

[Counsel listed on the next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

OSCAR GONZALEZ, on behalf of herself
and others similarly situated,

Plaintiffs,

vs.

NS CORPORATION, a California
corporation; and DOES 1-20, inclusive,

Defendants.

Case No. 20STCV41170

**JOINT STIPULATION FOR CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

Complaint Filed: October 27, 2020

JOINT STIPULATION FOR CLASS ACTION SETTLEMENT AND RELEASE

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**JOINT STIPULATION FOR CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AND RELEASE**

I. INTRODUCTION

1. This Joint Stipulation of Class Action Settlement and Release is made and entered into by and between Plaintiff Oscar Gonzalez (“Plaintiff”), an individual, and the State of California as Private Attorney General, on the one hand, and Defendant NS Corporation (“Defendant”), on the other hand.

2. This Agreement is made for the sole purpose of attempting to consummate settlement of this putative wage and hour class action on a class-wide basis, as well as the action brought by Plaintiff under the Labor Code Private Attorney General Act of 2004 (“PAGA”). As detailed below, in the event that the Court does not execute and file an order granting Final Approval of Settlement, or in the event that the associated Judgment does not become final for any reason, this Agreement shall be deemed null and void and shall be of no force or effect whatsoever.

II. DEFINITIONS

3. “Action” means the lawsuit entitled *Oscar Gonzalez v. NS Corporation*, pending in the Superior Court of California, County of Los Angeles, 20STCV41170.

4. “Agreement” and “Settlement” means the Joint Stipulation of Class Action Settlement and Release.

5. “Class Counsel” and “Plaintiff’s Counsel” means Nazo Koulloukian of Koul Law Firm, Inc. and Sahag Majarian II of Law Office of Sahag Majarian II.

6. “Class Counsel Fees” means the amount up to \$148,750 (i.e., thirty-five percent of the Gross Fund Value) to compensate Class Counsel for their attorneys’ fees incurred in connection with the Action, including their pre-filing investigation, their filing of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.

7. “Class Counsel Expenses” means the amount of reasonable litigation expenses Class Counsel incurred in connection with this Action, up to \$20,000, including their pre-filing

1 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
2 post-Settlement compliance procedures.

3 8. "Class Information" means information regarding Class Members that Defendant
4 will in good faith compile from their records and provide to the Settlement Administrator in a secure
5 manner on a confidential basis. It shall include each Class member's full name, social security
6 number, last known address, and the dates of employment that each Class Member worked during
7 the Class Period.

8 9. "Class" or "Class Members" means all current and former hourly, non-exempt
9 employees of Defendant at any time within the period beginning September 30, 2017, and ending
10 the earlier of the date the Court grants preliminary settlement approval, or the date the Class
11 Workweeks reaches 14,375.

12 10. "Class Notice" means the Notice of Proposed Class Action Settlement (substantially
13 in the form attached as **Exhibit A**).

14 11. "Class Period" means the period from September 30, 2017 and ending the earlier of
15 the date the Court grants preliminary settlement approval, or the date the Class Workweeks reaches
16 14,375.

17 12. "Class Representative" or "Plaintiff" refers to Oscar Gonzalez.

18 13. "Incentive Award" means an amount of up to \$7,500 that the Court authorizes to be
19 paid to the Class Representative in recognition of his effort and risk in assisting with the prosecution
20 of the Action and in return for executing a general release of Defendant.

21 14. "Complaint" means the First-Amended Complaint filed in this Action in the
22 Superior Court of California, County of Los Angeles, 20STCV41170.

23 15. "Court" means the Superior Court of California, County of Los Angeles.

24 16. "Defendant" refers to NS Corporation.

25 17. "Defendant's Counsel" refers to Gordon & Rees LLP.

26 18. "Effective Date" The effective date means the date by which this Settlement is
27 finally approved as provided herein and the Court's Final Approval Order becomes binding. For
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JOINT STIPULATION FOR CLASS ACTION SETTLEMENT AND RELEASE

1 purposes of this Settlement Agreement, the Final Approval Order becomes binding upon the later
2 of: (1) the day after the last day by which a notice of appeal of the Final Approval Order and/or of
3 an order rejecting any motion to intervene may be timely filed, and none is filed; (2) if such an
4 appeal is filed, and the Final Approval Order is affirmed, the day after the last date for filing a
5 request for further review of the decision passes and no further review is requested; (3) if an appeal
6 is filed and further review of the decision affirming the Final Approval Order is requested, the day
7 after the request for review is denied with prejudice and/or no further review of the decision can be
8 requested, or (4) if review is accepted, the day after the United States or California Supreme Court
9 affirms the Settlement. The Effective Date cannot occur, and Defendant will not be obligated to
10 fund this Settlement, until and unless there is no timely possibility of an appeal or further appeal
11 that could potentially prevent this Settlement Agreement from becoming final and binding.

12 19. "Eligible Workweek" means any week during which a Class Member worked in
13 California on behalf of Defendant during the Class Period.

14 20. "Request for Exclusion" means the written request by a Class Member to exclude
15 himself or herself from the Settlement submitted in accordance with the instructions in the Class
16 Notice.

17 21. "Exclusion List" means the list prepared by the Settlement Administrator listing all
18 Class Members requesting exclusion from the Settlement.

19 22. "Final Approval" means the Court's final approval of the Settlement without
20 material change.

21 23. "Individual Settlement Payment" means the total, gross amount payable from the
22 Gross Net Value to a Participating Class Member, which shall be calculated for each Participating
23 Class Member as described in this Agreement.

24 24. "Judgment" means the judgment or order to be rendered and entered by the Court in
25 the Action upon and/or after granting Final Approval of the Settlement.

26 25. "Gross Fund Value" means \$425,000, the total settlement value for all damages,
27 restitution, penalties, and interest, all payments to Participating Class Members, Class Counsel
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1 Fees, Class Counsel Expenses, Settlement Administration Costs, PAGA Payment, and the Incentive
2 Award. Defendant shall separately pay the employer's share of payroll taxes arising as a result of
3 the Settlement.

4 26. "Gross Net Value" means the Gross Fund Value, less the following: (a) Class
5 Counsel Fees; (b) Class Counsel Expenses; (c) Incentive Award; (d) Settlement Administration
6 Costs; and (e) PAGA Payment. The Gross Net Value shall be used to satisfy Individual Settlement
7 Payments to Participating Class Members in accordance with the terms of this Agreement.

8 27. "PAGA Members" means all of Defendant's non-exempt employees who worked
9 for Defendant in California during the PAGA Period. PAGA Members are a subset of the Class
10 Members.

11 28. "PAGA Period" means from August 20, 2019 to the date of Preliminary Approval.

12 29. "PAGA Payment" means the \$40,000 the Parties have agreed to allocate to civil
13 penalties in order to settle claims arising under the Private Attorneys General Act of 2004 (Labor
14 Code sections 2698, et seq.). "LWDA Payment" means the amount paid to the Labor and
15 Workforce Development Agency ("LWDA") as its portion (75%) of the total PAGA penalties
16 allocated to it in this Agreement and approved by the Court. "Net PAGA Amount" means the
17 amount paid to PAGA Members as their portion (25%) of the total PAGA penalties allocated to
18 them in this Agreement and approved by the Court.

19 30. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
20 Plaintiff or Defendants.

21 31. "Participating Class Member" means a Class member who does not submit a valid
22 Request for Exclusion requesting to be excluded from the Settlement, consistent with the terms set
23 forth in the Agreement.

24 32. "Preliminary Approval" means the Court's preliminary approval of the Settlement
25 without material change.

26 33. "Released Claims" shall have the meaning set forth in Paragraph 47.
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1 34. “Released Parties” means Defendant and its past, present, and future agents,
2 employees, officers, directors, partners, trustees, shareholders, attorneys, parents, subsidiaries,
3 related corporations, divisions, joint venturers, assigns, predecessors, successors, affiliated
4 organizations, and all persons acting by or through or in concert with any of them, and each of
5 them.

6 35. “Response Deadline” means the date sixty (60) calendar days after the Settlement
7 Administrator mails Class Notices to Class members and the last date on which Class members
8 may: (a) postmark Requests for Exclusion, or (b) postmark Objections to the Settlement, except
9 that if a Class Member submits an objection to her Individual Settlement Payment amount, then 10
10 days from the date the Claims Administrator mails an adjusted Notice or notice of rejection of the
11 challenge.

12 36. “Request for Exclusion” means the means the written request by a Class Member to
13 exclude himself or herself from the Settlement submitted in accordance with the instructions in the
14 Class Notice.

15 37. “Settlement Administration Costs” means the amount to be paid to the Settlement
16 Administrator from the Gross Fund Value for administration of this Settlement. The Settlement
17 Administration Costs are not to exceed \$20,000, and shall be paid out of the Gross Fund Value.

18 38. “Settlement Administrator” means CPT Group, Inc. agreed to by the Parties and
19 approved by the Court for the purposes of administering this Settlement.

20 **III. RECITALS**

21 39. Class Certification. The Parties stipulate to class certification for purposes of
22 settlement only. As part of this Settlement, the parties will stipulate to permit Plaintiff to file an
23 First Amended Complaint adding class allegations based on the Labor Code violations already
24 alleged herein on a PAGA representative basis. If the Court does not grant the stipulation, and
25 further does not grant either Preliminary Approval or Final Approval and Judgment of this
26 Settlement, the Parties stipulate that class certification will be revoked. The Parties shall cooperate
27 in good faith to secure a court order staying the Action and all deadlines, including the deadline for
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1 moving to compel arbitration, class certification and discovery deadlines, pending implementation
2 of the Settlement. The fact that the Parties were willing to stipulate to class certification as part of
3 the Settlement shall have no bearing on, or be admissible in connection with, the issue of whether
4 the Class or any other putative class could be certified in a non-settlement context or be considered
5 admissible for any other purpose in any matter.

6 40. Procedural History. Plaintiff Oscar Gonzalez filed this Action in the Los Angeles
7 County Superior Court on October 27, 2020, Case No. 20STCV41170 as a PAGA representative
8 action lawsuit. In connection with this Settlement, Plaintiff shall file a First Amended Class Action
9 Complaint adding class claims corresponding to those outlined in the PAGA Complaint. The
10 addition of Class Claims is for Settlement purposes only.

11 41. Mediation. The Parties participated in a private mediation on September 30, 2021
12 with experienced mediator, Marc Feder. Prior to the mediation, the Defendant produced extensive
13 time and payroll records to Plaintiff, which Plaintiff thoroughly analyzed with the help of a retained
14 expert. Following extensive negotiations, and with the expert assistance of the mediator, the Parties
15 reached an agreement that day as to all material terms for this Settlement which were documented
16 in a Memorandum of Understanding.

17 42. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
18 expense and length of continued proceedings necessary to litigate their disputes through trial and
19 through any possible appeals. Plaintiff and Class Counsel have also taken into account the
20 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
21 such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to
22 establish liability for the claims asserted in the Action, both generally and in response to
23 Defendant's defenses thereto (many of which have been shared at the mediation and in settlement
24 discussions), and the obligation to establish liability and damages for the Class Members. Plaintiff
25 and Class Counsel have also taken into account the extensive settlement negotiations conducted.
26 Further, Plaintiff and Class Counsel have taken into account Defendant's agreement to enter into a
27 settlement that confers substantial relief upon the Class members. Based on the foregoing, Plaintiff
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1 and Class Counsel have determined that the Settlement is a fair, adequate and reasonable settlement,
2 and is in the best interests of the Class members.

3 43. Defendant's Reasons for Settlement. Defendant has concluded that any further
4 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
5 time, energy and resources of Defendant, unless this Settlement is made, will be devoted to the
6 defense of the claims asserted by Plaintiff. Defendant has also taken into account the risks of further
7 litigation in reaching their decision to enter into this Settlement. Despite continuing to contend that
8 it is not liable for any of the claims set forth by Plaintiff, Defendant has, nonetheless, agreed to
9 settle in the manner and upon the terms set forth in this Agreement to put to rest the claims as set
10 forth in the Action. Defendant claims and continues to claim that the Released Claims have no
11 merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing
12 contained in this Agreement and no documents referred to herein and no action taken to carry out
13 this Agreement may be construed or used as an admission by or against the Parties as to the merits
14 or lack thereof of the claims asserted.

15 44. Claims in the Action. The First Amended Complaint alleges nine (9) causes of
16 action: (1) failing to comply with California law concerning payment of lawful wage for all hours
17 worked, including overtime hours worked; (2) failing to pay minimum wage; (3) failing to provide
18 timely, uninterrupted meal breaks; (4) failing to provide safe working conditions; (5) failing to
19 provide compliant rest breaks and cool-down rest periods; (6) failing to timely pay all wages owed;
20 and (7) failing to provide accurate itemized wage statements and maintain accurate records; (8)
21 engaging in unlawful business practices for unfair competition in violation of Business and
22 Professions Code section 17200, *et seq.*; and (9) Civil Penalties for Violation of the Private
23 Attorneys General Act of 2004 (Labor Code §2698 *et seq.*). Plaintiff asserts all causes of action on
24 behalf of himself, on a class and representative basis, and acting as a Private Attorney General for
25 the State of California pursuant to PAGA.

26 45. Solely for the purposes of this Settlement, the Parties agree that the Class will be
27 certified. Neither Party is conceding, and this Agreement shall not be used to support arguments
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1 that (a) class certification of any claim is appropriate or inappropriate; or (b) that PAGA claims are
2 manageable or need or need not be certified in order to proceed on a representative basis.

3 **I. TERMS OF AGREEMENT**

4 46. Consideration. Defendant agrees to pay \$425,000 as the Gross Fund Value amount
5 in the manner described in this Agreement as full consideration for settlement of the action and for
6 Participating Class Members' agreement to release the Released Parties from the Released Claims.
7 Participating Class Members are not eligible to receive any amounts other than their Individual
8 Settlement Payment(s) by virtue of this Settlement. Employer-side taxes shall be paid by Defendant
9 with funds separate and apart from fund the Gross Fund Value. Defendant represents that the Class
10 consists of 90 individuals who worked approximately 12,500 workweeks during the Class Period.

11 47. Released Claims. Released Claims with respect to the Participating Class Members
12 (other than Plaintiff) means wage and hour claims, rights, demands, liabilities and causes of action,
13 whether known or unknown, arising during the Class Period, that were asserted or could have been
14 asserted in the Action against Defendant based on the facts alleged or ascertained during the
15 pendency of the Action, under federal and state laws, including statutory, or common law claims
16 for wages, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution,
17 equitable relief or other relief under Business & Professions Code section 17200, et seq. based on
18 the alleged Labor Code violations, including, without limitations, the following categories: (a) any
19 and all claims involving any alleged failure to pay minimum wage; (b) any and all claims involving
20 any alleged failure to pay employees for all hours worked, including but not limited to any claim
21 for minimum, straight time, or overtime wages; (c) any and all claims involving any alleged failure
22 to pay overtime wages; (d) any and all claims arising under state law involving any alleged failure
23 to properly provide meal periods and/or authorize and permit rest periods, to pay premiums for
24 missed, late, short or interrupted meal and/or rest periods, or to pay such premiums as required by
25 Labor Code section 226.7; (d) any and all claims involving failure to provide cool-down periods;
26 (e) any and all claims arising under state law involving any alleged failure to properly provide meal
27 periods and/or authorize and permit rest periods, to pay premiums for missed, late, short or
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1 interrupted meal and/or rest periods, or to pay such premiums as required by Labor Code section
2 226.7; (f) any and all claims involving failure to provide safe working conditions; (g) any and all
3 claims involving any alleged failure to keep accurate records or to issue proper wage statements to
4 employees; (h) any and all claims involving any alleged failure to timely pay wages, including but
5 not limited to any claim that Defendant violated Labor Code sections 201, 202, or 204, and any
6 claim for waiting time penalties under Labor Code section 203; (i) any and all claims for unfair
7 business practices in violation of Business and Professions Code sections 17200, et seq.; and (i)
8 any and all penalties pursuant to the Private Attorneys General Act ("PAGA") of 2004 arising out
9 of any or all of the aforementioned claims. The release expressly excludes all other claims,
10 including claims for vested benefits, wrongful termination, unemployment insurance, disability,
11 social security, workers' compensation, and claims outside of the Class Period. This release shall
12 be referred to herein as the "Released Class Claims."

13 48. Tax Liability. The Parties make no representations as to the tax treatment or legal
14 effect of the payments called for hereunder, and Class Members are not relying on any statement
15 or representation by the Parties in this regard. Participating Class Members understand and agree
16 that they will be responsible for the payment of taxes and penalties they owe and that are assessed
17 on the payments described herein, and will hold the Defendant free and harmless from and against
18 any claims, liabilities, costs and expenses, including attorney's fees, resulting in any way from
19 personal tax treatment of the payments made pursuant to this Agreement, including the treatment
20 of such payments as not subject to withholding or deduction for payroll and employment taxes.
21 Each Party to this Agreement acknowledges and agrees that no provision of this Agreement, and
22 no written communication or disclosure between or among the Parties or their attorneys and other
23 advisers, is or was intended to constitute or be construed or be relied upon as, tax advice.

24 49. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
25 the "acknowledging party" and each Party to this Agreement other than the acknowledging party,
26 an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written
27 communication or disclosure between or among the Parties or their attorneys and other advisers, is
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1 or was intended to be, nor shall any such communication or disclosure constitute or be construed
2 or be relied upon as, tax advice within the meaning of United States Treasury Department circular
3 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
4 her or its own, independent legal and tax counsel for advice (including tax advice) in connection
5 with this Agreement, (b) has not entered into this Agreement based upon the recommendation of
6 any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any
7 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
8 that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party
9 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
10 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
11 acknowledging party of the tax treatment or tax structure of any transaction, including any
12 transaction contemplated by this Agreement.

13 50. Preliminary Approval of Settlement. Simultaneous with the filing of the Settlement
14 and solely for purposes of this Settlement, Plaintiff will file a Motion for Preliminary Approval
15 requesting the Court grant preliminary approval of this Settlement, certify the Class for settlement
16 purposes only, and set a date for the final settlement approval hearing. The order for Preliminary
17 Approval shall provide for the Class Notice to be sent to all Class Members as specified herein. At
18 the same time that Plaintiff files the Motion for Preliminary Approval, Plaintiff shall also submit
19 to the LWDA a copy of the proposed settlement pursuant to Labor Code § 2699, *et seq.*

20 51. Settlement Administrator's Duties. The Settlement Administrator shall be
21 responsible for: preparing, printing, and mailing the Class Notices to the Class Members; receiving
22 and reporting any Requests for Exclusion submitted by Class members; establishing the Qualified
23 Settlement Fund; calculating, processing, and mailing payments to Plaintiff, Class Counsel,
24 Participating Class Members, PAGA Members, and the LWDA; withholding any legally mandated
25 withholdings or deductions from the Individual Settlement Payments and remitting tax
26 withholdings to the applicable tax authorities; performing all tax reporting duties required by law,
27 including distributing all necessary tax forms; providing declaration(s) as necessary in support of
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1 preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree
2 upon or as the Court orders the Settlement Administrator to perform. The Settlement Administrator
3 will be responsible for keeping the Parties timely apprised of the performance of all Settlement
4 Administrator responsibilities.

5 52. Settlement Administration. Within twenty (20) calendar days after the Court grants
6 Preliminary Approval of this Agreement, Defendants shall provide the Settlement Administrator
7 with the Class Information for purposes of mailing Class Notices to Class Members. The Class
8 Information shall be kept confidential by the Settlement Administrator.

9 53. Allocation of the Gross Net Value. Within fourteen (14) calendar days after
10 receiving the Class Information from Defendants as provided herein, the Settlement Administrator
11 shall calculate the Individual Settlement Payment for each Class Member and provide the
12 calculations to the Parties *without* any personal identifying information (e.g., name, social security
13 number, last known address) about Class Members. The Settlement Administrator shall compute
14 the Individual Settlement Payment for each Class Member pursuant to the following formula:

- 15 a. Add all Eligible Work Weeks for all Class Members together to obtain the
16 “Denominator”;
- 17 b. Divide the number of Eligible Work Weeks for each Class Member by the
18 Denominator to obtain each Class Member’s “Payment Ratio”; and
- 19 c. Multiply each Class member’s Payment Ratio by the Gross Net Value to determine
20 his or her Individual Settlement Payment.
- 21 d. Final Allocation of Gross Net Value. If any Class Member submits a timely and
22 valid Request for Exclusion, the Settlement Administrator shall, within fourteen
23 (14) calendar days after the Response Deadline, reallocate their Individual
24 Settlement Payment amounts among all Participating Class Members on a *pro rata*
25 basis pursuant to the formula set forth in section 51(a)(i)-(iii), above, and provide
26 the final Individual Settlement Payment calculations to the Parties.

1 54. Class Notices. The Class Notice shall inform the Class Members of the number of
2 Eligible Work Weeks applicable to them based on Defendant's pay records and their estimated
3 Individual Settlement Payment. The Notice shall provide a procedure for challenging such
4 information.

5 55. Participating Class Members. All Class Members who do not submit a valid and
6 timely Request for Exclusion will be eligible to receive Individual Settlement Payments from the
7 Gross Net Value and be subject to the releases as provided herein.

8 56. Exclusions. The Class Notice shall state that Class Members who wish to exclude
9 themselves from the Settlement must submit a completed Request for Exclusion form by the
10 Response Deadline. The Request for Exclusion: (a) must contain the name and number of the
11 Action; (b) must contain the name, address, telephone number and the last four digits of the Social
12 Security number of the person requesting exclusion; (c) must be signed and dated by the Class
13 member; and (d) must be postmarked by the Response Deadline and returned to the Settlement
14 Administrator at the specified address. The Request for Exclusion will be rejected if it does not
15 contain a Class member's telephone number, the last four digits of the Social Security number, and
16 a statement that the Class member wishes to opt out of the Settlement. The date of the postmark
17 on the return mailing envelope on the Request for Exclusion shall be the exclusive means used to
18 determine whether a Request for Exclusion has been timely submitted. Any Class member who
19 requests to be excluded from the Class will not be entitled to recovery under the Settlement, except
20 for their share of the Net PAGA Amount, and will not be bound by the terms of the Settlement or
21 have any right to object, appeal or comment thereon. Class Members who do not submit a valid
22 and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms
23 of the Settlement, bound by the releases, and bound by any Judgment entered in this Action if the
24 Settlement is approved by the Court, even if they do not cash or otherwise negotiate their Individual
25 Settlement Payment check.

- 26 a. No later than fourteen (14) calendar days after the Response Deadline, the
27 Settlement Administrator shall provide counsel for the Parties with the number of
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1 all Class Members who have timely submitted Requests for Exclusion. At no time
2 shall any of the Parties or their counsel seek to solicit Class Members to submit
3 Requests for Exclusion from the Settlement.

4 b. The Settlement Administrator shall compile a list of all Class Members requesting
5 exclusion (the "Exclusion List"). The Settlement Administrator shall then remove
6 from the Class Member List all Class Members who appear on the Known Bad
7 Address List and Exclusion List. This new list shall be called the "Member
8 Distribution List."

9 c. Payments shall only be made to Class Members appearing on the Member
10 Distribution List, also known as Participating Class Members.

11 d. Objections. The Class Notice shall state that Class Members who wish to object to
12 the Settlement may submit a written statement of objection ("Notice of Objection")
13 by the Response Deadline and must not have submitted a Request for Exclusion. A
14 valid Notice of Objection must be postmarked by the Response Deadline and
15 returned to the Settlement Administrator at the specified address. The Notice of
16 Objection must be signed by the Class member and state: (a) the full name of the
17 Class Member; (b) the dates of employment of the Class Member; (c) the last four
18 digits of the Class Member's Social Security number and/or any Employee ID
19 number; (d) the basis for the objection; and (e) whether the Class Member intends
20 to appear at the Final Approval hearing. All Class Members, regardless of whether
21 they have submitted a written objection pursuant to the requirements above, may
22 appear at the Final Approval hearing and have their objections heard by the Court.
23 Class Members who fail to make objections either in writing in the manner specified
24 above, or in person at the Final Approval hearing, shall be deemed to have waived
25 any objections and shall be foreclosed from making any objections (whether by
26 appeal or otherwise) to the Settlement.
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- 1 e. At no time shall any of the Parties or their counsel seek to solicit or otherwise
2 encourage Class Members to submit written objections to the Settlement or appeal
3 from the Judgment. Class Counsel shall not represent any Class Members with
4 respect to any such objections.
- 5 f. The Parties and their counsel shall use their best efforts to cause the Court to grant
6 Preliminary and Final Approval of the Settlement as promptly as practical, to
7 perform all acts and execute and deliver all documents, data, and declarations
8 necessary to effectuate this Settlement, including, but not limited to, declarations
9 from the Parties in support of class certification and court approval (Preliminary and
10 Final) of the Settlement, and to oppose any objection by an objector (including any
11 appeal by an objector).

12 57. Funding and Allocation of Gross Fund Value. This is a non-reversionary, non-
13 claims made, opt-out Settlement. Defendant shall transfer funds equal to the Gross Fund Value to
14 a Qualified Settlement Fund ("QSF") to be established by the Settlement Administrator to fund the
15 Individual Settlement Payments, the Incentive Award, the Class Counsel Fees, the Class Counsel
16 Expenses, the PAGA Payment, and the Settlement Administration Costs as set forth in this
17 Agreement.

- 18 a. Defendant will fund the Gross Fund Value within six (6) months of the Effective Date
19 by electronic transfer to the Settlement Administrator ("Funding Date").
- 20 b. Qualified Settlement Fund. The QSF will be established by the Settlement
21 Administrator and administered as a Qualified Settlement Fund pursuant to the Internal
22 Revenue Code. The QSF will be controlled by the Settlement Administrator subject to
23 the terms of this Settlement and the Court's Order(s). Interest, if any, earned on monies
24 in the QSF will become part of the Gross Net Value. The Settlement Administrator
25 shall serve as Trustee of the QSF and shall act as a fiduciary with respect to the
26 handling, management, and distribution of the Gross Fund Value, including the
27 handling of tax related issues and payments. The Settlement Administrator shall act in
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1 a manner as necessary to qualify the settlement fund as a Qualified Settlement Fund
2 and to maintain the qualification.

3 c. Individual Settlement Payments. Individual Settlement Payments will be paid from the
4 Gross Net Value and shall be paid pursuant to the settlement formula set forth herein.
5 Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to
6 Participating Class Members on the Member Distribution List at the last known mailing
7 address maintained by the Settlement Administrator. Individual Settlement Awards
8 shall be allocated as follows: (i) 20% (twenty percent) as wages and (ii) 80% (eighty
9 percent) as penalties and interest. The Settlement Administrator shall issue a form W-
10 2 for amounts deemed “wages” that are paid under this Settlement and issue a form
11 1099 for the portions allocated to penalties and interest for each taxable year payments
12 are made.

13 d. With regard to the \$40,000 allocated to the PAGA Members for the claims asserted
14 under PAGA, the Claims Administrator shall determine each individual PAGA
15 Member’s *pro rata* basis based on the number of Eligible Work Weeks worked by each
16 PAGA Member during the PAGA Period, utilizing the same calculations set forth in
17 paragraph 53 above.

18 58. Individual Settlement Payment Checks That Are Returned or Not Negotiated. A
19 Participating Class Member must cash his or her Settlement Share check within 180 days after it is
20 mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement
21 Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his
22 or her correct address. If Participating Class Member’s Settlement Share check is not cashed within
23 120 days after its last mailing to the Participating Class Member, the Settlement Administrator will
24 send the Participating Class Member a letter informing him or her that unless the check is cashed
25 in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it
26 was lost or misplaced but not cashed. If the Settlement Share check of a Participating Class Member
27 remains uncashed by the expiration of the 180-day period, the uncashed funds shall be redistributed
28

1 to those Class Members who cashed their Individual Settlement Award checks. If any redistributed
2 amounts are not cashed, such check(s) shall be voided by the Settlement Administrator and
3 distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property
4 Law, California Civil Code Section 1500, *et seq.* for the benefit of those Participating Class
5 Members who did not cash their Settlement Share checks until such time that they claim their
6 property and who will remain bound by the Settlement. The Parties agree that this disposition
7 results in no “unpaid residue” under California Civil Procedure Code Section 384, as the entire Net
8 Settlement Amount will be paid out to Participating Class Members, whether or not they cash their
9 Settlement Share checks.

10 59. Incentive Award. Subject to Court approval, in exchange for the release of all
11 Released Claims, for the general release contained in paragraph 64, and for his time and effort in
12 bringing and prosecuting this matter, Plaintiff Oscar Gonzalez shall be paid an Incentive Award of
13 up to \$7,500 (Seven Thousand Five Hundred Dollars), and Defendant will not oppose an Incentive
14 Award up to such amount. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff
15 for the Incentive Award. Plaintiff shall be solely and legally responsible to pay any and all
16 applicable taxes on the Incentive Award and shall hold harmless Defendant from any claim or
17 liability for taxes, penalties, or interest arising as a result of the Incentive Award. The Incentive
18 Award shall be in addition to Plaintiff’s Individual Settlement Payment as a Participating Class
19 Member. Any amount requested by Plaintiff for the Incentive Award and that is not granted by the
20 Court shall return to the Gross Net Value and be distributed as provided in this Agreement.

21 60. Class Counsel Fees and Class Counsel Expenses. Defendant agrees not to oppose
22 or object to any application or motion by Class Counsel for attorneys’ fees not to exceed \$148,750
23 (i.e., thirty-five percent of the Gross Fund Value), to be paid out of the Gross Fund Value.
24 Defendant further agrees not to oppose any application or motion by Class Counsel for the
25 reimbursement of reasonable costs associated with Class Counsel’s prosecution of this matter not
26 to exceed \$20,000 (Twenty Thousand Dollars) from the Gross Fund Value. Class Counsel shall be
27 solely and legally responsible to pay all applicable taxes on the payment made pursuant to this
28

1 paragraph. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the
2 payments made pursuant to this paragraph. This Settlement is not contingent upon the Court
3 awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested
4 by Class Counsel for the Class Counsel Fees and Class Counsel Expenses that are not granted by
5 the Court shall return to the Gross Net Value and be distributed as provided in this Agreement.

6 61. PAGA Payment. Subject to Court approval, the Parties agree that the amount of
7 \$40,000 (Forty Thousand Dollars) from the Gross Fund Value shall be designated for satisfaction
8 of Plaintiff's and PAGA Members' claims pursuant to the PAGA. Seventy-five percent (75%) of
9 the amount designated for satisfaction of the PAGA claim, amounting to \$30,000 (Thirty Thousand
10 Dollars) shall be deducted from the Gross Fund Value. The remaining twenty-five percent (25%)
11 shall be allocated to PAGA Members based on the number of Eligible Work Weeks worked within
12 the PAGA Period. If the amount designated for satisfaction of the PAGA claim and/or PAGA
13 Payment are adjusted by the Court, it shall be adjusted by using funds from the Gross Fund Value
14 and in no event shall increase the Gross Fund Value.

15 62. Distribution Timing. Within twenty (10) calendar days of the Funding Date, as
16 defined in Paragraph 57, the Settlement Administrator shall issue payments to (a) Participating
17 Class Members and PAGA Members; (b) the LWDA; (c) Plaintiff; (d) Class Counsel; and (e) itself,
18 for Court-approved services performed in connection with the settlement.

19 63. Settlement Administration Costs. The Settlement Administrator shall be paid for
20 the costs of administration of the Settlement from the Gross Fund Value. No fewer than ten (10)
21 calendar days before the filing of the Final Approval Motion, the Settlement Administrator shall
22 provide the Parties with a statement detailing the costs of administration of the Settlement as well
23 as a declaration detailing the administration process. The Settlement Administrator, on the Parties'
24 behalf, shall have the authority and obligation to make payments, credits and disbursements,
25 including payments and credits in the manner set forth herein, to Participating Class Members
26 calculated in accordance with the methodology set out in this Settlement and orders of the Court.
27

1 The Parties agree to cooperate in the settlement administration process and to make all reasonable
2 efforts to control and minimize the cost and expenses incurred in administration of the Settlement.

3 64. General Release by Plaintiff. Plaintiff hereby unconditionally waives and forever
4 releases Defendants and the Released Parties from any and all claims, debts, liabilities, demands,
5 obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action
6 contingent or accrued for, or which arise from or are related to the allegations and claims asserted
7 in the Action, or any claims related to Plaintiff's employment with Defendant, including without
8 limitation any and all claims under state and federal law, including but not limited to claims for
9 unpaid wages, overtime compensation, premium payments, meal periods, rest periods, unsafe work
10 conditions, penalties of any kind, interest, attorneys' fees and expenses, whether known or
11 unknown arising or accruing at any time prior to the date of the entry of the final approval, claims
12 that have been raised, or that reasonably could have been raised, under the applicable Wage Orders
13 and California Labor Code Sections 200, 201-203, 218, 218.5, 226, 226.7, 510, 512, 558, 1194,
14 1194.2, 1197, 1197.2, 1198, 1199, as well as all claims under PAGA (California Labor Code section
15 2698 *et seq.*), whether or not he has standing to assert such claims under PAGA, Business and
16 Professions Code section 17200 *et seq.*, and claims for breach of any implied or express contract
17 or covenant; claims for promissory estoppel; claims of entitlement to any pay or employee benefit,
18 insurance or unit grants; claims of wrongful termination, retaliatory discharge or public policy
19 violations of whatever kind or nature, defamation, invasion of privacy, fraud, misrepresentation,
20 emotional distress or other common law or tort matters; assault, claims of harassment, retaliation
21 or discrimination based on age, race, color, religion, sex, sexual orientation, national origin,
22 ancestry, physical or mental disability, medical condition including genetic characteristics, marital
23 status, or any other protected status under federal or state law or regulation or local ordinance;
24 claims under the California Labor Code, Government, Business and Professions, and Health and
25 Safety Codes; claims based upon the California or Federal Constitutions; claims based on any
26 federal, state or other governmental statute, regulation or ordinance, including, without limitation,
27 the California Fair Employment & Housing Act, the California Family Rights Act, Title VII of the
28

Civil Rights Act, as amended, the Americans with Disabilities Act, the Labor Management Relations Act, and the Family Medical Leave Act.

- a. Release of Unknown Claims. Plaintiff acknowledges that he has had the opportunity to review and has reviewed California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

- b. Being fully informed of this provision of the California Civil Code and understanding its provisions, Plaintiff agrees to waive any rights under Section 1542, and acknowledges that this Agreement and the releases contained herein extends to all claims that they have or might have against the persons and entities released, including those which are presently unknown to them.

65. Final Approval, Entry of Judgment, and Notice to Class Members. Class Counsel shall draft the Motion for Final Approval. Then, a Final Approval hearing shall be conducted to determine final approval of the Settlement along with the amounts properly payable for: (a) Class Counsel Fees; (b) Class Counsel Expenses; (c) Incentive Award; (d) Settlement Administration Costs; and (e) PAGA Payment. The Final Approval hearing date may be continued without further notice to the Class.

66. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the Motion for Final Approval, the Parties shall also jointly file a Proposed Final Judgment and seek

1 the entry of Judgment consistent with the terms of this Agreement substantially in the form
2 evidenced in **Exhibit B**.

3 67. Nullification of Settlement Agreement. In the event: (a) the Court does not enter
4 the order for Preliminary Approval substantially in the form attached hereto as **Exhibit B**; (b) the
5 Court does not finally approve the Settlement as provided herein; (c) the Court does not enter a
6 Judgment as provided herein substantially in the form attached hereto as **Exhibit C**; or (d) the
7 Settlement does not become final for any other reason, either Party may terminate this Settlement.
8 The terminating Party shall give the other Party (through its counsel) written notice of its decision
9 to terminate no later than ten (10) calendar days after receiving notice that one of the above
10 enumerated events have occurred. Termination shall have the following effects:

- 11 a. The Settlement Agreement shall be null and void and any order or judgment entered
12 by the Court in furtherance of this Settlement shall be treated as void from the
13 beginning.
- 14 b. The Parties and any funds to be awarded under this Settlement shall be returned to
15 their respective statuses as of the date and time immediately prior to the execution
16 of this Agreement, and the Parties shall proceed in all respects as if this Agreement
17 had not been executed.
- 18 c. The Parties shall pay, in equal amounts, all Settlement Administration Costs.

19 68. Disputes Regarding Individual Settlement Payments. In the event that Class
20 Members have a dispute as to the data provided by the Defendants, Class Members will have the
21 opportunity to provide documentation and/or an explanation by the Response Deadline. If there is
22 a dispute, the Settlement Administrator will consult with the Parties to determine whether an
23 adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the
24 amounts of, any Individual Settlement Payments under the terms of this Agreement, and that
25 determination shall be binding. In no event will the Gross Value Fund be altered as a result of any
26 such disputes.

1 69. Disputes Regarding Administration of Settlement. Any disputes not resolved by the
2 Settlement Administrator concerning the administration of the Settlement will be resolved by the
3 Court under the laws of the State of California. Prior to any such involvement of the Court, counsel
4 for Parties will confer in good faith to resolve the disputes without the necessity of involving the
5 Court.

6 70. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Class Members
7 pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any
8 effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday
9 pay, retirement plans, etc.) of Plaintiff or Class Members.

10 71. No Admission by the Parties. Defendant denies any and all claims alleged in this
11 Action and denies any and all alleged wrongdoing whatsoever. This Agreement is not a concession
12 or admission, and shall not be used against Defendant as an admission or indication with respect to
13 any claim of any fault, concession or omission by Defendant.

14 72. Disposition of Data. The Parties expressly agree that all data and information shared
15 by Defendants before, at, and after the Parties' mediation of this matter is considered confidential
16 settlement communications.

17 73. Exhibits and Headings. The terms of this Agreement include the terms set forth in
18 any attached Exhibits A-C, which are incorporated by this reference as though fully set forth herein.
19 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of
20 any paragraphs or sections of this Agreement are inserted for convenience of reference only and do
21 not constitute a part of this Agreement.

22 74. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
23 except such proceedings necessary to implement and complete the Settlement, in abeyance pending
24 the Final Approval hearing to be conducted by the Court.

25 75. Amendment or Modification. This Agreement may be amended or modified only
26 by a written instrument signed by all Parties or their successors-in-interest.
27

1 76. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
2 Agreement among these Parties. No extrinsic oral or written representations or terms shall modify,
3 vary or contradict the terms of the Settlement Agreement unless made in writing and signed by duly
4 authorized representatives of all Parties.

5 77. No Prior Assignments. The Parties represent, covenant, and warrant that they have
6 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
7 encumber to any person or entity any portion of any claims, causes of action, demands, rights, and
8 liabilities of every nature and description released under this Settlement.

9 78. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
10 and represent they are expressly authorized by the Parties whom they represent to negotiate this
11 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
12 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
13 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
14 and use their best efforts to affect the implementation of the Settlement. In the event the Parties
15 are unable to reach agreement on the form or content of any document needed to implement the
16 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms
17 of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.
18 The person signing this Agreement on behalf of Defendant represents and warrants that he or she
19 is authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that
20 he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,
21 covered by this Settlement to a third-party.

22 79. Binding on Successors and Assigns. This Agreement shall be binding upon, and
23 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

24 80. California Law Governs. All terms of this Agreement and the Exhibits hereto shall
25 be governed by and interpreted according to the laws of the State of California, without giving
26 effect to any conflict of law principles or choice of law principles.

1 81. Counterparts. This Agreement may be executed in one or more counterparts. All
2 executed counterparts and each of them shall be deemed to be one and the same instrument provided
3 that counsel for the Parties to this Agreement shall exchange among themselves original signed
4 counterparts.

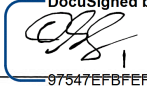
5 82. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
6 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this
7 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
8 and potential.

9 83. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the
10 interpretation, implementation and enforcement of the terms of this Agreement and all orders and
11 judgments entered in connection therewith pursuant to California Code of Civil Procedure Section
12 664.6 and all other applicable statutes, and the Parties and their counsel hereto submit to the
13 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement
14 embodied in this Agreement and all orders and judgments entered in connection therewith.

15 84. Invalidity of Any Provision. Before declaring any provision of this Agreement
16 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so
17 as to define all provisions of this Agreement valid and enforceable.

1 *Plaintiff:*

2 Date: January 14, 2022

3 By: 
4 DocuSigned by:
5 97547EFBFEF8487...
6 Oscar Gonzalez

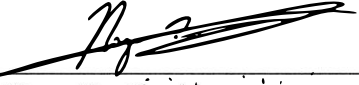
7 *Defendant NS Corporation*

8 Date: Jan. 14, 2022

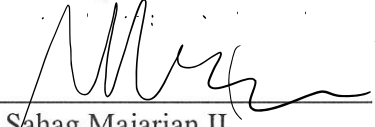
9 By: 
10 By: FRANCIS TENGGAARDJAJA
11 Its: EXEC. VP

12 *Approved as to form only:*

13 Date: January 14, 2022

14 By: 
15 Nazo Koulloukian
16 Attorney for Plaintiff

17 Date: January 14, 2022

18 By: 
19 Sahag Majarian II
20 Attorney for Plaintiff

21 Date: Jan. 14, 2022

22 By: 
23 Christopher B. Cato
24 Attorney for Defendant

25
26
27
28
JOINT STIPULATION FOR CLASS ACTION SETTLEMENT AND RELEASE