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any
26 other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor
27 any of its terms or provisions, nor any of the negotiations connected with it, shall be construed
28 as an admission or concession by Defendants of any such violations or failures to comply with

any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law. Nor shall anything in this Settlement Agreement be construed or deemed an admission that the Action was properly brought as a class action pursuant to California Code of Civil Procedure section 382, a representative action under California Business and Professions Code section 17200 and/or a private attorney general action under PAGA. Nor shall anything in this Settlement Agreement or in the Preliminary Approval or Order Granting Final Approval be deemed a waiver of Defendants' right to enforce the applicable arbitration agreements, if any, of Class Members in the future as to Plaintiff, members of the Class or otherwise.

I. Publicity.

Plaintiff and Class Counsel represent that they have not, and will not, issue any press, publications, or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media or anyone else regarding the Settlement that identifies Defendants, Plaintiff, Defendants' geographical location(s), or anything that would allow a person to be able to identify the Defendants or Plaintiff as the subject to the Settlement. Nothing in this paragraph shall be construed to prohibit Class Counsel from communicating with Class Members for the sole purpose of administering this settlement.

IT IS SO AGREED:

Dated: 08/17, 2022


Antonio Hernandez (Aug 17, 2022 17:06 PDT)
ANTONIO HERNANDEZ
Plaintiff and Class Representative

///

1 Dated: 8/19/2022, 2022

DocuSigned by:

Robert W. Bollar

SC COMMERCIAL, LLC

Defendant

By: Robert W. Bollar

Its: Corporate Secretary and Vice President

2 Dated: 8/19/2022, 2022

DocuSigned by:

Robert W. Bollar

SOUTHERN COUNTIES OIL CO., a California
Limited Partnership

Defendant

By: Robert W. Bollar

Its: Corporate Secretary and Vice President

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9
10 **AGREED AS TO FORM:**

11 Dated: August 19, 2022

Vedang J. Patel

DAVID D. BIBIYAN

VEDANG J. PATEL

Counsel for Plaintiff Antonio Hernandez

12
13
14
15 Dated: August 19, 2022

Christine Baran

CHRISTINE BARAN

Counsel for Defendants