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Attorneys for Plaintiffs Jose Saldana and Thomas Johns

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

JOSE SALDANA, individually, and on
behalf of other members of the general
public similarly situated; THOMAS JOHNS,
individually, and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiffs,

vs.

INTERNATIONAL E-Z UP INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendant.

Case No.: RIC1902873

Honorable Craig G. Riemer
Department 1

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFFS'
RENEWED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Notice of Motion and Renewed Motion for
Preliminary Approval of Class Action
Settlement; Plaintiffs' Compliance Chart in
Support of Renewed Motion for Preliminary
Approval; Declarations of Proposed Class
Representatives (Jose Saldana and Thomas
Johns); Declaration of Proposed Class Counsel
(Edwin Aiwarzian); Declaration of Defendant's
Chief Financial Officer (Katie Meltzer);
Declaration of Defendant's Counsel (Brent M.
Giddens); Declaration of Proposed Settlement
Administrator (Michael Bui); Declaration of
Proposed *Cy Pres* Recipient (Jessica Munoz);
and [Proposed] Order filed concurrently
herewith]

Reservation No. RES247987
Date: August 4, 2021
Time: 8:30 a.m.
Dept: 1

Complaint Filed: May 10, 2019
Trial Date: None Set

1 5. At *Girardi & Keese*, my practice focused on class actions and complex cases
2 involving toxic torts and products liability. In addition, I gained substantial experience on cases
3 involving insurance bad faith, premises liability, and medical negligence. While employed by
4 *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150
5 depositions, and prepared dozens of expert witnesses for deposition or trial.

6 6. Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has
7 almost exclusively focused on the prosecution of consumer and employment class actions,
8 involving wage-and-hour claims, race discrimination, unfair business practices or consumer
9 fraud. Currently, we are the attorneys of record in over a dozen employment-related putative
10 class actions in both state and federal courts in the State of California. Our firm has successfully
11 litigated cases involving the executive, administrative, and other overtime exemptions to the
12 State of California and federal overtime compensation requirements. During this relatively short
13 time, in association with other law firms, we have recovered millions of dollars on behalf of
14 thousands of individuals in California.

15 **EXAMPLES OF RESULTS IN CLASS ACTION AND OTHER COMPLEX OR**
16 **WAGE-AND-HOUR CASES**

17 7. Our firm has been approved and appointed as class counsel in over 100 cases. In
18 the last two (2) years alone, our firm has obtained class certification and been appointed class
19 counsel by way of contested class certification motions in approximately nine (9) cases. What
20 follows are just a few examples of the type of results we have achieved on behalf of our clients:

21 a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
22 hour class and Private Attorneys General Act (“PAGA”) representative action against a major
23 property management company involving allegations of misclassification of various “manager”
24 positions. On September 20, 2010, the court granted final approval of the class and
25 representative action settlement. The Los Angeles Superior Court Case Number is BC400414.

26 b) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
27 hour class action against a national retailer of household items involving allegations of
28 misclassification of the “Assistant Store Manager” position. On October 28, 2010, the court

h) Our firm, in association with co-counsel, represented the plaintiff in a wage-and-hour class and PAGA representative action against a national retailer of household items, on behalf of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of the class and PAGA representative action settlement. The San Francisco Superior Court Case Number is CGC-13-532344.

i) Our firm, in association with co-counsel, represented the plaintiff in a wage-and-hour class action involving allegations of misclassification of the salaried residential “Property Manager” position. On September 17, 2015, the court granted plaintiff’s motion for class certification. The Los Angeles Superior Court Case Number is BC474784.

j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a national retailer of upscale hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Number is JCCP4794 and BC516795, and the Judicial Council Coordination Proceeding Number is JCCP No. 4794.

k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a national retailer of apparel and fashion accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles Superior Court case number is BC488069.

l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action against a national retailer of apparel, accessories, and home products, involving allegations of misclassification of the “Department Manager” position. On August 12, 2016, the court granted plaintiffs’ class certification motion in part and certified a class. The Alameda County Superior Court Case Number is RG13680477.

m) Our firm represented the plaintiff in a PAGA representative action, against a real estate and property management company, on behalf of non-exempt employees. On November 4, 2016, the court granted approval of the PAGA settlement. The Orange County Superior Court

1 s) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
2 hour class action and PAGA representative action against a lumber and hardware company on
3 behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the
4 class and PAGA representative action settlement. The Orange County Superior Court Case
5 Number is 30-2014-00747750-CU-OE-CXC.

6 t) Our firm represented the plaintiff in a wage-and-hour class and PAGA
7 representative action against a property management company, on behalf of non-exempt
8 employees. On June 14, 2017, the court granted final approval of the class and PAGA
9 representative action settlement. The Los Angeles County Superior Court Case Number is
10 BC586234.

11 u) Our firm represented the plaintiff in a wage-and-hour class and PAGA
12 representative action against a food company on behalf of non-exempt employees. On June 30,
13 2017, the court granted final approval of the class and PAGA representative action settlement.
14 The Sacramento County Superior Court Case Number is 34-2015-00175871.

15 v) Our firm represented the plaintiffs in a wage-and-hour class and PAGA
16 representative action against a chocolate company on behalf of non-exempt employees. On July
17 19, 2017, the court granted final approval of the class and PAGA representative action
18 settlement. The Alameda County Superior Court Case Number is RG15764300.

19 w) Our firm represented the plaintiff in a PAGA representative action, against the
20 parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
21 October 18, 2017, the court granted approval of the PAGA representative action settlement. The
22 Los Angeles County Superior Court Case Number is BC569664.

23 x) Our firm represented the plaintiffs in a wage-and-hour class and PAGA
24 representative action against a manufacturer of plastic containers on behalf of non-exempt
25 employees. On October 31, 2017, the court granted final approval of the class and PAGA
26 representative action settlement. The Los Angeles County Superior Court Case Number is
27 BC577233.

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1 ee) Our firm, in association with co-counsel, represents the plaintiffs in a wage-and-
2 hour class action against a national retailer of apparel and fashion accessories, on behalf of non-
3 exempt employees. On July 31, 2019, the court granted plaintiffs' motion for class certification
4 in part and certified a class. The Sacramento County Superior Court Case Number is 34-2015-
5 00175330-CU-OE-GDS.

6 ff) Our firm, in association with co-counsel, represents the plaintiff in a wage-and-
7 hour class action against a parking company on behalf of non-exempt employees. On September
8 3, 2019, the court granted the plaintiff's motion for class certification and certified a class. The
9 Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial Council
10 Coordination Proceeding Number is JCCP No. 4886.

11 gg) Our firm, in association with co-counsel, represents the plaintiffs in a wage-and-
12 hour class and PAGA representative action against a bank on behalf of non-exempt employees.
13 On September 27, 2019, the court granted the plaintiffs' motion for class certification in part
14 and certified a class. The Alameda County Superior Court Case Number is RG15757606 and
15 the Judicial Council Coordination Proceeding Number is JCCP No. 4921.

16 hh) Our firm, in association with co-counsel, on behalf of the plaintiff and respondent
17 in a PAGA representative action, successfully opposed in the trial court, and briefed and argued
18 an appeal with respect to the employer's motion to compel arbitration, resulting in a notable
19 decision from the California Supreme Court clarifying the law and finding, in part, that employer
20 arbitration agreements are unenforceable where they block a PAGA claim from proceeding, *ZB,*
21 *N.A. v. Superior Court*, 8 Cal.5th175 (2019).

22 ii) Our firm, in association with co-counsel, represents the plaintiffs in a wage-and-
23 hour class and PAGA representative action against a national retailer of apparel and fashion
24 accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted the
25 plaintiffs' motion for class certification in part and certified a class. The Sacramento County
26 Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

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1 class certification and certified a class. The San Diego County Superior Court Case Number is
2 37-2015-00025968-CU-OE-CTL.

3 **PRELIMINARY APPROVAL**

4 8. Marked and attached hereto as “**EXHIBIT 1**” is the First Amended Joint
5 Stipulation of Class and PAGA Settlement and Release (“Settlement,” “Agreement,” or
6 “Settlement Agreement”) entered into by and between Plaintiffs Jose Saldana and Thomas
7 Johns, individually and on behalf of all others similarly situated and other aggrieved employees,
8 on the one hand, and Defendant International E-Z up Inc. (“Defendant”), on the other hand
9 (collectively, the “Parties”). For ease of reference by the Court, and in conformity with the
10 requirement of the Case Management Order, attached as “**EXHIBIT 2**” is a redline comparing
11 the original settlement agreement and exhibits thereto (i.e., the original Class Notice, Exclusion
12 Form, and Objection Form) to the revised and amended settlement agreement and exhibits
13 thereto (i.e., the revised Class Notice, revised Exclusion Form, and revised Objection Form).
14 The Parties and their counsel have approved the proposed Notice of Class Action Settlement
15 (“Class Notice”), Exclusion Form, and Objection Form, attached as “**EXHIBIT 1**,” “**EXHIBIT**
16 **2**,” and “**EXHIBIT 3**,” respectively, to the [Proposed] Order Granting Preliminary Approval of
17 Class Action Settlement, and respectfully request that the Court approve them as well.

18 9. Based on information provided by Defendant, as of May 2020, the Class is
19 estimated to consist of approximately two hundred eighty (280) individuals, of which one
20 hundred and eighty-five (185) individuals are considered to be Aggrieved Employees.

21 10. The effectiveness of Lawyers for Justice PC (“Class Counsel”) in prosecuting this
22 case has translated into tangible monetary benefits for the Class Members and State of California
23 in the following respects: (1) a recovery for them over a reasonably short period of time as
24 opposed to waiting additional years for the same, or possibly worse, result; (2) a guaranteed
25 result that compares favorably with other similar class action settlements of this type given the
26 strengths and weaknesses of the case; and (3) significant savings in Class Counsel’s litigation
27 fees and/or costs that would have only increased significantly had the case progressed through
28 certification, trial, and/or appeals.

1 Employee Handbook, weekly Earnings Schedule, forms, internal memoranda (including,
2 Building Hours and Card Access Areas and Employee Parking), Evaluation Guideline, Meal
3 Break Waiver, Time Clock Missed Punch Request Form, acknowledgments (including
4 Employee Payroll Swipe Card), Property Inspection Policy, Prohibited Time Clock Actions, and
5 Defendant's operations and employment practices, procedures, and policies, among other
6 information and documents. Class Counsel interviewed Plaintiffs to gather facts and to identify
7 potential witnesses. Counsel for the Parties also met and conferred on numerous occasions, e.g.,
8 to discuss issues relating to the pleadings and the production of documents and data. Class
9 Counsel also drafted a mediation brief and prepared for and attended two (2) sessions of
10 mediation.

11 13. Counsel for the Parties have also invested time researching and investigating the
12 applicable law, which is constantly evolving as it relates to class certification, representative
13 PAGA claims, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims and
14 damages, and Defendant's defenses thereto, as well as facts discovered. Based on our analysis,
15 I submit that the result achieved in this litigation is fair, adequate, and reasonable.

16 14. The Settlement provides for a Gross Settlement Fund of \$950,000. The Net
17 Settlement Amount is the Gross Settlement Fund less the following amounts subject to approval
18 by the Court: Attorneys' Fees (up to \$332,500) and Litigation Costs (up to \$40,000) to Class
19 Counsel, Enhancement Awards to Plaintiffs (combined amount of up to \$13,500), Settlement
20 Administration Costs to the Settlement Administrator (up to \$10,000), and PAGA Settlement
21 Amount (\$75,000). Assuming that the amounts allocated under the Settlement toward these
22 payments are awarded by the Court, the Net Settlement Amount is estimated to be no less than
23 Four Hundred Eighty Thousand Dollars (\$480,000). Under the Settlement Agreement, the final
24 available Net Settlement Amount will be distributed to Settlement Class Members and 25% of
25 the PAGA Settlement Amount (i.e., \$18,750) will be distributed to Aggrieved Employees, and
26 no portion will revert to Defendant.

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1 penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code
2 sections 2698, *et seq.*). Plaintiffs allege that Class Members were subject to the same or similar
3 operations and employment policies, practices, and procedures. Additionally, Plaintiffs allege
4 that Defendant's recordkeeping practices with respect to Plaintiffs and the Class Members were
5 substantially the same during the time period at issue. As a result, Plaintiffs claim that the Class
6 Members were uniformly not paid all of the compensation that was owed to them by Defendant
7 during the Class Period. Thus, it is clear that the outcome of this litigation would be determined
8 by Defendant's uniform operations and employment practices, policies, and procedures that
9 applied across its hourly-paid or non-exempt employees in California during the Class Period.

10 17. Class Counsel is aware of the defenses and positions of Defendant but believes
11 that Plaintiffs could potentially obtain class certification despite many obstacles. Plaintiffs have
12 also taken into account the uncertainty and risk of the outcome of further litigation, and the
13 difficulties and delays inherent in such litigation, including those involved in class certification
14 and representative adjudication. Plaintiffs further recognize the burdens of proof necessary to
15 establish liability for the claims asserted in the lawsuit, Defendant's defenses, and the difficulties
16 in establishing entitlement to monetary recovery. Plaintiffs have also considered the Parties'
17 settlement discussions as well as the evaluations of the mediator, who is experienced and well-
18 regarded in complex labor and employment matters.

19 18. Defendant, on the other hand, denied and continues to deny any liability and
20 wrongdoing of any kind associated with the claims alleged in the action, and further denies that
21 the action is appropriate for class treatment or representative adjudication for any purpose other
22 than this Settlement. Defendant believes that it would ultimately succeed in the action. Both
23 sides have also had the opportunity to interview witnesses and review documents and
24 information relating to Plaintiffs' and the Class Members' employment with Defendant, and
25 Defendant's operations and employment policies, practices, and procedures. The Parties also
26 reviewed and analyzed a large volume of documents and data, including but not limited to a
27 detailed sampling of Class Members' time and pay information, to determine the potential value
28 and strength of the claims. The available information enabled Class Counsel to estimate the

FEE SPLIT ARRANGEMENT

22. Lawyers for Justice, PC has not entered into a fee splitting agreement or arrangement with any other counsel.

RELATION TO PROPOSED CY PRES RECIPIENT

23. I made reasonable inquiry of Plaintiffs and other members at Lawyers for Justice, PC, and to the best of my knowledge, neither I, Plaintiffs, nor other members at Lawyers for Justice, PC have any relationship with the proposed *cy pres* recipient Riverside CASA.

ESTIMATED SETTLEMENT PAYMENTS TO CLASS MEMBERS

24. Based on data provided by Defendant to Class Counsel in February 2021, the maximum Individual Settlement Payment is estimated to be \$4,652.75, the minimum Individual Settlement Payment is estimated to be \$17.83, and the average Individual Settlement Payment is estimated to be \$1,711.36. Based on data provided by Defendant to Class Counsel in February 2021, the maximum Individual PAGA Payment is estimated to be \$183.38, the minimum Individual PAGA Payment is estimated to be \$3.46, and the average Individual PAGA Payment is estimated to be \$100.34.

ESTIMATE OF THE VALUE OF THE CLAIMS

25. Plaintiffs' action alleges that Defendant has violated the California Labor Code by engaging in a uniform policy and systematic scheme of wage abuse against Plaintiffs and the putative class members, including, *inter alia*, failing to properly compensate overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages and associated waiting-time penalties, failing to provide compliant wage statements, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices under the California Business and Professions Code and owes civil penalties recoverable under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* ("PAGA").

26. Having evaluated hundreds of wage-and-hour class action cases, I am experienced and qualified to evaluate the claims of the putative class members and Defendant's defenses.

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1 work. California Labor Code section 1198 and the applicable Industrial Welfare Commission
2 (“IWC”) Wage Order(s) provide that it is unlawful to employ persons without compensating
3 them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay,
4 depending on the number of hours worked by the person on a daily or weekly basis.

5 31. California Labor Code section 1197 provides that it is unlawful to pay employees
6 at a rate less than the minimum wage. California Labor Code sections 1194, 1194.2, 1197, and
7 1197.1 provide that an employee may seek to recover unlawfully unpaid wages by court action,
8 as well as liquidated damages in an amount equal to the wages unlawfully not paid and interest
9 thereon. California Labor Code section 1197.1 provides for civil penalties, which, arguably,
10 may only be recovered by the Labor Commissioner during a one-year statute of limitations
11 period.

12 32. Defendant contended, *inter alia*, that its overtime policies and practices comply
13 with the law, and that it paid putative class members over the California minimum wage for all
14 hours worked. Defendant contended that it correctly calculated putative class members’ regular
15 rate of pay for purposes of paying overtime and that any bonuses paid to putative class members
16 was discretionary. Defendant also produced wage records reflecting overtime compensation
17 paid to many of the putative class members (including, and not limited to, Plaintiffs). Defendant
18 further contended that all employees were required to record all time worked and were given
19 the opportunity to make any necessary revisions or changes to their time worked, and that
20 Defendant was not aware that any work had been performed off-the-clock. Defendant also
21 argued that individual liability issues predominate, including: (a) whether each employee
22 worked off-the-clock; (b) whether Defendant knew or should have known about each
23 employee’s off-the-clock work; (c) whether each employee worked overtime; and (d) whether
24 Defendant knew or should have known that each putative class member performed overtime
25 work. Defendant also contended that the putative class members held different job titles and
26 had different job duties and that these circumstances would raise highly individualized questions
27 of fact and would pose challenges to certification and the merits of the claims for overtime and
28 minimum wages.

1 certification (bringing the value of the claim closer to \$243,331.18), a discount of 50% was
2 applied to account for the risks associated with succeeding on the merits and establishing
3 liability (bringing the value of the claim closer to \$121,665.59), and a discount of 50% was
4 applied to account for the risks associated with proving the extent of damages and obtaining an
5 award thereof (bringing the value of the claim closer to \$60,832.80).

6 **B. Failure to Provide Compliant Meal and Rest Periods and Associated Premiums**

7 35. Plaintiffs' theory of liability was also based on Defendant's failure to provide
8 timely, full, and/or uninterrupted meal and rest periods. Plaintiffs contended, *inter alia*, that
9 Defendant's policies, practices, and procedures required employees to perform job duties (e.g.,
10 answering work inquiries from supervisors) during their meal and rest periods in part due to
11 assigning heavy workloads and understaffing and prevented them from regularly receiving
12 compliant meal and rest periods. Plaintiffs further contended that Defendant failed to pay a
13 meal and rest period premiums for missed, late, short, or interrupted meal periods in every
14 instance that one was due.

15 36. Under California law, an employer must provide an employee with uninterrupted
16 meal periods of not less than thirty (30) minutes before the employee works more than five (5)
17 hours, except that if the total work period per day of the employee is no more than six (6) hours,
18 the meal period may be waived by mutual consent of both the employer and employee. Cal.
19 Lab. Code § 512(a). A second meal period of not less than thirty (30) minutes is required if an
20 employee works more than ten (10) hours per day, except that if the total hours worked is no
21 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
22 employer and employee only if the first meal period was not waived. *Id.* An "on-duty" meal
23 period may be agreed to only if "the nature of the work prevents an employee from being
24 relieved of all duty and when by written agreement between the parties an on-the-job paid meal
25 period is agreed to." IWC Wage Orders 1 through 15, § 11; IWC Wage Order 16, § 10. An
26 employer must pay each employee to whom it fails to "provide" a meal period one hour of wages
27 at his or her regular rate of pay "for each work day that the meal or rest period is not provided."
28 Cal. Lab. Code § 226.7(b).

1 average hourly rate of \$15.29).

2 40. Class Counsel also considered the risk of further litigating the case, including the
3 significant additional costs that will be incurred by both sides if the case does not settle, as
4 litigating a class action through class certification, trial, and/or appeals is very expensive.
5 Moreover, litigating meal and rest period claims is inherently difficult as an employer's records,
6 as is the case here, do not usually indicate when a meal period is interrupted or when a rest
7 period is missed, late, short and/or interrupted. While Class Counsel disagreed with Defendant's
8 arguments and factual contentions, Class Counsel recognized the circumstances and realities of
9 the case, applicable case law and regulations, costs and expenses of further litigation and
10 certification, and risks to recovery, and applied appropriate discounts for them. At this juncture,
11 a discount of 30% was applied to account for the risks associated with obtaining and maintaining
12 certification (bringing the value of the claim closer to \$1,419,431.86), a discount of 40% was
13 applied to account for the risks associated with succeeding on the merits and establishing
14 liability (bringing the value of the claim closer to \$851,659.12), and a discount of 40% was
15 applied to account for the risks associated with proving the extent of damages and obtaining an
16 award thereof (bringing the value of the claim closer to \$510,995.47).

17 **C. Waiting-Time Penalties for Failure to Timely Provide Wages During Employment**
18 **and Upon Termination**

19 41. California Labor Code section 204 provides that wages earned by any person in
20 any employment between the 1st and 15th days, inclusive, of any calendar month, other than
21 those wages due upon termination of an employee, are due and payable between the 16th and
22 the 26th day of the month during which the labor was performed. Further, all wages earned by
23 any person in any employment between the 16th and the last day, inclusive, of any calendar
24 month, are due and payable between the 1st and the 10th day of the following month.

25 42. Plaintiffs alleged that Defendant intentionally and willfully failed to pay Plaintiffs
26 and putative class members all wages due to them while they were employed by Defendant,
27 within the time period permissible under California law. These wages included, but were not
28 limited to, minimum, regular, and overtime wages and meal and rest break premiums. However,

1 x [30 days x hourly rate of \$15.29 x 8 hours]], or approximately \$3,669.60 per individual.
2 However, this presumes that Plaintiffs would prevail on the underlying California Labor Code
3 claims, which is necessary to show that Defendant failed to timely pay wages that were due to
4 the putative class members upon termination.

5 47. Defendant was adamant that no waiting-time penalties should be awarded.
6 Defendant pointed out that waiting-time penalties are derivative of each and every other
7 underlying alleged California Labor Code violations and contended that it paid the terminated
8 employees all wages due and owing. Moreover, Defendant emphasized that, under California
9 Labor Code section 203, employers are only obligated to pay waiting-time penalties if they
10 “willfully” fail to pay wages due and owing at the time of termination or resignation. As Title
11 8, California Code of Regulations, section 13520 states,

12 A willful failure to pay wages within the meaning of Labor Code Section 203 occurs
13 when an employer intentionally fails to pay wages to an employee when those wages
14 are due. However, a good faith dispute that any wages are due will preclude
imposition of waiting time penalties under Section 203.

15 A “good faith dispute” that any wages are due occurs when an employer presents a
16 defense, based in law or fact, which, if successful, would preclude any recovery on
17 the part of the employee. The fact that a defense is ultimately unsuccessful will not
18 preclude a finding that a good faith dispute did exist. Defenses presented which,
under all the circumstances, are unsupported by any evidence, are unreasonable, or
are presented in bad faith, will preclude a finding of a “good faith dispute.”

19 48. Accordingly, to assess the likely recovery of waiting-time penalties, Class
20 Counsel also took into consideration the chances of prevailing on each of the underlying causes
21 of action, as well as the additional hurdles of prevailing on the claim for waiting-time penalties,
22 including the inherent difficulty in proving the “willful” prong of section 203, applicable case
23 law, costs and expenses associated with further litigation and certification, the circumstances
24 and realities of the case, and risks to recovery, and applied appropriate discounts for them. At
25 this juncture, a discount of 50% was applied to account for the risks associated with obtaining
26 and maintaining certification (bringing the value of the claim closer to \$223,845.60), a discount
27 of 50% was applied to account for the risks associated with succeeding on the merits and
28 establishing liability (bringing the value of the claim closer to \$111,922.80), and a discount of

1 shown. When assessing the value of this claim, Class Counsel considered these factors, the
2 derivative nature of this alleged violation, the chances of prevailing on each of the underlying
3 causes of action, applicable case law and regulations, costs and expenses associated with further
4 litigation and certification, realities of the case, and risks to recovery, and applied appropriate
5 discounts for them. At this juncture, a discount of 50% was applied to account for the risks
6 associated with obtaining and maintaining certification (bringing the value of the claim closer
7 to \$265,600.00), a discount of 50% was applied to account for the risks associated with
8 succeeding on the merits and establishing liability (bringing the value of the claim closer to
9 \$132,800.00), and a discount of 50% was applied to account for the risks associated with proving
10 the extent of damages and obtaining an award thereof (bringing the value of the claim closer to
11 \$66,400.00).

12 **E. Failure to Maintain Requisite Payroll Records**

13 52. Plaintiffs alleged that Defendant had intentionally and willfully failed to keep
14 accurate and complete payroll records showing the hours worked daily by, and the wages paid
15 to, Plaintiffs and the putative class members. Plaintiffs also alleged that Defendant's intentional
16 and willful failure to keep accurate payroll records violated the statutorily-protected right to
17 accurate and complete payrolls records, and that Plaintiffs and putative class members have
18 suffered injury and damage as a result.

19 53. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
20 central location in the state or at the plants or establishments at which employees are employed,
21 payroll records showing the hours worked daily by and the wages paid to, and the number of
22 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
23 respective plants or establishments. These records must be kept in accordance with rules
24 established for this purpose by the Labor Commissioner, but in any case, shall be kept on file
25 for not less than three years. Under California Labor Code section 1174.5, a willful violation of
26 the employer's recordkeeping obligations set forth in California Labor Code section 1174(d) is
27 subject to a civil penalty of \$500. Arguably, this civil penalty would only be recoverable by the
28 Labor Commissioner, however, Plaintiffs assert a cause of action under PAGA. Therefore, the

1 contended that the reason for why a putative class member undertook certain expenses, while
2 not others, and failed to receive reimbursement for certain expenses while not others, would
3 raise individual issues that could not be certified.

4 59. Defendant also contended that the California Labor Code only requires
5 reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the
6 course of performing work—and argued that distinguishing a necessary expense from an
7 unnecessary one would require individualized inquiry. See, Cal. Lab. Code § 2802; *Gattuso v.*
8 *Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Furthermore, whether or not an expense
9 was necessary, would depend, in part, on the reasonableness of the employee’s choice, and
10 whether or not an expense was incurred, would have to be established by way of extensive
11 individual factual inquiry and/or statistical evidence. *Cochran v. Schwan’s Home Services, Inc.*
12 (2014) 228 Cal.App.4th 1137.

13 60. If Plaintiffs proved that Defendant willfully failed to reimburse necessary
14 business-related expenses to putative class members in the amount of five dollars (\$5) each per
15 workweek during the relevant time period, Plaintiffs’ estimate of the potential value of this claim
16 if it was entirely successful at trial would be \$132,620.00 (24,053 total workweeks x \$5 business
17 expenses). Class Counsel also took into consideration that, not only would it have to be
18 established that expenses were incurred, but also that the nature of the expenses were such that
19 Defendant was required to reimburse them. While Class Counsel disagreed with Defendant’s
20 arguments and factual contentions, Class Counsel considered Defendant’s arguments,
21 applicable case law and regulations, the costs and expenses associated with further litigation and
22 certification, the circumstances and realities of the case, and risks to recovery, and applied
23 appropriate discounts for them. At this juncture, a discount of 50% was applied to account for
24 the risks associated with obtaining and maintaining certification (bringing the value of the claim
25 closer to \$66,310.00), a discount of 50% was applied to account for the risks associated with
26 succeeding on the merits and establishing liability (bringing the value of the claim closer to
27 \$33,155.00), and a discount of 40% was applied to account for the risks associated with proving
28 the extent of damages and obtaining an award thereof (bringing the value of the claim closer to

1 certification. When assessing the likelihood of prevailing on this cause of action, Class Counsel
2 considered all of the above, as well as Defendant's factual contentions and legal arguments, the
3 chances of prevailing on the other causes of action, costs and expenses associated with further
4 litigation and certification, and risks to recovery, and applied appropriate discounts for
5 settlement purposes.

6 **H. PAGA Penalties**

7 65. Under the PAGA, civil penalties to be assessed and collected by the state labor
8 agency for a violation of the California Labor Code, may, as an alternative, be recovered by an
9 aggrieved employee plaintiff. If the California Labor Code already specifies and provides a
10 civil penalty for the violation of a provision of the California Labor Code, said civil penalty is
11 recoverable by the aggrieved employee plaintiff. Additionally, the PAGA statute establishes a
12 civil penalty that is recoverable by an aggrieved employee plaintiff, for violation of provisions
13 of the California Labor Code for which the California Labor Code does not specifically provide
14 for a civil penalty, as follows: one hundred dollars (\$100) for each aggrieved employee per pay
15 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
16 pay period for each subsequent violation. Cal. Lab. Code § 2699(f). Pursuant to California
17 Labor Code section 2699(i), seventy-five percent (75%) of the penalties recovered must be
18 allocated to the State of California, with the remaining twenty-five percent (25%) allocated to
19 the aggrieved employees. The statute of limitations period applicable to such penalties is one
20 year prior to the filing of the complaint. Cal. Code Civ. Proc. § 340.

21 66. Defendant contended that violations of multiple provisions of the California Labor
22 Code would not give rise to cumulative penalties, and at best, would only trigger an initial
23 violation penalty and a subsequent violation penalty once per pay period, if at all.

24 67. Defendant contended that an important feature of the PAGA statute is that, when
25 determining whether or not to assess a penalty, the court exercises the same discretion that the
26 LWDA has and may reduce the penalties to be assessed against the employer pursuant to section
27 2699(e)(1)-(2). As such, Defendant contended that, with respect to a PAGA claim, the Court
28 was unlikely to assess cumulative penalties for the maximum number of possible, separate

1 70. Defendant would also likely seek bifurcation of discovery and/or trial of the
2 PAGA claim – many courts have taken such an approach.

3 71. Defendant also maintained that, in addition to its strong arguments against the
4 underlying claims, taking the current unsettled state of law, it would be unjust to award the
5 maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials
6 and/or assessment of penalties under the PAGA statute, and there is no clearly-established
7 methodology for the valuation and/or assessment of PAGA penalties.

8 72. Defendant also contended that before a PAGA claim could be tried, under existing
9 law, the court of law would have to be satisfied that the adjudication of the PAGA claim, based
10 on a theory of uniform wage and hour practices relating to a large group of aggrieved employees,
11 is sufficiently “manageable” so as not to interfere with Defendant’s right to due process.
12 Defendant asserted that the aggrieved employees worked different positions, and that their job
13 roles, job duties, departments, and work hours varied. Defendant contended that there was
14 variation as to the circumstances that could allegedly cause the employees to work off-the-clock,
15 or to be deprived of the opportunity to take legally-compliant, duty-free meal and/or rest periods.
16 Defendant further contended that these issues presented challenges to Plaintiffs’ ability to show
17 that a PAGA claim could be efficiently and manageably adjudicated without abridging
18 Defendant’s due process rights.

19 73. Defendant pointed to case law that held that, given the derivative nature of a
20 PAGA claim, it would stand or fall based on the claims from which it derives, and the success
21 of showing, *inter alia*, off-the-clock work, failure to properly pay wages, failure to reimburse
22 for expenses, etc. Defendant also pointed to case law demonstrating that courts have attributed
23 little separate value to PAGA claims, for example, allowing them to be resolved for \$0 where
24 the other underlying California Labor Code claims are being resolved. See, e.g. *Matter of*
25 *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 588-590 (No abuse of discretion by
26 the trial court in approving the allocation of \$0 toward PAGA penalties, where PAGA claim is
27 resolved as a part of an overall resolution of the underlying California Labor Code violations);
28 *Franco v. Ruiz Food Prods, Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL

1 of the claim closer to \$70,447.50).

2 76. Although, strictly-speaking, class certification requirements are not required to be
3 satisfied in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication
4 and valuation of a PAGA claim is uncertain. Instead, what is clear is that the purpose of the
5 PAGA is not to generate revenue for the State, but rather, to facilitate the enforcement of the
6 labor laws. See, e.g., *Williams v. Superior Court* (2017) 3 Cal. 5th 531, 546; *Arias v. Superior*
7 *Court* (2009) 46 Cal.4th 969, 986; Cal. Lab. Code § 2699(i). In assessing the adequacy of the
8 recovery under a PAGA claim, the focus is not the amount which the LWDA and the aggrieved
9 employees are to receive formally in the form of monetary civil penalties, but instead, whether
10 the total settlement amount achieves the PAGA's objectives. "When PAGA claims are settled,
11 courts "consider whether the proposed PAGA settlement is fair and adequate in view of the
12 purposes and policies of the statute[]" and "[t]hose purposes and policies include benefit[ing]
13 the public by augmenting the state's enforcement capabilities, encouraging compliance with
14 California Labor Code provisions, and deterring noncompliance." *O'Connor v. Uber Techs.,*
15 *Inc.*, 201 F. Supp. 3d 1110, 1132-33 and 1135 (N.D. Cal. 2016). A "[c]ourt does not review the
16 PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine whether
17 it is fundamentally fair, reasonable and adequate, with primary consideration for the interests of
18 absent class members." LWDA Response at 4, *O'Connor v. Uber Techns.*, No. 13-CV- 03826-
19 EMC, Docket No. 736 (N.D. Cal. July 29, 2016). "PAGA penalties must be evaluated in terms
20 of their public policy objective and not just through the prism of what private relief has been
21 sought or obtained." *Id.* at 4.

22 77. Here, the overall relief obtained by way of the Settlement is significant, not only
23 from a monetary perspective, but also, from the perspective of deterring noncompliance with
24 (and thereby, facilitating enforcement of) California labor laws. Defendant has agreed to pay
25 \$950,000 to settle disputed claims. Based on the analysis and valuation of the claims, it was
26 determined that a PAGA allocation of \$75,000 is appropriate. The potential value of the PAGA
27 claim is \$313,100.00 (which is 7.01% of the potential value of all of the claims) and the
28 reasonable value of the PAGA claim is \$70,447.50 (which is 7.51% of the reasonable value of

1 The conclusion to be drawn from the foregoing analysis is that neither class certification,
2 liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide basis is
3 clear-cut, which is why the Parties elected to settle this matter. Class Counsel recognized the
4 circumstances and realities of the case, applicable case law and regulations, the costs and
5 expenses of further litigation and certification, and risks to recovery and applied appropriate
6 discounts as discussed above. This Settlement involves highly disputed claims and, like most
7 other settlements, is the product of compromise.

8 79. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is
9 in the best interest of the Class. Class Counsel also submits that the Settlement and
10 accompanying moving papers satisfy the requirements set forth in the Class Action Case
11 Management Order #1 issued by the Court, as reflected in the concurrently-filed Compliance
12 Chart. Class Counsel further submits that the Settlement is within an acceptable range of
13 recovery for this type of litigation given the strengths and weaknesses of this action, the inherent
14 costs and risks of further litigation, and the costs and risks associated with representative
15 adjudication, class certification, trial, and/or appeals.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed on this ____ day of July 2021, at Glendale, California.

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20 _____
Edwin Aiwanian
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DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiffs Jose Saldana and Thomas Johns (together “Plaintiffs”). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EDUCATION

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles County Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

LITIGATION AND CLASS ACTION EXPERIENCE

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by the law firm of *Girardi & Keese*.

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1 5. At *Girardi & Keese*, my practice focused on class actions and complex cases
2 involving toxic torts and products liability. In addition, I gained substantial experience on cases
3 involving insurance bad faith, premises liability, and medical negligence. While employed by
4 *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150
5 depositions, and prepared dozens of expert witnesses for deposition or trial.

6 6. Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has
7 almost exclusively focused on the prosecution of consumer and employment class actions,
8 involving wage-and-hour claims, race discrimination, unfair business practices or consumer
9 fraud. Currently, we are the attorneys of record in over a dozen employment-related putative
10 class actions in both state and federal courts in the State of California. Our firm has successfully
11 litigated cases involving the executive, administrative, and other overtime exemptions to the
12 State of California and federal overtime compensation requirements. During this relatively short
13 time, in association with other law firms, we have recovered millions of dollars on behalf of
14 thousands of individuals in California.

15 **EXAMPLES OF RESULTS IN CLASS ACTION AND OTHER COMPLEX OR**
16 **WAGE-AND-HOUR CASES**

17 7. Our firm has been approved and appointed as class counsel in over 100 cases. In
18 the last two (2) years alone, our firm has obtained class certification and been appointed class
19 counsel by way of contested class certification motions in approximately nine (9) cases. What
20 follows are just a few examples of the type of results we have achieved on behalf of our clients:

21 a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
22 hour class and Private Attorneys General Act (“PAGA”) representative action against a major
23 property management company involving allegations of misclassification of various “manager”
24 positions. On September 20, 2010, the court granted final approval of the class and
25 representative action settlement. The Los Angeles Superior Court Case Number is BC400414.

26 b) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
27 hour class action against a national retailer of household items involving allegations of
28 misclassification of the “Assistant Store Manager” position. On October 28, 2010, the court

1 granted final approval of the class action settlement. The Los Angeles Superior Court Case
2 Number is BC413498.

3 c) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
4 hour class action against a national property management company involving allegations of
5 misclassification of the “Property Manager” position. On May 23, 2012, the court granted final
6 approval of the class action settlement. The Los Angeles Superior Court Case Number is
7 BC430918.

8 d) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
9 hour class action involving allegations of misclassification of the “Store Manager” position. On
10 June 10, 2011, the court granted plaintiffs’ motion for class certification. On August 26, 2013,
11 the court granted final approval of the class action settlement. The Los Angeles Superior Court
12 Case Number is BC424012.

13 e) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
14 hour class and PAGA representative action against a bank, involving allegations of
15 misclassification of the “Assistant Branch Manager” position. On August 27, 2013, the court
16 granted final approval of the class and PAGA representative action settlement. The Kern
17 Superior Court Case Number is S-1500-CV-273194-LHB.

18 f) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
19 hour class and PAGA representative action against a national wholesale distributor of plumbing
20 and builder supplies, involving allegations of misclassification of multiple salaried “manager”
21 positions. On May 22, 2014, the court granted final approval of the class and PAGA
22 representative action settlement. The Sacramento Superior Court Case Number is 34-2012-
23 00136285.

24 g) Our firm, in association with co-counsel, represented the plaintiff in a wage-and-
25 hour class action against a multinational corporation that provides global workplace solutions,
26 involving allegations of misclassification of the salaried “Operations Manager” position. On
27 September 16, 2014, the court granted plaintiff’s motion for class certification. The Los Angeles
28 Superior Court Case Number is BC478769.

1 h) Our firm, in association with co-counsel, represented the plaintiff in a wage-and-
2 hour class and PAGA representative action against a national retailer of household items, on
3 behalf of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final
4 approval of the class and PAGA representative action settlement. The San Francisco Superior
5 Court Case Number is CGC-13-532344.

6 i) Our firm, in association with co-counsel, represented the plaintiff in a wage-and-
7 hour class action involving allegations of misclassification of the salaried residential “Property
8 Manager” position. On September 17, 2015, the court granted plaintiff’s motion for class
9 certification. The Los Angeles Superior Court Case Number is BC474784.

10 j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
11 hour class and PAGA representative action against a national retailer of upscale hardware and
12 home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted
13 final approval of the class and PAGA representative action settlement. The Los Angeles County
14 Superior Court Case Number is JCCP4794 and BC516795, and the Judicial Council
15 Coordination Proceeding Number is JCCP No. 4794.

16 k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
17 hour class and PAGA representative action against a national retailer of apparel and fashion
18 accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final
19 approval of the class and PAGA representative action settlement. The Los Angeles Superior
20 Court case number is BC488069.

21 l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
22 hour class action against a national retailer of apparel, accessories, and home products, involving
23 allegations of misclassification of the “Department Manager” position. On August 12, 2016,
24 the court granted plaintiffs’ class certification motion in part and certified a class. The Alameda
25 County Superior Court Case Number is RG13680477.

26 m) Our firm represented the plaintiff in a PAGA representative action, against a real
27 estate and property management company, on behalf of non-exempt employees. On November
28 4, 2016, the court granted approval of the PAGA settlement. The Orange County Superior Court

Case Number is 30-2015-00775439-CU-OE-CXC.

n) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a full-service bank, on behalf of non-exempt employees. On November 18, 2016, the court granted final approval of the class and PAGA representative action settlement. The San Francisco Superior Court case number is CJC-13-004839 and the Judicial Council Coordination Proceeding Number is JCCP No. 4839.

o) Our firm represented the plaintiffs in a wage-and-hour class and PAGA representative action against a foodservice distributor, on behalf of non-exempt employees. On January 26, 2017, the court granted final approval of the class and representative action settlement. The San Bernardino County Superior Court Case Number is CIVDS1507260.

p) Our firm, on behalf of the plaintiff and respondent in a PAGA representative action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the employer's motion to compel arbitration, which resulted in a published opinion by the California Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply*, 9 Cal.App.5th 439 (Cal. App. 4th Dist., Mar. 7, 2017), review denied, cert. denied (U.S. Supreme Court Docket No. 17-254).

q) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a consumer packaging company, on behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Number is BC590429.

r) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a manufacturer of food service industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final approval of the class and PAGA representative action settlement. The Orange County Superior Court Case Number is 30-2015-00810013-CU-OE-CXC.

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1 s) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
2 hour class action and PAGA representative action against a lumber and hardware company on
3 behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the
4 class and PAGA representative action settlement. The Orange County Superior Court Case
5 Number is 30-2014-00747750-CU-OE-CXC.

6 t) Our firm represented the plaintiff in a wage-and-hour class and PAGA
7 representative action against a property management company, on behalf of non-exempt
8 employees. On June 14, 2017, the court granted final approval of the class and PAGA
9 representative action settlement. The Los Angeles County Superior Court Case Number is
10 BC586234.

11 u) Our firm represented the plaintiff in a wage-and-hour class and PAGA
12 representative action against a food company on behalf of non-exempt employees. On June 30,
13 2017, the court granted final approval of the class and PAGA representative action settlement.
14 The Sacramento County Superior Court Case Number is 34-2015-00175871.

15 v) Our firm represented the plaintiffs in a wage-and-hour class and PAGA
16 representative action against a chocolate company on behalf of non-exempt employees. On July
17 19, 2017, the court granted final approval of the class and PAGA representative action
18 settlement. The Alameda County Superior Court Case Number is RG15764300.

19 w) Our firm represented the plaintiff in a PAGA representative action, against the
20 parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
21 October 18, 2017, the court granted approval of the PAGA representative action settlement. The
22 Los Angeles County Superior Court Case Number is BC569664.

23 x) Our firm represented the plaintiffs in a wage-and-hour class and PAGA
24 representative action against a manufacturer of plastic containers on behalf of non-exempt
25 employees. On October 31, 2017, the court granted final approval of the class and PAGA
26 representative action settlement. The Los Angeles County Superior Court Case Number is
27 BC577233.

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1 y) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
2 hour class and PAGA representative action against a bank on behalf of non-exempt employees.
3 On December 11, 2017, the court entered an order granting final approval of the class and PAGA
4 representative action settlement. The Los Angeles County Superior Court Case Number is
5 BC569646.

6 z) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
7 hour class and PAGA representative action against a property management company on behalf
8 of hourly-paid and non-exempt employees. On January 4, 2018, the court granted final approval
9 of the class and PAGA representative action settlement. The Los Angeles County Superior Court
10 Case Number is JCCP4819.

11 aa) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-
12 hour class and PAGA representative action against a company that operates business centers.
13 On February 15, 2018, the court granted final approval of the class and PAGA representative
14 action settlement. The Los Angeles County Superior Court Case Number is BC498401.

15 bb) Our firm, in association with co-counsel, represents the plaintiff in a wage-and-
16 hour class action against a manufacturing company on behalf of non-exempt employees. On
17 October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare
18 County Superior Court Case Number is VCU264528.

19 cc) Our firm represented the plaintiffs in a wage-and-hour class and PAGA
20 representative action against a behavioral health service provider on behalf of non-exempt
21 employees. On November 13, 2018, the court granted final approval of the class and PAGA
22 representative action settlement. The Alameda County Superior Court Case Number is
23 RG16811450.

24 dd) Our firm, in association with co-counsel, represented the plaintiff in a PAGA
25 representative action, against a global provider of products and services to the energy industry,
26 on behalf of hourly-paid and non-exempt employees. On November 19, 2018, the court granted
27 approval of the PAGA settlement. The Kern County Superior Court Case Number is S-1500-
28 CV-280215-SDC.

1 ee) Our firm, in association with co-counsel, represents the plaintiffs in a wage-and-
2 hour class action against a national retailer of apparel and fashion accessories, on behalf of non-
3 exempt employees. On July 31, 2019, the court granted plaintiffs' motion for class certification
4 in part and certified a class. The Sacramento County Superior Court Case Number is 34-2015-
5 00175330-CU-OE-GDS.

6 ff) Our firm, in association with co-counsel, represents the plaintiff in a wage-and-
7 hour class action against a parking company on behalf of non-exempt employees. On September
8 3, 2019, the court granted the plaintiff's motion for class certification and certified a class. The
9 Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial Council
10 Coordination Proceeding Number is JCCP No. 4886.

11 gg) Our firm, in association with co-counsel, represents the plaintiffs in a wage-and-
12 hour class and PAGA representative action against a bank on behalf of non-exempt employees.
13 On September 27, 2019, the court granted the plaintiffs' motion for class certification in part
14 and certified a class. The Alameda County Superior Court Case Number is RG15757606 and
15 the Judicial Council Coordination Proceeding Number is JCCP No. 4921.

16 hh) Our firm, in association with co-counsel, on behalf of the plaintiff and respondent
17 in a PAGA representative action, successfully opposed in the trial court, and briefed and argued
18 an appeal with respect to the employer's motion to compel arbitration, resulting in a notable
19 decision from the California Supreme Court clarifying the law and finding, in part, that employer
20 arbitration agreements are unenforceable where they block a PAGA claim from proceeding, *ZB,*
21 *N.A. v. Superior Court*, 8 Cal.5th175 (2019).

22 ii) Our firm, in association with co-counsel, represents the plaintiffs in a wage-and-
23 hour class and PAGA representative action against a national retailer of apparel and fashion
24 accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted the
25 plaintiffs' motion for class certification in part and certified a class. The Sacramento County
26 Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

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1 jj) Our firm, in association with co-counsel, represents the plaintiff in a wage-and-
2 hour class action against a medical equipment supplier on behalf of non-exempt employees. On
3 February 13, 2020, the court granted the plaintiff's motion for class certification and certified a
4 class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

5 kk) Our firm, in association with co-counsel, represents the plaintiff in a wage-and-
6 hour class and PAGA representative action against a large national drug testing laboratory on
7 behalf of non-exempt employees. On February 21, 2020, the court granted the plaintiff's motion
8 for class certification and certified a class. The San Diego County Superior Court Case Number
9 is 37-2018-00019611-CU-OE-CTL.

10 ll) Our firm represents the plaintiffs in a wage-and-hour class and representative
11 action against a national retailer of sportswear, footwear, and camping equipment on behalf of
12 non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's motion for
13 class certification and certified a class. The Riverside County Superior Court Case Number is
14 RIC1507504 and RICJCCP4930, and the Judicial Council Coordination Proceeding Number is
15 JCCP No. 4930.

16 mm) Our firm, in association with co-counsel, represents the plaintiffs in a wage-and-
17 hour class and PAGA representative action against a plastic packaging company on behalf of
18 non-exempt employees. On June 8, 2020, the court granted in part the plaintiffs' motion for
19 class certification and certified a class. The San Bernardino County Superior Court Case
20 Number is CIVDS1507361.

21 nn) Our firm represented the plaintiffs in a wage-and-hour class and representative
22 action against a national retailer of sportswear, footwear, and camping equipment on behalf of
23 non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's motion for
24 class certification and certified a class. The Riverside County Superior Court Case Number is
25 RICJCCP4930.

26 oo) Our firm, in association with co-counsel, represents the plaintiffs in a wage-and-
27 hour class action against manufacturer and supplier of power products and services on behalf of
28 non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion for

1 class certification and certified a class. The San Diego County Superior Court Case Number is
2 37-2015-00025968-CU-OE-CTL.

3 **PRELIMINARY APPROVAL**

4 8. Marked and attached hereto as “**EXHIBIT 1**” is the First Amended Joint
5 Stipulation of Class and PAGA Settlement and Release (“Settlement,” “Agreement,” or
6 “Settlement Agreement”) entered into by and between Plaintiffs Jose Saldana and Thomas
7 Johns, individually and on behalf of all others similarly situated and other aggrieved employees,
8 on the one hand, and Defendant International E-Z up Inc. (“Defendant”), on the other hand
9 (collectively, the “Parties”). For ease of reference by the Court, and in conformity with the
10 requirement of the Case Management Order, attached as “**EXHIBIT 2**” is a redline comparing
11 the original settlement agreement and exhibits thereto (i.e., the original Class Notice, Exclusion
12 Form, and Objection Form) to the revised and amended settlement agreement and exhibits
13 thereto (i.e., the revised Class Notice, revised Exclusion Form, and revised Objection Form).
14 The Parties and their counsel have approved the proposed Notice of Class Action Settlement
15 (“Class Notice”), Exclusion Form, and Objection Form, attached as “**EXHIBIT 1**,” “**EXHIBIT**
16 **2**,” and “**EXHIBIT 3**,” respectively, to the [Proposed] Order Granting Preliminary Approval of
17 Class Action Settlement, and respectfully request that the Court approve them as well.

18 9. Based on information provided by Defendant, as of May 2020, the Class is
19 estimated to consist of approximately two hundred eighty (280) individuals, of which one
20 hundred and eighty-five (185) individuals are considered to be Aggrieved Employees.

21 10. The effectiveness of Lawyers for Justice PC (“Class Counsel”) in prosecuting this
22 case has translated into tangible monetary benefits for the Class Members and State of California
23 in the following respects: (1) a recovery for them over a reasonably short period of time as
24 opposed to waiting additional years for the same, or possibly worse, result; (2) a guaranteed
25 result that compares favorably with other similar class action settlements of this type given the
26 strengths and weaknesses of the case; and (3) significant savings in Class Counsel’s litigation
27 fees and/or costs that would have only increased significantly had the case progressed through
28 certification, trial, and/or appeals.

11. Class Counsel has actively litigated the Action since it commenced on May 10, 2019. The Parties have engaged in extensive settlement negotiations and participated in two (2) mediation sessions with the Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters. After the Parties exchanged class information and conducted extensive investigation and informal discovery, the Parties engaged in an extensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and representative adjudication, the law relating to meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things. During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position. Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits, at certification, and at trial, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial. After conducting extensive investigations, informal discovery and exchange of information, and settlement negotiations, the Parties have agreed that this case is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation. The Settlement is a fair, reasonable, and adequate resolution of Released Class Claims of the Settlement Class Members and Released PAGA Claims of the State of California (with respect to employment of Aggrieved Employees).

12. Prior to reaching the Settlement, the Parties investigated the veracity, strength and scope of the claims, and Class Counsel was preparing the case for class certification and trial. Plaintiffs conducted significant investigation and extensive informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant and obtained from other sources. The large volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs' employment records, sampling of time and payroll records,

1 Employee Handbook, weekly Earnings Schedule, forms, internal memoranda (including,
2 Building Hours and Card Access Areas and Employee Parking), Evaluation Guideline, Meal
3 Break Waiver, Time Clock Missed Punch Request Form, acknowledgments (including
4 Employee Payroll Swipe Card), Property Inspection Policy, Prohibited Time Clock Actions, and
5 Defendant's operations and employment practices, procedures, and policies, among other
6 information and documents. Class Counsel interviewed Plaintiffs to gather facts and to identify
7 potential witnesses. Counsel for the Parties also met and conferred on numerous occasions, e.g.,
8 to discuss issues relating to the pleadings and the production of documents and data. Class
9 Counsel also drafted a mediation brief and prepared for and attended two (2) sessions of
10 mediation.

11 13. Counsel for the Parties have also invested time researching and investigating the
12 applicable law, which is constantly evolving as it relates to class certification, representative
13 PAGA claims, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims and
14 damages, and Defendant's defenses thereto, as well as facts discovered. Based on our analysis,
15 I submit that the result achieved in this litigation is fair, adequate, and reasonable.

16 14. The Settlement provides for a Gross Settlement Fund of \$950,000. The Net
17 Settlement Amount is the Gross Settlement Fund less the following amounts subject to approval
18 by the Court: Attorneys' Fees (up to \$332,500) and Litigation Costs (up to \$40,000) to Class
19 Counsel, Enhancement Awards to Plaintiffs (combined amount of up to \$13,500), Settlement
20 Administration Costs to the Settlement Administrator (up to \$10,000), and PAGA Settlement
21 Amount (\$75,000). Assuming that the amounts allocated under the Settlement toward these
22 payments are awarded by the Court, the Net Settlement Amount is estimated to be no less than
23 Four Hundred Eighty Thousand Dollars (\$480,000). Under the Settlement Agreement, the final
24 available Net Settlement Amount will be distributed to Settlement Class Members and 25% of
25 the PAGA Settlement Amount (i.e., \$18,750) will be distributed to Aggrieved Employees, and
26 no portion will revert to Defendant.

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1 15. After obtaining competing bids from multiple potential settlement administrators
2 ranging from \$7,500 to \$8,500, the Parties agreed to retain Simpluris, Inc. (“Simpluris” or
3 “Settlement Administrator”), which quoted \$7,500, to handle the notice and settlement
4 administration. The Parties preferred to retain Simpluris over its competitors because counsel
5 on both sides have had positive experiences working with Simpluris in the past. The Parties
6 respectfully request that the Court appoint Simpluris to handle these procedures and serve as the
7 Settlement Administrator. Defendant will provide Simpluris with the Class List, and Simpluris
8 will calculate each Class Member’s estimated Individual Settlement Payment and Individual
9 Settlement Payment (if applicable). Simpluris will also translate the Class Notice, Exclusion
10 Form, and Objection Form (together, “Notice Packet”) into Spanish and mail both an English
11 and a Spanish version of the Notice Packet to Class Members, receive and process Opt-Out
12 Requests, Objections, and Workweek Challenges; provide necessary reports and declarations;
13 calculate, subtract, and transmit necessary taxes and withholdings; prepare and submit
14 informational and other tax filings and documents; issue and transmit all payments provided by
15 the Settlement, including and not limited to, mailing payment checks to the Settlement Class
16 Members and Aggrieved Employees; and perform any other usual and customary duties for
17 administering a class and representative action settlement. Under the Settlement, the amount of
18 up to Ten Thousand Dollars (\$10,000) has been allocated toward Settlement Administration
19 Costs, and will be paid out of the Gross Settlement Fund, subject to approval of the Court.

20 16. Based on investigation and information discovered, Class Counsel believes that
21 there is sufficient evidence to support the allegations made in the lawsuit, including the
22 allegations that Defendant, with respect to Plaintiffs and the Class Members, *inter alia*, failed
23 to pay overtime and minimum wages, failed to provide compliant meal and rest periods and pay
24 associated premium pay, failed to timely pay wages during employment and upon termination
25 of employment and associated waiting-time penalties, failed to provide compliant wage
26 statements, failed to keep complete and accurate payroll records, and failed to reimburse
27 necessary business expenses, and thereby engaged in unfair business practices in violation of
28 California Business and Professions Code section 17200, *et seq.* and conduct giving rise to

1 penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code
2 sections 2698, *et seq.*). Plaintiffs allege that Class Members were subject to the same or similar
3 operations and employment policies, practices, and procedures. Additionally, Plaintiffs allege
4 that Defendant's recordkeeping practices with respect to Plaintiffs and the Class Members were
5 substantially the same during the time period at issue. As a result, Plaintiffs claim that the Class
6 Members were uniformly not paid all of the compensation that was owed to them by Defendant
7 during the Class Period. Thus, it is clear that the outcome of this litigation would be determined
8 by Defendant's uniform operations and employment practices, policies, and procedures that
9 applied across its hourly-paid or non-exempt employees in California during the Class Period.

10 17. Class Counsel is aware of the defenses and positions of Defendant but believes
11 that Plaintiffs could potentially obtain class certification despite many obstacles. Plaintiffs have
12 also taken into account the uncertainty and risk of the outcome of further litigation, and the
13 difficulties and delays inherent in such litigation, including those involved in class certification
14 and representative adjudication. Plaintiffs further recognize the burdens of proof necessary to
15 establish liability for the claims asserted in the lawsuit, Defendant's defenses, and the difficulties
16 in establishing entitlement to monetary recovery. Plaintiffs have also considered the Parties'
17 settlement discussions as well as the evaluations of the mediator, who is experienced and well-
18 regarded in complex labor and employment matters.

19 18. Defendant, on the other hand, denied and continues to deny any liability and
20 wrongdoing of any kind associated with the claims alleged in the action, and further denies that
21 the action is appropriate for class treatment or representative adjudication for any purpose other
22 than this Settlement. Defendant believes that it would ultimately succeed in the action. Both
23 sides have also had the opportunity to interview witnesses and review documents and
24 information relating to Plaintiffs' and the Class Members' employment with Defendant, and
25 Defendant's operations and employment policies, practices, and procedures. The Parties also
26 reviewed and analyzed a large volume of documents and data, including but not limited to a
27 detailed sampling of Class Members' time and pay information, to determine the potential value
28 and strength of the claims. The available information enabled Class Counsel to estimate the

1 potential claims of the Class and prepare damages/valuation models. Accordingly, the Parties
2 have conducted adequate investigation and analysis to be sufficiently informed of the nature and
3 extent of the Class Members' claims, and to enable both sides to fully evaluate the Settlement
4 for its fairness, adequacy, and reasonableness. The Parties have agreed that the case is well-
5 suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the
6 costs and risks to both sides that would attend further litigation. The Settlement takes into
7 account the strengths and weaknesses of each side's position and the uncertainty of how the case
8 might have concluded at certification, trial, and/or appeals.

9 19. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
10 in an amount of up to thirty-five percent (35%) of the Gross Settlement Fund (i.e., \$332,500)
11 and reimbursement for actual costs and expenses incurred, which will be paid out of the Gross
12 Settlement Fund, subject to approval by the Court. It should be noted that Class Counsel has
13 borne all of the risks and costs of litigation and will not receive any compensation until recovery
14 is obtained.

15 20. The Settlement Agreement provides for an Enhancement Awards of up to \$7,500
16 to Plaintiff Saldana and \$5,000 to Plaintiff Johns to be paid out of the Gross Settlement Fund,
17 subject to approval by the Court. Plaintiffs spent considerable time and effort to produce
18 relevant documents and past employment records and to provide the facts and evidence
19 necessary to attempt to prove the allegations. Plaintiffs were available whenever Class Counsel
20 needed him and actively tried to obtain information that would benefit the Class. Accordingly,
21 it is appropriate and just for Plaintiffs to each receive a reasonable Enhancement Award in
22 addition to an Individual Settlement Payment and Individual PAGA Payment (if applicable).

23 **OTHER PENDING ACTIONS**

24 21. I made reasonable inquiry of other members at Lawyers *for* Justice, PC, and I am
25 not aware of any other pending actions against Defendant International E-Z Up, Inc. in any other
26 Court that the Settlement may impact.

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FEE SPLIT ARRANGEMENT

22. Lawyers *for* Justice, PC has not entered into a fee splitting agreement or arrangement with any other counsel.

RELATION TO PROPOSED *CY PRES* RECIPIENT

23. I made reasonable inquiry of Plaintiffs and other members at Lawyers *for* Justice, PC, and to the best of my knowledge, neither I, Plaintiffs, nor other members at Lawyers *for* Justice, PC have any relationship with the proposed *cy pres* recipient Riverside CASA.

ESTIMATED SETTLEMENT PAYMENTS TO CLASS MEMBERS

24. Based on data provided by Defendant to Class Counsel in February 2021, the maximum Individual Settlement Payment is estimated to be \$4,652.75, the minimum Individual Settlement Payment is estimated to be \$17.83, and the average Individual Settlement Payment is estimated to be \$1,711.36. Based on data provided by Defendant to Class Counsel in February 2021, the maximum Individual PAGA Payment is estimated to be \$183.38, the minimum Individual PAGA Payment is estimated to be \$3.46, and the average Individual PAGA Payment is estimated to be \$100.34.

ESTIMATE OF THE VALUE OF THE CLAIMS

25. Plaintiffs' action alleges that Defendant has violated the California Labor Code by engaging in a uniform policy and systematic scheme of wage abuse against Plaintiffs and the putative class members, including, *inter alia*, failing to properly compensate overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages and associated waiting-time penalties, failing to provide compliant wage statements, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices under the California Business and Professions Code and owes civil penalties recoverable under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* ("PAGA").

26. Having evaluated hundreds of wage-and-hour class action cases, I am experienced and qualified to evaluate the claims of the putative class members and Defendant's defenses.

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1 27. Based on data provided by Defendant prior the sessions of mediation, the total
2 number of Class Members during the period from May 10, 2015 to November 20, 2019
3 (“relevant time period”) was estimated to be two hundred forty-seven (247) individuals, their
4 total workweeks were estimated to be 24,053, and the average hourly rate of pay was estimated
5 to be \$15.59.

6 28. Both sides had the opportunity to interview witnesses, conducted informal
7 discovery and investigations into the facts of the case, and informally exchanged information
8 and class-wide data.

9 **A. Failure to Pay Overtime and Minimum Wages**

10 29. Plaintiffs alleged that Defendant failed to pay overtime and minimum wages.
11 Plaintiffs contended that Defendant’s uniform policies, practices, and procedures required
12 putative class members to perform work (such as unloading trucks, offloading products, pulling
13 products for orders, processing purchase order, and responding to work-related inquiries) during
14 meal periods and before clocking-in and after clocking-out. For example, Plaintiffs contended
15 that Plaintiffs and other putative class members were required to record their scheduled hours
16 instead actual time worked, that Defendant assigned workloads that could not be completed
17 within the work hours scheduled, and that Defendant discouraged them from working overtime
18 hours with policies requiring that all overtime be pre-approved by supervisors. Plaintiffs also
19 contended that Defendant incorrectly calculated the regular rate of pay for purposes of
20 calculating overtime compensation, and that Defendant failed to properly compensate Plaintiffs
21 and putative class members at their applicable minimum, regular, or overtime rates for all of the
22 hours that they worked.

23 30. California Labor Code section 510 provides that when an employee works more
24 than eight (8) hours in any workday, more than forty (40) hours in any workweek and/or more
25 than six (6) days in a workweek, the employer must pay the employee at least one and one-half
26 times the employee’s regular rate of pay for all overtime hours worked. The employer must pay
27 the employee no less than twice his or her regular rate of pay for hours worked in excess of
28 twelve (12) hours in one day or in excess of eight (8) hours on the seventh consecutive day of

1 work. California Labor Code section 1198 and the applicable Industrial Welfare Commission
2 (“IWC”) Wage Order(s) provide that it is unlawful to employ persons without compensating
3 them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay,
4 depending on the number of hours worked by the person on a daily or weekly basis.

5 31. California Labor Code section 1197 provides that it is unlawful to pay employees
6 at a rate less than the minimum wage. California Labor Code sections 1194, 1194.2, 1197, and
7 1197.1 provide that an employee may seek to recover unlawfully unpaid wages by court action,
8 as well as liquidated damages in an amount equal to the wages unlawfully not paid and interest
9 thereon. California Labor Code section 1197.1 provides for civil penalties, which, arguably,
10 may only be recovered by the Labor Commissioner during a one-year statute of limitations
11 period.

12 32. Defendant contended, *inter alia*, that its overtime policies and practices comply
13 with the law, and that it paid putative class members over the California minimum wage for all
14 hours worked. Defendant contended that it correctly calculated putative class members’ regular
15 rate of pay for purposes of paying overtime and that any bonuses paid to putative class members
16 was discretionary. Defendant also produced wage records reflecting overtime compensation
17 paid to many of the putative class members (including, and not limited to, Plaintiffs). Defendant
18 further contended that all employees were required to record all time worked and were given
19 the opportunity to make any necessary revisions or changes to their time worked, and that
20 Defendant was not aware that any work had been performed off-the-clock. Defendant also
21 argued that individual liability issues predominate, including: (a) whether each employee
22 worked off-the-clock; (b) whether Defendant knew or should have known about each
23 employee’s off-the-clock work; (c) whether each employee worked overtime; and (d) whether
24 Defendant knew or should have known that each putative class member performed overtime
25 work. Defendant also contended that the putative class members held different job titles and
26 had different job duties and that these circumstances would raise highly individualized questions
27 of fact and would pose challenges to certification and the merits of the claims for overtime and
28 minimum wages.

1 33. Class Counsel considered information obtained through investigations and from
2 Plaintiffs and other putative class members, as well as class data provided by Defendant, and
3 created damages/valuation models prior to the mediations. Based thereon, assuming that it could
4 be proven that Defendant failed to pay an hour of overtime wages every workweek during the
5 relevant time period, Plaintiffs' estimate of the potential value of this claim if they were entirely
6 successful at trial was \$608,460.56 (24,053 workweeks x 1 hour of overtime wages x overtime
7 hourly rate of \$22.94, which is based on the average hourly rate of \$15.29). Assuming that it
8 could be proven that Defendant failed to pay one (1) hour of minimum wages every workweek
9 during the relevant time period, Plaintiffs' estimate of the potential value of this claim if they
10 were entirely successful at trial was \$405,551.96 (24,053 workweeks x 1 hour of unpaid
11 minimum wages x average hourly rate of \$15.29).

12 34. However, this assumes an exposure based on a class having been certified and
13 Plaintiffs having proven all elements of the overtime and minimum wage claims, despite risks
14 associated with obtaining and maintaining certification, risks to establishing liability, and
15 significant additional costs that would have to be incurred in order to certify a class and establish
16 liability. Plaintiffs also faced the risk of the Court finding that individualized issues
17 predominate, such that class treatment is not suitable. While Class Counsel disagreed with
18 Defendant's arguments and factual contentions, Class Counsel recognized the circumstances
19 and realities of the case, applicable case law and regulations, the costs and expenses of further
20 litigation and certification, and risks to recovery, and applied appropriate discounts for them.
21 With respect to the overtime claim, at this juncture, a discount of 30% was applied to account
22 for the risks associated with obtaining and maintaining certification (bringing the value of the
23 claim closer to \$425,922.39), a discount of 40% was applied to account for the risks associated
24 with succeeding on the merits and establishing liability (bringing the value of the claim closer
25 to \$255,553.43), and a discount of 40% was applied to account for the risks associated with
26 proving the extent of damages and obtaining an award thereof (bringing the value of the claim
27 closer to \$153,332.06). Also, with respect to the minimum wage claim, at this juncture, a
28 discount of 40% was applied to account for the risks associated with obtaining and maintaining

1 certification (bringing the value of the claim closer to \$243,331.18), a discount of 50% was
2 applied to account for the risks associated with succeeding on the merits and establishing
3 liability (bringing the value of the claim closer to \$121,665.59), and a discount of 50% was
4 applied to account for the risks associated with proving the extent of damages and obtaining an
5 award thereof (bringing the value of the claim closer to \$60,832.80).

6 **B. Failure to Provide Compliant Meal and Rest Periods and Associated Premiums**

7 35. Plaintiffs' theory of liability was also based on Defendant's failure to provide
8 timely, full, and/or uninterrupted meal and rest periods. Plaintiffs contended, *inter alia*, that
9 Defendant's policies, practices, and procedures required employees to perform job duties (e.g.,
10 answering work inquiries from supervisors) during their meal and rest periods in part due to
11 assigning heavy workloads and understaffing and prevented them from regularly receiving
12 compliant meal and rest periods. Plaintiffs further contended that Defendant failed to pay a
13 meal and rest period premiums for missed, late, short, or interrupted meal periods in every
14 instance that one was due.

15 36. Under California law, an employer must provide an employee with uninterrupted
16 meal periods of not less than thirty (30) minutes before the employee works more than five (5)
17 hours, except that if the total work period per day of the employee is no more than six (6) hours,
18 the meal period may be waived by mutual consent of both the employer and employee. Cal.
19 Lab. Code § 512(a). A second meal period of not less than thirty (30) minutes is required if an
20 employee works more than ten (10) hours per day, except that if the total hours worked is no
21 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
22 employer and employee only if the first meal period was not waived. *Id.* An "on-duty" meal
23 period may be agreed to only if "the nature of the work prevents an employee from being
24 relieved of all duty and when by written agreement between the parties an on-the-job paid meal
25 period is agreed to." IWC Wage Orders 1 through 15, § 11; IWC Wage Order 16, § 10. An
26 employer must pay each employee to whom it fails to "provide" a meal period one hour of wages
27 at his or her regular rate of pay "for each work day that the meal or rest period is not provided."
28 Cal. Lab. Code § 226.7(b).

1 37. California law requires an employer to provide rest periods to all employees at the
2 rate of ten (10) minutes every four hours of work or major fraction thereof. Cal. Lab. Code §
3 226.7. When an employer fails to provide a compliant rest period, the employer is required to
4 either (a) provide another rest period or (b) pay one additional hour of pay at the regular rate of
5 pay “for each work day that the meal or rest period is not provided.” *Augustus v. ABM Security*
6 *Services, Inc.* (2016) 2 Cal.5th 257, 271-272; Cal. Lab. Code § 226.7(b). However, employees
7 are exempt from the rest breaks law, if their duties and responsibilities qualify for one or more
8 of the exemptions under California or federal law. See Cal. Lab. Code § 226.7(e); see e.g., 49
9 CFR § 395.

10 38. Defendant contended that it had practices, policies, and procedures to provide
11 meal and rest periods every workday to its employees that fully complied with California law.
12 To the extent that putative class members failed to take their meal and rest periods or took a
13 short or break, Defendant contended that they did so voluntarily and that all applicable meal and
14 rest periods were still provided to them. Thus, Defendant argued that it did not act unlawfully
15 to deprive putative class members of meal and rest periods. Defendant also contended that there
16 were multiple individual issues that would pose challenges to certification, including and not
17 limited to, (a) whether any meal and rest periods were non-compliant, and (b) why they were
18 non-compliant. Defendant also contended that the putative class members held different job
19 titles and had different job duties, and that as a result, there was variation to the circumstances
20 that could allegedly cause the employees to be deprived of the opportunity to take legally-
21 compliant, duty-free meal and rest periods, and this variation in circumstances raised highly
22 individualized questions of fact.

23 39. Class Counsel considered information obtained through investigations and from
24 Plaintiffs and other putative class members, as well as class data provided by Defendant, and
25 created damages/valuation models prior to the mediations. Based thereon, assuming that it could
26 be proven that five (5) meal and/or rest period premiums are due for every workweek during the
27 relevant time period, Plaintiffs’ estimate of the potential value of this claim assuming it was
28 entirely successful at trial was \$2,027,759.80 (24,053 workweeks x 5 meal period premiums x

1 average hourly rate of \$15.29).

2 40. Class Counsel also considered the risk of further litigating the case, including the
3 significant additional costs that will be incurred by both sides if the case does not settle, as
4 litigating a class action through class certification, trial, and/or appeals is very expensive.
5 Moreover, litigating meal and rest period claims is inherently difficult as an employer's records,
6 as is the case here, do not usually indicate when a meal period is interrupted or when a rest
7 period is missed, late, short and/or interrupted. While Class Counsel disagreed with Defendant's
8 arguments and factual contentions, Class Counsel recognized the circumstances and realities of
9 the case, applicable case law and regulations, costs and expenses of further litigation and
10 certification, and risks to recovery, and applied appropriate discounts for them. At this juncture,
11 a discount of 30% was applied to account for the risks associated with obtaining and maintaining
12 certification (bringing the value of the claim closer to \$1,419,431.86), a discount of 40% was
13 applied to account for the risks associated with succeeding on the merits and establishing
14 liability (bringing the value of the claim closer to \$851,659.12), and a discount of 40% was
15 applied to account for the risks associated with proving the extent of damages and obtaining an
16 award thereof (bringing the value of the claim closer to \$510,995.47).

17 **C. Waiting-Time Penalties for Failure to Timely Provide Wages During Employment**
18 **and Upon Termination**

19 41. California Labor Code section 204 provides that wages earned by any person in
20 any employment between the 1st and 15th days, inclusive, of any calendar month, other than
21 those wages due upon termination of an employee, are due and payable between the 16th and
22 the 26th day of the month during which the labor was performed. Further, all wages earned by
23 any person in any employment between the 16th and the last day, inclusive, of any calendar
24 month, are due and payable between the 1st and the 10th day of the following month.

25 42. Plaintiffs alleged that Defendant intentionally and willfully failed to pay Plaintiffs
26 and putative class members all wages due to them while they were employed by Defendant,
27 within the time period permissible under California law. These wages included, but were not
28 limited to, minimum, regular, and overtime wages and meal and rest break premiums. However,

1 arguably, this provision of the California Labor Code only states requirements and does not
2 provide for private relief for failure to comply with the requirements stated therein. Instead,
3 redress may be pursued for the failure to pay wages and meal and rest period premiums (which
4 are discussed herein).

5 43. California Labor Code sections 201 and 202 provide that if an employer
6 discharges an employee, the wages earned and unpaid at the time of discharge are due and
7 payable immediately. If an employee quits his or her employment, his or her wages shall
8 become due and payable not later than seventy-two (72) hours of quitting, unless the employee
9 has given seventy-two (72) hours of notice of his or her intention to quit, in which cases the
10 employee is entitled to his or her wages at the time of quitting.

11 44. California Labor Code section 203 provides that if an employer fails to pay an
12 employee all wages due at termination or within seventy-two (72) hours of resignation, in
13 accordance with sections 201 and 202, then that employee's wages shall continue as a penalty
14 until paid for a period of up to thirty (30) days from the date they were due. California Labor
15 Code section 203 further provides that the statute of limitations to recover the penalty is the
16 same as the statute of limitations for recovery of the unpaid wages from which the penalties
17 arise, i.e. three years.

18 45. Plaintiffs alleged that Defendant intentionally and willfully failed to pay Plaintiffs
19 and the other putative class members all wages due to them upon termination, within the time
20 period permissible under California law. For example, Plaintiffs alleged that putative class
21 members are entitled to unpaid wages arising from, *inter alia*, off-the-clock work, as well as
22 meal and rest period premiums, thereby triggering waiting-time penalties under California Labor
23 Code section 203.

24 46. Based on information and data provided by Defendant, it was estimated that
25 approximately 122 putative class members had been terminated during the three-year statute of
26 limitations (i.e., from May 10, 2016). Assuming that these individuals were not timely paid all
27 wages due to them upon termination, Plaintiffs' estimate of the potential value of waiting-time
28 penalties claim if it was entirely successful at trial was \$447,691.20 collectively (122 individuals

1 x [30 days x hourly rate of \$15.29 x 8 hours]], or approximately \$3,669.60 per individual.
2 However, this presumes that Plaintiffs would prevail on the underlying California Labor Code
3 claims, which is necessary to show that Defendant failed to timely pay wages that were due to
4 the putative class members upon termination.

5 47. Defendant was adamant that no waiting-time penalties should be awarded.
6 Defendant pointed out that waiting-time penalties are derivative of each and every other
7 underlying alleged California Labor Code violations and contended that it paid the terminated
8 employees all wages due and owing. Moreover, Defendant emphasized that, under California
9 Labor Code section 203, employers are only obligated to pay waiting-time penalties if they
10 “willfully” fail to pay wages due and owing at the time of termination or resignation. As Title
11 8, California Code of Regulations, section 13520 states,

12 A willful failure to pay wages within the meaning of Labor Code Section 203 occurs
13 when an employer intentionally fails to pay wages to an employee when those wages
14 are due. However, a good faith dispute that any wages are due will preclude
imposition of waiting time penalties under Section 203.

15 A “good faith dispute” that any wages are due occurs when an employer presents a
16 defense, based in law or fact, which, if successful, would preclude any recovery on
17 the part of the employee. The fact that a defense is ultimately unsuccessful will not
18 preclude a finding that a good faith dispute did exist. Defenses presented which,
under all the circumstances, are unsupported by any evidence, are unreasonable, or
are presented in bad faith, will preclude a finding of a “good faith dispute.”

19 48. Accordingly, to assess the likely recovery of waiting-time penalties, Class
20 Counsel also took into consideration the chances of prevailing on each of the underlying causes
21 of action, as well as the additional hurdles of prevailing on the claim for waiting-time penalties,
22 including the inherent difficulty in proving the “willful” prong of section 203, applicable case
23 law, costs and expenses associated with further litigation and certification, the circumstances
24 and realities of the case, and risks to recovery, and applied appropriate discounts for them. At
25 this juncture, a discount of 50% was applied to account for the risks associated with obtaining
26 and maintaining certification (bringing the value of the claim closer to \$223,845.60), a discount
27 of 50% was applied to account for the risks associated with succeeding on the merits and
28 establishing liability (bringing the value of the claim closer to \$111,922.80), and a discount of

50% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of the claim closer to \$55,961.40).

D. Wage Statement Violations

49. Plaintiffs also alleged that Defendant violated California Labor Code section 226(a) which states that an employer must provide an accurate and itemized wage statement twice a month or each time wages are paid, whichever is the more frequent. Failure to do so entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). See Cal. Lab. Code § 226(e). Arguably, actual damages may be sought, under a three-year statute of limitations, or, statutory penalties may be sought, under a one-year statute of limitations.

50. Based on data provided by Defendant, it was estimated that approximately 202 putative class members worked during the one-year statutory limitations period (i.e., from May 10, 2018), and that these putative class members worked a total of 5,413 pay periods. Assuming that an injurious wage statement could be proven for each of these putative class members for each of these pay periods, Plaintiffs' estimate of the potential value of this claim if it was entirely successful at trial was \$531,200.00 ([202 initial violations x \$50 initial violation penalty] x [(5,413 - 202) subsequent violations x \$100 subsequent violation penalty]).

51. Defendant contended that Plaintiffs and putative class members suffered no actual injury from the alleged wage statement violations. Defendant also contended that this alleged violation is entirely derivative of the foregoing allegations. In other words, Plaintiffs would have to prove, for example, that off-the-clock work occurred, that overtime was worked, that all hours of work had not been properly recorded and compensated, and/or that non-compliant meal and rest periods occurred and that Defendant did not pay premiums, etc., to demonstrate that the wage statements were inaccurate. Defendant further contended, *inter alia*, that if off-the-clock and/or overtime work occurred and was not reflected in the wage statements, it was because the work was hidden from Defendant. Defendant also contended that no actual injury could be

1 shown. When assessing the value of this claim, Class Counsel considered these factors, the
2 derivative nature of this alleged violation, the chances of prevailing on each of the underlying
3 causes of action, applicable case law and regulations, costs and expenses associated with further
4 litigation and certification, realities of the case, and risks to recovery, and applied appropriate
5 discounts for them. At this juncture, a discount of 50% was applied to account for the risks
6 associated with obtaining and maintaining certification (bringing the value of the claim closer
7 to \$265,600.00), a discount of 50% was applied to account for the risks associated with
8 succeeding on the merits and establishing liability (bringing the value of the claim closer to
9 \$132,800.00), and a discount of 50% was applied to account for the risks associated with proving
10 the extent of damages and obtaining an award thereof (bringing the value of the claim closer to
11 \$66,400.00).

12 **E. Failure to Maintain Requisite Payroll Records**

13 52. Plaintiffs alleged that Defendant had intentionally and willfully failed to keep
14 accurate and complete payroll records showing the hours worked daily by, and the wages paid
15 to, Plaintiffs and the putative class members. Plaintiffs also alleged that Defendant's intentional
16 and willful failure to keep accurate payroll records violated the statutorily-protected right to
17 accurate and complete payrolls records, and that Plaintiffs and putative class members have
18 suffered injury and damage as a result.

19 53. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
20 central location in the state or at the plants or establishments at which employees are employed,
21 payroll records showing the hours worked daily by and the wages paid to, and the number of
22 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
23 respective plants or establishments. These records must be kept in accordance with rules
24 established for this purpose by the Labor Commissioner, but in any case, shall be kept on file
25 for not less than three years. Under California Labor Code section 1174.5, a willful violation of
26 the employer's recordkeeping obligations set forth in California Labor Code section 1174(d) is
27 subject to a civil penalty of \$500. Arguably, this civil penalty would only be recoverable by the
28 Labor Commissioner, however, Plaintiffs assert a cause of action under PAGA. Therefore, the

1 value of this claim is considered as a part of the valuation of the PAGA claim contained *infra*.

2 54. Defendant contended that Plaintiffs and putative class members suffered no actual
3 injury or damage from the alleged recordkeeping violations. Moreover, Defendant challenged
4 certification of the recordkeeping issue on the basis that individual liability issues predominated,
5 including (a) whether each putative class member's payroll records were not maintained
6 properly, and (b) whether Defendant's alleged failure to keep requisite payroll records was
7 "willful." Like the wage statement violations, this cause of action is entirely derivative of the
8 causes of action for failure to pay overtime and minimum wages and failure to provide compliant
9 meal or rest periods.

10 55. As such, to assess the value of this claim, Class Counsel also took the foregoing
11 factors into account, as well as Defendant's defenses and contentions, the derivative nature of
12 this cause of action, the chances of prevailing on the other causes of action, the inherent
13 difficulty in proving the "willful" prong of California Labor Code section 1174.5, applicable
14 case law and regulations, costs and expenses of further litigation and certification, the
15 circumstances and realities of the case, and risks to recovery, and applied appropriate discounts
16 for settlement purposes.

17 **F. Unreimbursed Business Expenses**

18 56. Plaintiffs contended that Defendant failed to reimburse Plaintiffs and other
19 putative class members for necessary business expenses, including but not limited to, costs
20 associated with complying with Defendant's dress code and using personal cell phones for work
21 duties.

22 57. California Labor Code section 2802 requires an employer to indemnify its
23 employees for all necessary expenditures made by the employee in direct consequence of the
24 discharge of his or her duties, or of his or her obedience to the directions of the employer.

25 58. Defendant contended that it has a policy and practice of reimbursing employees
26 and that, with respect to the alleged expenses for which Plaintiffs and other putative class
27 members never requested reimbursement from Defendant, Defendant did not know and had no
28 reason to know that the alleged business-related expenses were incurred. Defendant further

1 contended that the reason for why a putative class member undertook certain expenses, while
2 not others, and failed to receive reimbursement for certain expenses while not others, would
3 raise individual issues that could not be certified.

4 59. Defendant also contended that the California Labor Code only requires
5 reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the
6 course of performing work—and argued that distinguishing a necessary expense from an
7 unnecessary one would require individualized inquiry. See, Cal. Lab. Code § 2802; *Gattuso v.*
8 *Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Furthermore, whether or not an expense
9 was necessary, would depend, in part, on the reasonableness of the employee’s choice, and
10 whether or not an expense was incurred, would have to be established by way of extensive
11 individual factual inquiry and/or statistical evidence. *Cochran v. Schwan’s Home Services, Inc.*
12 (2014) 228 Cal.App.4th 1137.

13 60. If Plaintiffs proved that Defendant willfully failed to reimburse necessary
14 business-related expenses to putative class members in the amount of five dollars (\$5) each per
15 workweek during the relevant time period, Plaintiffs’ estimate of the potential value of this claim
16 if it was entirely successful at trial would be \$132,620.00 (24,053 total workweeks x \$5 business
17 expenses). Class Counsel also took into consideration that, not only would it have to be
18 established that expenses were incurred, but also that the nature of the expenses were such that
19 Defendant was required to reimburse them. While Class Counsel disagreed with Defendant’s
20 arguments and factual contentions, Class Counsel considered Defendant’s arguments,
21 applicable case law and regulations, the costs and expenses associated with further litigation and
22 certification, the circumstances and realities of the case, and risks to recovery, and applied
23 appropriate discounts for them. At this juncture, a discount of 50% was applied to account for
24 the risks associated with obtaining and maintaining certification (bringing the value of the claim
25 closer to \$66,310.00), a discount of 50% was applied to account for the risks associated with
26 succeeding on the merits and establishing liability (bringing the value of the claim closer to
27 \$33,155.00), and a discount of 40% was applied to account for the risks associated with proving
28 the extent of damages and obtaining an award thereof (bringing the value of the claim closer to

1 \$19,893.00).

2 **G. Unfair Business Practices**

3 61. Plaintiffs' sole cause of action is for Defendant's alleged violation of the
4 California's Unfair Competition Law, Business and Professions sections 17200, *et seq.* ("UCL")
5 which prohibits any "unlawful, unfair or fraudulent business practices." A violation of the UCL
6 may be predicated on the violation of any law.

7 62. Arguably, California Business and Professions Code section 17208 extends the
8 statute of limitations on Plaintiffs' other allegations, which qualify as unfair business practices,
9 to four (4) years. However, claims brought under the UCL are equitable actions for injunctive
10 or restitutionary relief, and a court may take into consideration equitable defenses when
11 fashioning equitable remedies. Restitution under the UCL is limited to returning to Plaintiffs
12 and putative class members monies unlawfully withheld, such as unpaid wages or unpaid meal
13 or rest period premiums, or restitutionary disgorgement.

14 63. Plaintiffs contended that each of Defendant's alleged violations of the California
15 Labor Code constitute business practices that are either unlawful (i.e., is forbidden by law)
16 and/or unfair (i.e., harm to victim outweighs any benefit). In order to prevail on the UCL cause
17 of action, Plaintiffs would have to prove that Defendant violated the predicate provisions of law,
18 and that the violations constitute unlawful and/or unfair business acts and practices in violation
19 of California Business and Professions Code sections 17200, *et seq.* Plaintiffs would have to
20 prove that Defendant's conduct throughout the time period at issue has been unfair, unlawful,
21 harmful, and injurious to Plaintiffs and putative class members. With respect to the UCL's
22 standing requirement, Plaintiffs would also have to prove that they suffered an economic injury
23 as a result of Defendant's conduct.

24 64. As discussed above, Defendant vigorously challenged the likelihood of Plaintiffs'
25 success in establishing that any of provisions of the California Labor Code, on which the UCL
26 claim is predicated, were violated and that such violations were injurious. Throughout this
27 litigation, Defendant also relentlessly challenged Plaintiffs' standing and adequacy to assert
28 class claims and contended there were individualized issues that would pose challenges to

1 certification. When assessing the likelihood of prevailing on this cause of action, Class Counsel
2 considered all of the above, as well as Defendant's factual contentions and legal arguments, the
3 chances of prevailing on the other causes of action, costs and expenses associated with further
4 litigation and certification, and risks to recovery, and applied appropriate discounts for
5 settlement purposes.

6 **H. PAGA Penalties**

7 65. Under the PAGA, civil penalties to be assessed and collected by the state labor
8 agency for a violation of the California Labor Code, may, as an alternative, be recovered by an
9 aggrieved employee plaintiff. If the California Labor Code already specifies and provides a
10 civil penalty for the violation of a provision of the California Labor Code, said civil penalty is
11 recoverable by the aggrieved employee plaintiff. Additionally, the PAGA statute establishes a
12 civil penalty that is recoverable by an aggrieved employee plaintiff, for violation of provisions
13 of the California Labor Code for which the California Labor Code does not specifically provide
14 for a civil penalty, as follows: one hundred dollars (\$100) for each aggrieved employee per pay
15 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
16 pay period for each subsequent violation. Cal. Lab. Code § 2699(f). Pursuant to California
17 Labor Code section 2699(i), seventy-five percent (75%) of the penalties recovered must be
18 allocated to the State of California, with the remaining twenty-five percent (25%) allocated to
19 the aggrieved employees. The statute of limitations period applicable to such penalties is one
20 year prior to the filing of the complaint. Cal. Code Civ. Proc. § 340.

21 66. Defendant contended that violations of multiple provisions of the California Labor
22 Code would not give rise to cumulative penalties, and at best, would only trigger an initial
23 violation penalty and a subsequent violation penalty once per pay period, if at all.

24 67. Defendant contended that an important feature of the PAGA statute is that, when
25 determining whether or not to assess a penalty, the court exercises the same discretion that the
26 LWDA has and may reduce the penalties to be assessed against the employer pursuant to section
27 2699(e)(1)-(2). As such, Defendant contended that, with respect to a PAGA claim, the Court
28 was unlikely to assess cumulative penalties for the maximum number of possible, separate

1 California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or
2 confiscatory, especially where certain conduct may be regulated by multiple provisions of the
3 California Labor Code that are interrelated and work in tandem.

4 68. Defendant also maintained and continues to maintain that it had legally-compliant
5 employment policies and practices throughout the statutory period. Defendant denied and
6 continues to deny that it ever violated any provision of the California Labor Code and argued,
7 that, even if, *arguendo*, such violations occurred, it will not be treated as having engaged in
8 subsequent violations giving rise to heightened penalties. In other words, Defendant argued that
9 heightened civil penalties for subsequent violations would not be assessed unless it could be
10 shown that Defendant had notice that it was violating the law, e.g. because it had been cited by
11 a labor agency or adjudged by a court to have done so. See, e.g., *Amaral v. Cintas Corp. No. 2*
12 (2008) 163 Cal.4th 1157, 1209. Defendant argued that it would be able to show a lack of
13 willfulness in the violations, such that the alleged California Labor Code violations would not
14 be considered “willful.” Defendant contended that, at best, even if a violation giving rise to a
15 penalty was shown for each pay period, only the lower civil penalty associated with initial
16 violations would apply.

17 69. Importantly, to prevail on the PAGA claim, Defendant contended that some courts
18 have required Plaintiffs to show at the outset that they have suffered injury, in order to establish
19 standing, and that Plaintiffs would also have to prove all requisite elements to prove violations
20 of the underlying California Labor Code provisions, in order to show that Defendant’s conduct
21 gave rise to penalties. The unpaid wage and meal and rest period allegations are fundamental to
22 this action; however, for the reasons discussed above, there were substantial challenges to
23 showing liability and exposure for these claims. Defendant argued that Plaintiffs would not be
24 able to establish violations of the underlying California Labor Code provisions and the
25 fundamental allegations regarding unpaid wages and meal and rest periods. Defendant also
26 contended that multiple individualized issues vitiated the manageability of representative
27 adjudication of the PAGA claim.

28 ///

1 70. Defendant would also likely seek bifurcation of discovery and/or trial of the
2 PAGA claim – many courts have taken such an approach.

3 71. Defendant also maintained that, in addition to its strong arguments against the
4 underlying claims, taking the current unsettled state of law, it would be unjust to award the
5 maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials
6 and/or assessment of penalties under the PAGA statute, and there is no clearly-established
7 methodology for the valuation and/or assessment of PAGA penalties.

8 72. Defendant also contended that before a PAGA claim could be tried, under existing
9 law, the court of law would have to be satisfied that the adjudication of the PAGA claim, based
10 on a theory of uniform wage and hour practices relating to a large group of aggrieved employees,
11 is sufficiently “manageable” so as not to interfere with Defendant’s right to due process.
12 Defendant asserted that the aggrieved employees worked different positions, and that their job
13 roles, job duties, departments, and work hours varied. Defendant contended that there was
14 variation as to the circumstances that could allegedly cause the employees to work off-the-clock,
15 or to be deprived of the opportunity to take legally-compliant, duty-free meal and/or rest periods.
16 Defendant further contended that these issues presented challenges to Plaintiffs’ ability to show
17 that a PAGA claim could be efficiently and manageably adjudicated without abridging
18 Defendant’s due process rights.

19 73. Defendant pointed to case law that held that, given the derivative nature of a
20 PAGA claim, it would stand or fall based on the claims from which it derives, and the success
21 of showing, *inter alia*, off-the-clock work, failure to properly pay wages, failure to reimburse
22 for expenses, etc. Defendant also pointed to case law demonstrating that courts have attributed
23 little separate value to PAGA claims, for example, allowing them to be resolved for \$0 where
24 the other underlying California Labor Code claims are being resolved. See, e.g. *Matter of*
25 *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 588-590 (No abuse of discretion by
26 the trial court in approving the allocation of \$0 toward PAGA penalties, where PAGA claim is
27 resolved as a part of an overall resolution of the underlying California Labor Code violations);
28 *Franco v. Ruiz Food Prods, Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL

5941801, at *14 (approving allocation of \$10,000, out of the settlement of \$2.5 million, toward the settlement of the PAGA claim); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) No.1:10-CV-0324-AWI-SKO, 2012 WL 5364575, at *3 (approving the allocation of \$10,000, out of the settlement of \$3.7 million, toward the settlement of the PAGA claim); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) No. C 05-4526 MHP, C 0647924 MHP, 2011 WL 672645, at *1 (approving the allocation of \$10,000, out of the settlement of \$6.9 million, toward the settlement of the PAGA claim); *Jack v. Hartford Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 3:09-cv-1683—MMA (JMA), 2011 WL 4899942, at *18 (approving the allocation of \$3,000, out of the settlement of \$1.2 million, toward the settlement of the PAGA claim); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14 (approving the allocation of \$10,000, out of the settlement of \$518,245, toward settlement of the PAGA claim).

74. Assuming that a court would be satisfied that the PAGA claim was susceptible to being efficiently tried and adjudicated on a representative basis, and assuming that civil penalties in the amount of \$1,550 could be recovered for each of the 202 aggrieved employees who were estimated to have worked during the one-year statutory period (i.e., from May 10, 2018), the PAGA penalties at issue, which the Court could determine whether or not to assess and whether or not to reduce, were estimated to be approximately \$313,100.00 (202 individuals x \$1,550 civil penalties).

75. Class Counsel recognized the realities of Defendant's arguments, evidence and information obtained through investigations as well as from Defendant, the circumstances and realities of the case, the current state of the law, the costs of continued litigation, and the risks to recovery, and applied appropriate discounts for them. At this juncture, a discount of 25% was applied to account for the risks associated with establishing manageability and possible bifurcation of discovery and/or trial (bringing the value of this claim closer to \$234,825.00), a discount of 40% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$140,895.00), and a discount of 50% was applied to account for the risks associated with proving the extent of penalties that are warranted and possible discretionary reduction of penalties by the Court (bringing the value

1 of the claim closer to \$70,447.50).

2 76. Although, strictly-speaking, class certification requirements are not required to be
3 satisfied in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication
4 and valuation of a PAGA claim is uncertain. Instead, what is clear is that the purpose of the
5 PAGA is not to generate revenue for the State, but rather, to facilitate the enforcement of the
6 labor laws. See, e.g., *Williams v. Superior Court* (2017) 3 Cal. 5th 531, 546; *Arias v. Superior*
7 *Court* (2009) 46 Cal.4th 969, 986; Cal. Lab. Code § 2699(i). In assessing the adequacy of the
8 recovery under a PAGA claim, the focus is not the amount which the LWDA and the aggrieved
9 employees are to receive formally in the form of monetary civil penalties, but instead, whether
10 the total settlement amount achieves the PAGA's objectives. "When PAGA claims are settled,
11 courts "consider whether the proposed PAGA settlement is fair and adequate in view of the
12 purposes and policies of the statute[]" and "[t]hose purposes and policies include benefit[ting]
13 the public by augmenting the state's enforcement capabilities, encouraging compliance with
14 California Labor Code provisions, and deterring noncompliance." *O'Connor v. Uber Techs.,*
15 *Inc.*, 201 F. Supp. 3d 1110, 1132-33 and 1135 (N.D. Cal. 2016). A "[c]ourt does not review the
16 PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine whether
17 it is fundamentally fair, reasonable and adequate, with primary consideration for the interests of
18 absent class members." LWDA Response at 4, *O'Connor v. Uber Techns.*, No. 13-CV- 03826-
19 EMC, Docket No. 736 (N.D. Cal. July 29, 2016). "PAGA penalties must be evaluated in terms
20 of their public policy objective and not just through the prism of what private relief has been
21 sought or obtained." *Id.* at 4.

22 77. Here, the overall relief obtained by way of the Settlement is significant, not only
23 from a monetary perspective, but also, from the perspective of deterring noncompliance with
24 (and thereby, facilitating enforcement of) California labor laws. Defendant has agreed to pay
25 \$950,000 to settle disputed claims. Based on the analysis and valuation of the claims, it was
26 determined that a PAGA allocation of \$75,000 is appropriate. The potential value of the PAGA
27 claim is \$313,100.00 (which is 7.01% of the potential value of all of the claims) and the
28 reasonable value of the PAGA claim is \$70,447.50 (which is 7.51% of the reasonable value of

all of the claims). As such, it was determined that a PAGA allocation between approximately 5-10% of the total settlement amount would be reasonable. Under the Settlement, the amount of \$75,000 has been allocated toward PAGA penalties; this is a reasonable allocation because it is 7.89% of the Gross of \$950,000, but also, because the allocation represents 10.61% of the potential value of the PAGA claim and 101.29% of the reasonable value of the PAGA claim. Furthermore, the Settlement fulfills the public policy objective of providing redress to aggrieved employees, providing funds to the State for enforcement of labor laws, and promoting enforcement through deterrence.

I. Summary

78. The foregoing discussion confirms that the amount of the Settlement is adequate in light of the merits of this case, Plaintiffs' allegations and causes of action, the evidence at issue with respect to those allegations and causes of action, and legal and factual arguments and circumstances which pose challenges to monetary recovery. Class Counsel estimates that the potential value to be recovered if Plaintiffs were successful at trial on all of the claims is \$4,466,383.52, and the total value that could reasonably be expected to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks, is \$937,862.24. Seen in this light, the Gross Settlement Fund of \$950,000 represents 21.27% of the potential value and 101.29% of the risk-adjusted value of the claims.

Principle Claim	Potential Value	Risk-Adjusted Realistic Value
1. Failure to Pay Overtime Wages	\$608,460.56	\$153,332.06
2. Failure to Pay Minimum Wages	\$405,551.96	\$60,832.80
3. Failure to Provide Compliant Meal and Rest Periods and Associated Premiums	\$2,027,759.80	\$510,995.47
4. Failure to Timely Provide Wages and Waiting-Time Penalties	\$447,691.20	\$55,961.40
5. Failure to Provide Compliant Wage Statement	\$531,200.00	\$66,400.00
6. Failure to Maintain Requisite Payroll Records	See item 9.	
7. Failure to Reimburse Business Expenses	\$132,620.00	\$19,893.00
8. Unfair Business Practices	See items 1, 2, 3 and 7.	
9. Private Attorneys General Act	\$313,100.00	\$70,447.50
Total:	\$4,466,383.52	\$937,862.24

1 The conclusion to be drawn from the foregoing analysis is that neither class certification,
2 liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide basis is
3 clear-cut, which is why the Parties elected to settle this matter. Class Counsel recognized the
4 circumstances and realities of the case, applicable case law and regulations, the costs and
5 expenses of further litigation and certification, and risks to recovery and applied appropriate
6 discounts as discussed above. This Settlement involves highly disputed claims and, like most
7 other settlements, is the product of compromise.

8 79. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is
9 in the best interest of the Class. Class Counsel also submits that the Settlement and
10 accompanying moving papers satisfy the requirements set forth in the Class Action Case
11 Management Order #1 issued by the Court, as reflected in the concurrently-filed Compliance
12 Chart. Class Counsel further submits that the Settlement is within an acceptable range of
13 recovery for this type of litigation given the strengths and weaknesses of this action, the inherent
14 costs and risks of further litigation, and the costs and risks associated with representative
15 adjudication, class certification, trial, and/or appeals.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed on this 7th day of July 2021, at Glendale, California.

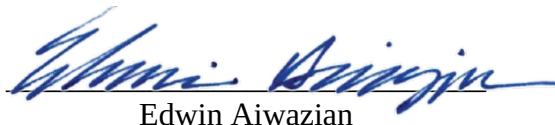
19 
20 Edwin Aiwanian

EXHIBIT 1

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Attorneys for Plaintiffs Jose Saldana and Thomas Johns

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, RIVERSIDE COURT

JOSE SALDANA, individually, and on behalf
of other members of the general public
similarly situated; THOMAS JOHNS,
individually and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Acts,

Plaintiffs,

vs.

INTERNATIONAL E-Z UP INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant.

) Case No. RIC1902873

) Judge: Craig G. Riemer

) Dept: 01

) **CLASS ACTION**

) **FIRST AMENDED JOINT STIPULATION**
) **OF CLASS AND PAGA SETTLEMENT**
) **AND RELEASE**

) Action Filed: May 10, 2019

) Amended Complaint Filed: March 25, 2021

1 **FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA**

2 **SETTLEMENT AND RELEASE**

3 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
4 the Court, that the full and final settlement of this Action shall be effectuated upon and subject to
5 the following terms and conditions. Capitalized terms shall have the meanings set forth in Article I
6 or as defined elsewhere in this First Amended Joint Stipulation of Class and PAGA Settlement and
7 Release (hereinafter the “Agreement” or “Class Settlement Agreement”). Pursuant to Section 6.01
8 of the Joint Stipulation of Class and PAGA Settlement and Release that the Parties entered into on
9 or about March 3, 2021, this First Amended Joint Stipulation of Class and PAGA Settlement and
10 Release hereby supplants the Joint Stipulation of Class and PAGA Settlement and Release.

11 This Agreement is made and entered into by and between Plaintiffs Jose Saldana and
12 Thomas Johns, on behalf of themselves and other similarly situated employees (“Plaintiffs”), on the
13 one hand, and Defendant International E-Z Up, Inc. (“Defendant”). Plaintiffs and Defendant
14 collectively are referred to in the Agreement as “the Parties” and individually are referred to as
15 “Party.”

16 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
17 concluded by agreement of Defendant to pay no more than the settlement sum of \$950,000 as
18 provided in Section 3.06(a) below (“Gross Settlement Fund”), with the addition of the employer’s
19 portion of payroll taxes on the wage portion of the Settlement (which will be paid by Defendant
20 separately and in addition to the Gross Settlement Fund), upon the terms and conditions of the
21 Agreement and for the consideration set forth herein, including, but not limited to, a general release
22 of claims by Named Plaintiffs Jose Saldana and Thomas Johns as described herein, and the releases
23 of claims as set forth in this Agreement.

24 **ARTICLE I**

25 **DEFINITIONS**

26 Unless otherwise defined herein, the following terms used in this Agreement shall have the
27 meanings ascribed to them as set forth below:

28 ///

1 a. “Action” means the case entitled *Jose Saldana, et al. v. International E-Z Up, Inc.*,
2 Riverside County Superior Court, Case No. RIC1902873 commenced on May 10, 2019.

3 b. “Agreement” means this First Amended Joint Stipulation of Class and PAGA
4 Settlement and Release, including all exhibits attached hereto.

5 c. “Aggrieved Employees” means Plaintiffs and Class Members who worked for
6 Defendant within the PAGA Period.

7 d. “Attorneys’ Fees” means the payment of attorneys’ fees to Class Counsel in an
8 amount not to exceed \$332,500 (i.e., 35% of Gross Settlement Fund).

9 e. “Class” means all hourly-paid or non-exempt employees who worked for Defendant
10 within the State of California at any time during the Class Period.

11 f. “Class Counsel” or “Plaintiffs’ Counsel” means the attorneys for the Class, who are:
12 LAWYERS FOR JUSTICE, PC
13 Edwin Aiwasian, Esq.
14 Arby Aiwasian Esq.
15 Joanna Ghosh, Esq.
16 410 West Arden Avenue, Suite 203
17 Glendale, California 91203
18 Telephone: (818) 265-1020
19 Facsimile: (818) 265-1021

20 g. “Class List” means a true and complete list of all Class Members that Defendant
21 will compile, based on its business records, and provide to the Settlement Administrator within ten
22 (10) calendar days after the Court grants preliminary approval of the Settlement. The Class List
23 shall be formatted in Microsoft Office Excel and shall include each Class Member’s full name, his
24 or her last known home address, telephone number, Social Security number, beginning and ending
25 dates of employment.

26 h. “Class Member(s)” mean(s) all members of the Class.

27 i. “Class Period” means the time period from May 10, 2015 until May 8, 2020.

28 j. “Class Settlement” means this Settlement as it pertains to the settlement of claims
that do not arise under the Private Attorneys General Act of 2004, California Labor Code §§ 2698,
et seq.

///

1 k. "Court" means the Riverside County Superior Court, the court in which the Action
2 is pending.

3 l. "Defendant" means International E-Z Up, Inc.

4 m. "Defendant's Counsel" or "Defense Counsel" means:

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7 Ashley A. Halberda
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8 Brian E. Cole II
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10 Tel: (949) 622-1661

11 n. "Disposition" means the method by which the Court adopts the terms of the
12 Settlement and Agreement, which may be by judgment or other final order, and retains jurisdiction
13 over the enforcement, implementation, construction, administration, and interpretation of the
14 Settlement and Agreement.

15 o. "Effective Date" of this Settlement shall be the later of the time when: (i) the date
16 of final affirmance of the Final Approval Order and Judgment on an appeal of the Final Approval
17 Order and Judgment, the expiration of the time for, or the denial of, a petition to review the Final
18 Approval Order and Judgment, or if review is granted, the date of final affirmance of the Final
19 Approval Order and Judgment following review pursuant to that grant, (ii) the date of final
20 dismissal of any appeal from the Final Approval Order and Judgment or the final dismissal of any
21 proceeding to review the Final Approval Order and Judgment, provided that the Final Approval
22 Order and Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or
23 withdrawal) of any filed appeal or other proceeding to set aside the Final Approval Order and
24 Judgment in a way that affirms the Final Approval Order and Judgment in a form substantially
25 identical to the form of the Final Approval Order and Judgment entered by the Court, and the time
26 to petition for review with respect to any appellate decision affirming the Final Approval Order and
27 Judgment has expired; or (iv) if no Objection is made or a timely made Objection is made and then
28 withdrawn, then the Effective Date shall be the day the Court enters the Final Approval Order and

1 Judgment approving this Agreement.

2 p. "Enhancement Awards" means a monetary amount of up to \$7,500.00 for Plaintiff
3 Jose Saldana and \$5,000 to Plaintiff Thomas Johns, subject to Court approval, which will be paid
4 pursuant to Section 3.06(c) of this Agreement.

5 q. "Final Approval Hearing" means the hearing at which the Court enters the order
6 approving the Settlement and Agreement and terminating the Action by entry of judgment.

7 r. "Final Approval Order and Judgment" or "Final Order" means the formal court
8 order signed by the Court at or after the Final Approval Hearing in accordance with the terms
9 herein approving this Agreement and terminating the Action by entry of judgment.

10 s. "Gross Settlement Fund" means the maximum settlement sum of \$950,000, to be
11 paid by Defendant under the terms and conditions of this Agreement. Defendant shall remit its
12 share of the employer's payroll taxes, as provided herein, separately and in addition to the Gross
13 Settlement Fund.

14 t. "Individual Settlement Payments" means the amount of money from the Net
15 Settlement Amount that shall be paid to the Settlement Class Members. Individual Settlement
16 Payments will be each Settlement Class Member's *pro rata* share of the Net Settlement Amount
17 (which share shall be determined by the calculations provided in this Agreement), minus the
18 employee's share of payroll and income taxes on the portion which is wages and all other
19 applicable deductions or withholding required by law or expressly authorized by the Class
20 Member.

21 u. "Individual PAGA Payments" means the amount of money from the PAGA
22 Settlement Amount that shall be paid to the Aggrieved Employees. Individual PAGA Payments
23 will be each Aggrieved Employee's *pro rata* share of 25% of the PAGA Settlement Amount
24 (which share shall be determined by the calculations provided in this Agreement).

25 v. "Litigation Costs" means the reimbursement of actual litigation costs and expenses
26 incurred by Class Counsel in the course of this Action in an amount not to exceed \$40,000.00.

27 w. "LWDA" means the California Labor and Workforce Development Agency.

28 x. "Named Plaintiffs" or "Plaintiffs" means Jose Saldana and Thomas Johns.

1 y. "Net Settlement Amount" means the Gross Settlement Fund less all of the following
2 as approved by the Court: (a) Enhancement Awards to Plaintiffs; (b) Attorneys' Fees to Class
3 Counsel; (c) Litigation Costs to Class Counsel; (d) Settlement Administration Costs to Settlement
4 Administrator; and (e) PAGA Settlement Amount to the LWDA and Aggrieved Employees.

5 z. "Class Notice" means the Notice of Proposed Class Action Settlement substantially
6 in the form attached hereto as "**Exhibit A**" (the "Notice").

7 aa. "Operative Complaint" means the First Amended Class Action Complaint for
8 Damages and Enforcement of the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq.*
9 filed in the Action on March 25, 2021.

10 bb. "Opt-Out Request" means a written request to be excluded from the Class
11 Settlement or completed Exclusion Form pursuant to Section 3.04(b) below.

12 cc. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code
13 §§ 2698, *et seq.*

14 dd. "PAGA Period(s)" means the time period from May 10, 2018 to May 8, 2020.

15 ee. "PAGA Settlement" means this Settlement as it pertains to the settlement of claims
16 arising under the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

17 ff. "PAGA Settlement Amount" means \$75,000 allocated to the settlement of claims
18 arising under PAGA, seventy-five percent (75%) of which, or Fifty-Six Thousand Two Hundred
19 Fifty Dollars (\$56,250.00), will be paid to the LWDA and twenty-five percent (25%) of which, or
20 Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00), will be paid to Aggrieved
21 Employees.

22 gg. "Parties" means collectively Plaintiffs and Defendant.

23 hh. "Pay Period" means a pay period during the PAGA Period during which an
24 Aggrieved Employee worked for Defendant as an hourly-paid or non-exempt employee in
25 California. Each Aggrieved Employee will be credited with at least one (1) Pay Period.

26 ii. "Preliminary Approval Date" means the date on which the Court preliminarily
27 approves the Settlement embodied in this Agreement, including, without limitation, the Class
28 Notice, Exclusion Form, and Objection Form.

1 jj. “Settlement” means the resolution of this Action and all related claims effectuated
2 by this Agreement.

3 kk. “Settlement Class Members” means all Class Members who do not submit timely
4 and valid Opt-Out Requests.

5 ll. “Settlement Administration Costs” means all costs incurred by the Settlement
6 Administrator in administration of the Settlement, including, but not limited to, any notices that
7 must be provided to the Class (including a Spanish translation), calculating employer payroll taxes,
8 performing address updates and verifications as necessary prior to the first mailing of the Notice
9 Packet, performing a single address follow-up on any returned mail, calculating Individual
10 Settlement Payments and Individual PAGA Payments and tax withholdings, providing declarations,
11 generating Individual Settlement Payment and Individual PAGA Payment checks and related tax
12 reporting forms, completing administrative work related to unclaimed checks, if any, generating
13 checks to Class Counsel for Attorneys’ Fees and Litigation Costs, and to Plaintiffs for their
14 Enhancement Awards, and any other actions of the Settlement Administrator as set forth in this
15 Agreement, all pursuant to the terms of this Agreement.

16 mm. “Settlement Administrator” means Simpluris, Inc., which was mutually selected by
17 the Parties for the administration of the Settlement including, without limitation, the distribution of
18 the Individual Settlement Payments and Individual PAGA Payments from the Gross Settlement
19 Fund and related matters under this Agreement.

20 nn. “Total Pay Periods” means the total aggregate number of Pay Periods of all
21 Aggrieved Employees.

22 oo. “Total Workweeks” means the total aggregate number of Workweeks of all
23 Settlement Class Members

24 pp. “Workweek(s)” means a week during the Class Period commencing on Sunday and
25 ending on the following Saturday in which a Class Member worked one or more days. Each Class
26 Member will be credited with at least one (1) Workweek.

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1 **ARTICLE II**

2 **FACTUAL BACKGROUND**

3 a. On or about May 10, 2019, Plaintiff Jose Saldana filed the Class Action Complaint
4 for Damages, commencing the Action in the California Superior Court for the County of Riverside,
5 Case No. RIC1902873. On March 25, 2021, the First Amended Class Action Complaint for
6 Damages and Enforcement of the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq.*
7 (“First Amended Complaint” or “Operative Complaint”) was filed in the Action, adding Thomas
8 Johns as a plaintiff and a cause of action under the Private Attorneys General Act, Cal. Lab. Code
9 § 2698, *Et Seq.*. The Operative Complaint alleges claims for: (1) Violation of California Labor
10 Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and
11 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code §§ 226.7 (Unpaid
12 Rest Break Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid
13 Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not
14 Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During
15 Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
16 (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9)
17 Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10)
18 Violation of California Business & Professions Code §§ 17200, *et seq.*; and Violation of the Private
19 Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq.* The Operative Complaint alleges putative
20 class claims on behalf of a putative class and seeks civil penalties on behalf of the State of
21 California with respect to alleged aggrieved employees.

22 b. Defendant generally denies all of the allegations asserted in the Action, including
23 those in the Operative Complaint, and specifically denies any violation of (i) the California Labor
24 Code, (ii) the California Industrial Welfare Commission Wage Orders, and/or (iii) California
25 Business and Professions Code. Defendant further denies any pendant or related charges, denies
26 violating any other law or right of Plaintiffs or any Class Member and denies any liability is owed
27 to Plaintiffs, Class Members, or the State of California.

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1 c. On December 11, 2019 and then on February 8, 2020, the Parties engaged in private
2 mediation with Jeffrey Krivis, Esq., an experienced wage and hour class action mediator, and
3 thereafter reached an agreement to resolve this matter. The settlement discussions were conducted
4 at arm's-length. The Settlement is the result of an informed and detailed analysis of the risks
5 facing both parties in litigating this case, including but not limited to, careful consideration of the
6 legal and factual obstacles to Plaintiffs' prospects of obtaining class certification and representative
7 adjudication, and on the merits, and Defendant's defenses, as well as Defendant's potential
8 exposure and the additional costs of litigating the Action.

9 d. It is the desire of the Parties to fully, finally, and forever settle, compromise and
10 discharge the Released Class Claims and Released PAGA Claims. It is the intention of the Parties
11 that this Settlement Agreement shall constitute a full and complete settlement and release of all
12 claims set forth in Section 5.01 and Section 5.02 below.

13 e. Named Plaintiffs and Class Counsel have each conducted a thorough investigation
14 into the facts of the Action, including an extensive review of relevant documents, and have
15 diligently pursued an investigation of Class Members' claims and the PAGA claims against
16 Defendant. Based on their respective own independent investigation and evaluation, Named
17 Plaintiffs and Class Counsel are each of the opinion that the Settlement with Defendant for the
18 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
19 adequate and is in the best interest of the Settlement Class and the State of California in light of all
20 known facts and circumstances, including the risk of significant delay, the risk the Class will not be
21 certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues.

22 f. The Parties agree to cooperate and take all steps necessary and appropriate to
23 consummate this Settlement and that the Final Approval Order and Judgment shall have a *res*
24 *judicata* effect.

25 g. The maximum total payment under the Settlement, including all Individual
26 Settlement Payments, Attorneys' Fees, Litigation Costs, Enhancement Awards, PAGA Settlement
27 Amount, and any other payments provided by this Settlement, is the Gross Settlement Fund.
28 Notwithstanding the foregoing, Defendant shall be responsible for paying the employer's portion of

1 payroll taxes on the wage portion of each Individual Settlement Payment. It is understood and
2 agreed that other than the employer's portion of payroll taxes on the wage portion of each
3 Individual Settlement Payment, Defendant's maximum total liability under this Settlement shall not
4 exceed the Gross Settlement Fund.

5 h. It is understood that the Gross Settlement Fund is non-reversionary. To the extent
6 that an Individual Settlement Payment check or Individual PAGA Payment check is (1)
7 undeliverable, after skip tracing performed by the Settlement Administrator as provided in
8 paragraph 3.03 below, or (2) has not been cashed, deposited, or otherwise negotiated within 180
9 days after the date listed on the check, those checks will be cancelled and the funds associated with
10 said cancelled checks will be distributed to a *cy pres* recipient pursuant to Code of Civil Procedure
11 section 384 (i.e., in no event will any of the funds revert to Defendant).

12 i. It is further understood and agreed that Named Plaintiffs and/or Class Counsel shall
13 not issue any public statement to the media, press, or otherwise concerning this Action and/or any
14 business practice, procedure, or policy of Defendant, except as specified in Section 6.25 of this
15 Agreement.

16 j. The Settlement embodied in this Agreement contemplates the (i) entry of an order
17 approving certification of a Class for settlement purposes only, (ii) entry of a Final Approval Order
18 and Judgment, (iii) entry of Disposition enforcing the terms of the Settlement and retaining
19 jurisdiction, (iv) release, as set forth below in Sections 5.01 and 5.02 below, by all Settlement Class
20 Members, including Named Plaintiffs, of all Released Class Claims and release by the State of
21 California of all Released PAGA Claims, and (vi) a general release by Named Plaintiffs of all
22 known and unknown claims against Defendant, its past, current, or future officers, directors, and
23 employees pursuant to California Civil Code section 1542.

24 **ARTICLE III**

25 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

26 Because the Parties have stipulated to the certification of the Class with respect to all class
27 causes of action alleged in the Operative Complaint in this Action for settlement purposes only, this
28 Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter

1 into this Agreement on a conditional basis. This Agreement is contingent upon the approval and
2 certification of the Class by the Court. If the Effective Date does not occur, this Agreement shall
3 be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or
4 used for any purpose whatsoever.

5 The Parties and their respective counsel shall take all reasonable steps that may be
6 requested by the Court relating to the approval and implementation of this Agreement and shall
7 otherwise use their respective best efforts to obtain Court approval and implement this Agreement.
8 If the Court does not grant the motion for preliminary approval and/or the motion for final
9 approval, the Parties agree to meet and confer to address the Court's concerns.

10 The procedure for obtaining Court approval of and implementing this Agreement shall be as
11 follows:

12 **Section 3.01 Motion for Preliminary Approval of Class Action and PAGA Settlement**

13 Promptly upon execution of this Agreement, the Parties shall submit this Agreement to the
14 Court and request preliminary approval and determination by the Court as to its fairness, adequacy,
15 and reasonableness. Class Counsel will prepare and file the motion for preliminary approval of
16 settlement. Upon receipt of the motion for preliminary approval and all supporting documents,
17 Defendant shall have a minimum of two (2) calendar days to review the motion for preliminary
18 approval of settlement before Class Counsel files the motion for preliminary approval with the
19 Court.

20 At the time of filing the motion for preliminary approval, pursuant to California Labor Code
21 section 2699(1)(2), Plaintiffs will simultaneously cause this Settlement Agreement to be filed with
22 the LWDA using the appropriate website and intake forms located at:

23 <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

24 In seeking preliminary approval of this Agreement, the Parties shall apply to the Court for
25 the entry of a preliminary order seeking certification the Class under section 382 of the California
26 Code of Civil Procedure and Rules 3.760 *et seq.* of the California Rules of Court for purposes of
27 settlement only; approving the proposed Notice as to form and content; directing the mailing of the
28 Notice Packet to the Class Members; and preliminarily approving the Settlement subject only to

1 Objection of Settlement Class Members and final review by the Court.

2 **Section 3.02 The Settlement Administrator**

3 The Parties have chosen Simpluris, Inc. to administer this Settlement and to act as the
4 Settlement Administrator, including, but not limited to, distributing any notices and forms that must
5 be provided to the Class, performing address updates and verifications as necessary prior to the first
6 mailing of the Notice Packet, performing a single address follow-up on any returned mail,
7 responding to inquiries about the Class Notice, determining the validity of all Opt-Out Requests,
8 calculating the Net Settlement Amount and the Individual Settlement Payments, calculating the
9 Individual PAGA Payments, calculating employer payroll taxes, preparing tax statements and/or
10 reports and remitting the necessary tax payments, providing necessary progress reports, preparing
11 declarations required by the Court, preparing a detailed declaration that sets forth the number of
12 Settlement Class Members and each of the Class Members who submitted a timely and valid Opt-
13 Out Requests, and, with notice and consent of the Parties, generating and issuing the Individual
14 Settlement Payment checks and distributing them to Settlement Class Members and generating and
15 issuing Individual PAGA Payment checks and distributing them to Aggrieved Employees, and
16 issuing the payments to Class Counsel for Attorneys' Fees and Litigation Costs, the Enhancement
17 Award checks to the Named Plaintiffs, processing and remitting funds associated with cancelled
18 checks (if any) to the *cy pres* recipient, and any other actions of the Settlement Administrator as set
19 forth in this Agreement, all pursuant to the terms of this Agreement.

20 The Settlement Administrator shall expressly agree to all of the terms and conditions of this
21 Agreement relating to the administration of the Settlement. The Parties each represent that they do
22 not have any financial interest in the Settlement Administrator or otherwise have a relationship
23 with the Settlement Administrator that could create a conflict of interest.

24 The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly
25 report that certifies: (i) the number of Class Members to whom the Settlement Administrator has
26 mailed the Notice Packet; (ii) the number of Notice Packets that were returned as undeliverable;
27 (iii) the number of Class Members who have submitted valid Opt-Out Requests; (iv) the number of
28 Class Members who have submitted Workweek Challenges; and (v) the number of Settlement

1 Class Members who have submitted Objections. Additionally, the Settlement Administrator will
2 provide to Defense Counsel and Class Counsel any updated reports regarding the administration of
3 the Settlement Agreement.

4 The Settlement Administrator shall maintain throughout the administration of the
5 Settlement all of the Opt-Out Requests that it receives. At the conclusion of the administration of
6 the Settlement, the Settlement Administrator shall retain all Opt-Out Requests for an additional
7 four years. The Settlement Administrator shall provide to Defense Counsel and Class Counsel all
8 Opt-Out Requests.

9 All costs of administering the Settlement, including, but not limited to, all costs and fees
10 associated with preparing, issuing, and mailing any and all notices to Class Members and/or
11 Settlement Class Members, all costs and fees associated with computing, processing, reviewing,
12 and mailing the Individual Settlement Payments and Individual PAGA Payments, all costs and fees
13 associated with preparing any tax returns and any other filings required by any governmental taxing
14 authority or agency, all costs and fees associated with preparing any other checks, notices, reports,
15 or filings to be prepared in the course of administering disbursements from the Gross Settlement
16 Fund, and any other costs and fees incurred and/or charged by the Settlement Administrator in
17 connection with the carrying out of its duties under this Agreement are contemplated and paid by
18 the Settlement Administration Costs, shall be deducted from the Gross Settlement Fund.

19 The Settlement Administrator shall be required to acknowledge that in its role as Settlement
20 Administrator it owes fiduciary obligations to the Named Plaintiffs and Class Members and will be
21 required to attest that it will make payments consistent only with the terms of this Agreement,
22 including the allocation instructions set forth in this Agreement, or as ordered by the Court. In no
23 event shall the Settlement Administrator permit the disbursement of any portion of the Gross
24 Settlement Fund before the Effective Date. The obligations of the Settlement Administrator are
25 released upon all funds being disbursed by the Settlement Administrator pursuant to this
26 Agreement and/or order(s) of the Court.

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1 **Section 3.03 Notice to the Class**

2 Notice of the Settlement shall be provided to the Class Members in both English and
3 Spanish, and the Class Members may submit Objections and/or Opt-Out Requests with respect to
4 the Class Settlement by using the following procedures:

5 Within ten (10) calendar days after the Court preliminarily approves the Settlement,
6 Defense Counsel will provide the Class List to the Settlement Administrator.

7 Within ten (10) calendar days after the receipt of the Class List, the Settlement Administrator
8 shall update the addresses using the United States Postal Service's NCOALink system and mail the
9 Class Notice, Exclusion Form, and Objection Form (together, "Notice Packet") by first-class United
10 States mail to each Class Member. Any Notice Packet returned to the Settlement Administrator as
11 non-delivered on or before the Response Deadline shall be re-mailed once to the forwarding address
12 affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly
13 attempt to determine a correct address by use of telephonic inquiry, skip-tracing, or other search
14 using the name, address, and/or Social Security number of the Class Member involved, and shall
15 then perform one re-mailing, if another mailing address is identified by the Settlement Administrator.
16 The Settlement Administrator shall promptly notify Class Counsel and Defense Counsel if any
17 Notice Packets are returned as undeliverable and no forwarding address is available. Settlement Class
18 Members to whom a Notice Packet is re-mailed shall have their Response Deadline extended by
19 fifteen (15) calendar days.

20 No later than twenty-one (21) calendar days prior to the Final Approval Hearing, or seven
21 (7) calendar days prior to Plaintiffs' deadline to file the motion for final approval and for approval
22 of fees and costs, whichever is earlier, the Settlement Administrator shall provide Class Counsel
23 and Defense Counsel with a declaration attesting to completion of the notice process, including but
24 not limited to any attempts to obtain valid mailing addresses for Class Members and re-sending any
25 returned Notice Packets, as well as the number of Opt-Out Requests, Objections, or Workweek
26 Challenges that the Settlement Administrator received and the dates that the Settlement
27 Administrator received those Opt-Out Requests, Objections, or Workweek Challenges.

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1 Compliance with the procedures described in this Section shall constitute due and sufficient
2 notice to Class Members of this proposed Settlement and the Final Approval Hearing, and shall
3 satisfy the requirements of due process. Nothing else shall be required of, or done by, the Parties,
4 Class Counsel, Defense Counsel, or the Settlement Administrator to provide notice of the proposed
5 Settlement and the Final Approval Hearing.

6 **Section 3.04 Responses to Notice**

7 **a. No Claim Forms**

8 Settlement Class Members are not required to submit claim forms in order to be issued
9 payment for their share of the Net Settlement Amount.

10 Any Settlement Class Member who disagrees with the number of Workweeks used to
11 calculate his or her Individual Settlement Payment as reflected on the Class Notice shall be allowed
12 to indicate and explain their challenge by submitting a written dispute to the Settlement
13 Administrator (“Workweek Challenge”). In order to be timely, a Workweek Challenge must be
14 postmarked or faxed to the Settlement Administrator no later than forty-five (45) days after the date
15 the Notice Packet is first mailed (the “Response Deadline”), unless extended as provided in section
16 3.03, above. In order to be valid, a Workweek Challenge must: (1) contain the Class Member’s full
17 name, telephone number, address, and the last four numbers of his or her Social Security number;
18 (2) list the case name and number of the Action; (3) clearly state that the Class Member believes
19 the Workweeks allocated to him or her is not correct; (4) clearly state the number of Workweeks
20 the Class Member contends is correct; and (5) attach any written documentation to support the
21 Class Member’s contention.

22 The Settlement Administrator shall resolve the Workweek Challenge with the Class
23 Member using the employee records provided by Defendant and the Class Member, in consultation
24 with Class Counsel and Defense Counsel. Any disputes not otherwise resolved by the Settlement
25 Administrator, Class Counsel, and Defense Counsel concerning Workweek Challenges and/or
26 administration of the Settlement shall be resolved by the Court, under the laws of the State of
27 California. Prior to any such involvement of the Court, counsel for the Parties will confer in good
28 faith to resolve the Workweek Challenges. The date of the postmark on the return envelope or the

1 fax confirmation of the Settlement Administrator shall be the exclusive means used to determine
2 whether a Class Member has submitted a timely Workweek Challenge.

3 **b. Request for Exclusion from Class**

4 By entering into this Agreement, Named Plaintiffs agree that they are not requesting and
5 will not be requesting exclusion from the Class Settlement.

6 The Notice shall provide that Class Members who wish to exclude themselves from the
7 Class Settlement must submit a written request to be excluded from the Class Settlement or a
8 completed Exclusion Form (attached hereto as “**Exhibit B**”) to the Settlement Administrator (i.e.,
9 Opt-Out Request). In order to be timely, an Opt-Out Request must be postmarked or faxed to the
10 Settlement Administrator no later than the applicable Response Deadline. In order to be valid, an
11 Opt-Out Request must: (1) contain the Class Member’s full name, telephone number, address, and
12 the last four numbers of his or her Social Security number; (2) list the case name and number of the
13 Action; and (3) clearly state that the Class Member wishes to be excluded from the Class
14 Settlement. The date of the postmark on the return mailing envelope or the fax confirmation of the
15 Settlement Administrator shall be the exclusive means used to determine whether an Opt-Out
16 Request has been timely submitted. Any Class Member who submits a valid and timely Opt-Out
17 Request will not be entitled to any recovery under the Class Settlement and will not be bound by
18 the Class Settlement or any release of the Released Class Claims or have any right to object,
19 appeal, or comment on the Class Settlement. Class Members who fail to submit a valid and timely
20 Opt-Out Request on or before the Response Deadline shall be bound by all terms of the Settlement
21 and any Final Approval Order and Judgment entered in this Action if the Settlement is approved by
22 the Court, including a full and final release of all Released Class Claims. No later than five (5)
23 calendar days after the Response Deadline, the Settlement Administrator shall provide a declaration
24 with a complete list of each of the Class Members who submitted a timely and valid Opt-Out
25 Requests.

26 Class Members who worked for Defendant within the PAGA Period will remain Aggrieved
27 Employees, and the State of California will be bound to the PAGA Settlement and release Released
28 PAGA Claims, regardless of whether they submit a timely and valid Opt-Out Request, and said

1 Aggrieved Employees will each be issued an Individual PAGA Payment.

2 **c. Objections to Class Settlement**

3 The Notice shall provide that Class Members who wish to object to the Class Settlement
4 must either submit a written statement objecting to the Class Settlement or completed Objection
5 Form (attached hereto as “**Exhibit C**”) to the Settlement Administrator (collectively, “Objection”)
6 or appear at the Final Approval Hearing and make an oral objection. In order to be timely, an
7 Objection must be postmarked or faxed to the Settlement Administrator no later than the applicable
8 Response Deadline. In order to be valid, an Objection must: (1) contain the Settlement Class
9 Member’s full name, telephone number, address, and the last four numbers of his or her Social
10 Security number; (2) list the case name and number of the Action; (3) clearly state that the
11 Settlement Class Member objects to the Class Settlement; and (4) clearly state the factual and/or
12 legal basis of their objection. The Parties will be permitted to respond in writing to such
13 Objections before the Final Approval Hearing or within the time period set by the Court. Class
14 Members who fail to make objections in the manner specified above shall be deemed to have
15 waived any objections and shall be foreclosed from making any objections (whether by appeal or
16 otherwise) to the Class Settlement.

17 **d. No Solicitation of Objections or Opt-Out Requests**

18 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
19 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
20 to submit oral or written Objections or Opt-Out Requests, appeal from the Court’s Final Approval
21 Order and Judgment or seek to vacate or set aside the Final Approval Order and Judgment.
22 Further, at no time shall any of the Parties or their counsel discourage any Class Members from
23 participating in the Class Settlement.

24 **e. Failure to Object**

25 Any Settlement Class Member who fails to timely submit a valid Objection shall be
26 foreclosed from making any Objection to the Class Settlement and Agreement, unless otherwise
27 ordered by the Court, except that any Settlement Class Member may appear at the Final Approval
28 Hearing and make an oral objection, as provided in subsection (c), above.

1 **f. Right of Plaintiffs and Defendant to Void Agreement**

2 If five percent (5%) or more of the Class Members submit timely and valid Opt-Out
3 Requests as described in Section 3.04(b) above, Defendant will have the right, but not the
4 obligation, to revoke and void this Agreement at its discretion. Defendant must exercise its right to
5 revoke this Agreement within fourteen (14) calendar days of being informed by the Settlement
6 Administrator that more than five percent (5%) of the Class Members submitted valid and timely
7 Opt-Out Requests. If Defendant exercises its right to void the Agreement, then the Parties will
8 have no further obligations under the Agreement, including, without limitation, any obligation by
9 Defendant to pay the Gross Settlement Fund, or any amounts that otherwise would have been owed
10 under this Agreement. If the number of Workweeks for the time period from May 10, 2015 to
11 November 20, 2019 exceeds 24,053 (i.e., the number of Workweeks provided to Class Counsel
12 prior to mediation) by 5% or more, Plaintiffs will have the right, but not the obligation, to revoke
13 and void this Agreement at their discretion. Plaintiffs must exercise their right to revoke this
14 Agreement within fourteen (14) calendar days of being informed by the Settlement Administrator
15 of the applicable number of Workweeks.

16 **Section 3.05 Final Approval Hearing**

17 A Final Approval Hearing shall be held before the Court on the date set forth in the order
18 granting preliminary approval of the Settlement and the Class Notice. At the Final Approval
19 Hearing, the Court shall (1) review this Agreement and determine whether the Court should grant it
20 final approval, (2) set the amounts of the Enhancement Awards and Attorneys' Fees and Litigation
21 Costs, and (3) consider any timely objections made pursuant to Section 3.04(c) above and all
22 responses by the Parties to such objections. At the Final Approval Hearing, the Parties shall ask
23 the Court to grant final approval to this Settlement and Agreement and shall submit to the Court a
24 proposed Final Approval Order and Judgment, which the Parties shall jointly agree upon in
25 advance and which shall be entered in the Action.

26 After entry of the Final Approval Order and Judgment, the Court shall have continuing
27 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this
28 Agreement and all orders and judgments entered in connection with this Agreement, and the Parties

1 and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing,
2 and enforcing the settlement embodied in this Agreement, and all orders and judgments entered in
3 connection with this Agreement.

4 **a. Right to Appeal**

5 Provided that the Final Approval Order and Judgment is consistent with the terms and
6 conditions of this Agreement, Named Plaintiffs hereby waive any and all rights to appeal from the
7 Final Approval Order and Judgment, including all rights to any post-judgment proceeding and
8 appellate proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and
9 any extraordinary writ, and the Final Approval Order and Judgment. This waiver does not include
10 any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings
11 nor does this waiver preclude Plaintiffs and/or Class Counsel from appealing any award of
12 Enhancement Awards or Attorneys' Fees and Litigation Costs of suit. A Settlement Class Member
13 who submitted a timely Objection must also satisfy any additional requirements under applicable
14 law, in addition to objecting, in order to have standing to appeal from the class action settlement
15 espoused herein.

16 **b. Vacating, Reversal, or Material Modification on Appeal or Review**

17 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
18 or application, the reviewing court vacates, reverses, or modifies the Final Approval Order and
19 Judgment such that there is a material modification to the Settlement and Agreement, and that
20 court's decision is not completely reversed and the Final Approval Order and Judgment is not fully
21 affirmed on review by a higher court, then Named Plaintiffs and Defendant will each have the right
22 to void the Settlement and Agreement, which the Parties must do by giving written notice to the
23 other Parties, the reviewing court, and the Court not later than fourteen (14) calendar days after the
24 reviewing court's decision vacating, reversing, or materially modifying the Final Approval Order
25 and Judgment becomes final. A vacation, reversal, or modification of the Court's award of an
26 Enhancement Award or Class Counsel's Attorneys' Fees or Litigation Costs will not constitute a
27 vacation, reversal, or material modification of the Final Approval Order and Judgment within the
28 meaning of this paragraph, provided that Defendant's obligation to make payments remains limited

1 as set forth in this Agreement.

2 **c. Rendering the Settlement Null and Void**

3 In the event: (i) either Party elects to void this Agreement pursuant to Section 3.04(f)
4 above; (ii) the Court does not enter any order specified in this Agreement; (iii) the Court does not
5 finally approve the Settlement as provided in this Agreement; (iv) the Court does not enter a Final
6 Approval Order and Judgment as provided in this Agreement which becomes final as a result of the
7 occurrence of the Effective Date; or (v) the Settlement does not become final for any other reason,
8 this Settlement Agreement shall be null and void and any order or judgment entered by the Court in
9 furtherance of this Settlement shall be treated as void, the Parties under this Settlement shall be
10 returned to their respective positions at the time of the execution of this Settlement Agreement, and
11 the Parties shall proceed in all respects as if this Settlement Agreement had not been executed,
12 except that any fees already incurred by the Settlement Administrator shall be split between the
13 Parties.

14 **d. Administration of the Settlement with Appeal Pending**

15 In the event an appeal is filed from the Court's Final Approval Order and Judgment, or any
16 other appellate review is sought prior to the Effective Date, administration of the Settlement shall
17 be stayed pending final resolution of the appeal or other appellate review.

18 **Section 3.06 Settlement Payment Procedures**

19 **a. Settlement Sum**

20 The Gross Settlement Fund of \$950,000 includes the following: (a) Enhancement Awards
21 to Plaintiff Saldana in an amount not to exceed \$7,500.00 and to Plaintiff Johns in an amount not to
22 exceed \$5,000.00; (b) an award of Attorneys' Fees to Class Counsel in an amount not to exceed
23 \$332,500; (c) an award of Litigation Costs to Class Counsel in an amount not to exceed
24 \$40,000.00; (d) the Settlement Administration Costs not to exceed \$10,000 to the Settlement
25 Administrator; and (e) the allocation of the PAGA Settlement Amount in the amount of \$75,000 to
26 be distributed to the LWDA and Aggrieved Employees.

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1 The Gross Settlement Fund has a maximum value of \$950,000. Under no circumstances
2 will Defendant be required to pay more than \$950,000, pursuant to the terms set forth in this
3 Agreement, except that Defendant shall separately pay for the employer's portion of any payroll
4 taxes due on the wage portion of each Individual Settlement Payment.

5 **b. Payment of Attorneys' Fees and Costs**

6 Class Counsel may request that the Court approve, and Defendant will not oppose, an award
7 of up to \$332,500 for Attorneys' Fees and up to \$40,000.00 for Litigation Costs. The Attorneys'
8 Fees and Litigation Costs will cover: all work performed and all fees and costs incurred to date and
9 all work to be performed and all fees and costs to be incurred in connection with the approval by
10 the Court of this Settlement, Class Counsel's supervision of administration of the Settlement, and
11 obtaining final approval of this Settlement and entry of judgment. Plaintiffs' Counsel shall not be
12 permitted to petition the Court for, or accept, any additional payments for attorneys' fees or costs.
13 Plaintiffs' Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the
14 Attorneys' Fees and Litigation Costs. The Settlement shall not be contingent upon the Court
15 awarding Class Counsel any particular amount for attorneys' fees and costs. The Parties agree that
16 any reduction in the amount of Attorneys' Fees and Litigation Costs awarded by the Court is not a
17 basis to void the Agreement and Plaintiffs' Counsel has the right to appeal the Court's ruling
18 regarding the Attorneys' Fees and Litigation Costs. If Plaintiffs' Counsel appeals an adverse ruling
19 of the Court regarding its fee and cost application, the ruling of the appellate court (regardless of its
20 substance) shall not constitute a material alteration of a term of this Agreement. The Attorneys'
21 Fees and Litigation Costs shall be paid by the Settlement Administrator to Class Counsel no later
22 than ten (10) calendar days after the Effective Date. The Settlement Administrator may, at the
23 expense of Class Counsel, purchase an annuity to utilize US treasuries and bonds or other attorney
24 fee deferral vehicles for Class Counsel.

25 The Settlement Administrator's payment of the Attorneys' Fees and Litigation Costs to
26 Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person,
27 attorney, or law firm for attorneys' fees or costs in the Action incurred by any attorney on behalf of
28 the Named Plaintiffs, and Class Members, and shall relieve Defendant, the Settlement

1 Administrator, and Defense Counsel of any other claims or liability to any other attorney or law
2 firm for any attorneys' fees or costs to which any of them may claim to be entitled on behalf of the
3 Named Plaintiffs and Class Members.

4 **c. Payment of Enhancement Awards to Named Plaintiffs**

5 Plaintiffs' Counsel may request that the Court approve, and Defendant will not oppose,
6 Enhancement Awards to the Named Plaintiffs in an amount not to exceed \$7,500.00 to Plaintiff
7 Saldana and \$5,000.00 to Plaintiff Johns, to be paid to the Named Plaintiffs for their time and effort
8 spent pursuing the Action. Defendant agrees not to oppose such an application, so long as it is
9 consistent with the provisions of this Agreement. The Settlement Administrator shall deliver any
10 Enhancement Awards to Named Plaintiffs within ten (10) calendar days after the Effective Date.
11 The Named Plaintiffs will also be entitled to receive Individual Settlement Payments and
12 Individual PAGA Payments (if applicable), pursuant to this Agreement in addition to their
13 Enhancement Awards. The Settlement shall not be contingent upon the Court awarding Named
14 Plaintiffs any particular amount for the Enhancement Awards. Class Counsel and Named Plaintiffs
15 shall have no right or ability to nullify the Settlement in the event that the Court awards an amount
16 less than the Enhancement Awards described in this Agreement.

17 Because it is the intent of the Parties that the Enhancement Awards represent payment to
18 the Named Plaintiffs in commendation for their services to the Class and State of California, and
19 not wages, the Settlement Administrator will not withhold any taxes from the Enhancement
20 Awards. The Enhancement Awards will be reported on a Form 1099 to Named Plaintiffs.
21 Although it is the contemplation of the Parties that the Enhancement Awards do not represent
22 wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing
23 authority may take the position that the Enhancement Awards constitute compensation for income
24 tax and withholding purposes. Named Plaintiffs agree to assume the responsibility of remitting to
25 the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing
26 authority the amounts required by law, if any, to be withheld by Defendant from the Enhancement
27 Awards paid under this Agreement. In addition, Named Plaintiffs shall hold Defendant harmless
28 and indemnify Defendant for all taxes, interest, penalties, and costs, excluding attorneys' fees,

1 incurred by Defendant by reason of any claims relating to the non-withholding of taxes from the
2 Enhancement Awards. The Settlement Administrator will issue a Form 1099 to the Named
3 Plaintiffs with regard to the Enhancement Award payments. The Settlement Administrator will
4 provide Defense Counsel with a copy of the Form 1099 issued to Named Plaintiffs.

5 **d. Payment of Settlement Administration Costs**

6 The Settlement Administration Costs shall be deducted from the Gross Settlement Fund and
7 are not to exceed \$10,000. All disputes relating to the Settlement Administrator's performance of
8 its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over
9 this Settlement until all payments and obligations contemplated by this Settlement have been fully
10 carried out. The Settlement Administrator will remit to itself the Settlement Administration Costs
11 within fifteen (15) calendar days of the Effective Date but no sooner than all other payments under
12 this Agreement have been made.

13 **e. Payment of Individual Settlement Payments to Settlement Class**
14 **Members and Individual PAGA Payments to Aggrieved Employees**

15 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
16 Payments. The Parties agree that the Net Settlement Amount shall be divided between all Settlement
17 Class Members based on the number of Workweeks allocated to each of them. The amount that each
18 Settlement Class Member is entitled to receive is determined by multiplying Net Settlement Amount
19 by a ratio that is determined by dividing a Settlement Class Member's Workweeks by the Total
20 Workweeks, as expressed in the following formula:

$$\begin{array}{ccccccc} \text{Individual} & & & \text{Net} & & \text{Settlement Class Member's} \\ \text{Settlement} & = & & \text{Settlement} & \times & \frac{\text{Workweeks}}{\text{Total Workweeks}} \\ \text{Payment} & & & \text{Amount} & & \end{array}$$

23 It is the intent of the Parties that the Net Settlement Amount shall be sufficient to pay
24 Settlement Class Members in accordance with the formula set forth above. Each Individual
25 Settlement Payment will be allocated as one-third (1/3) to wages and two-thirds (2/3) to penalties
26 and interest. The Settlement Administrator shall calculate, withhold, and remit to applicable
27 governmental agencies sufficient amounts as may be owed for employees' share of taxes due on
28 the portion of the Individual Settlement Payment allocated to wages that will be reported on an IRS

Form W2. These amounts shall be paid from the Net Settlement Amount. The Settlement Administrator shall also report those portions of the Individual Settlement Payments allocated to interest and penalties on an IRS Form 1099 as required by law.

The Settlement Administrator shall also calculate, receive from Defendant, and remit to the applicable government agencies such amount as may be owed by Defendant as an employer for payroll taxes on a maximum wage allocation of each Individual Settlement Payment that will be reported on an IRS Form W2. These employer payroll taxes allocated to the wage portion of the Individual Settlement Payments shall be paid by Defendant in addition to the Gross Settlement Fund.

The Parties agree that twenty-five percent of the PAGA Settlement Amount (“Net PAGA Payment”) (i.e., \$18,750) shall be used to fund Individual PAGA Payments. The Parties agree that the PAGA Payment shall be divided between all Aggrieved Employees based on the number of Pay Periods allocated to each of them. The amount that each Aggrieved Employees is entitled to receive is determined by multiplying the Net PAGA Payment by a ratio that is determined by dividing an Aggrieved Employee’s Pay Periods by the Total Pay Periods, as expressed in the following formula:

$$\begin{array}{ccccc} \text{Individual} & & \text{Net PAGA} & & \text{Aggrieved Employee's} \\ \text{PAGA} & = & \text{Payment} & \times & \frac{\text{Pay Periods}}{\text{Total Pay Periods}} \\ \text{Payment} & & & & \end{array}$$

Each Individual PAGA Payment will be allocated as entirely as penalties and will be reported on an IRS Form 1099 as required by law.

No later than ten (10) calendar days after the Court grants final approval of the Settlement, Defendant will pay the Gross Settlement Fund to the Settlement Administrator, who shall segregate and secure such funds in an interest-bearing account with all interest accruing for the benefit of Defendant. No later than ten (10) calendar days after the Effective Date, the Settlement Administrator shall prepare and mail the Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payments to Aggrieved Employees, minus applicable withholdings. For those Settlement Class Members who are also Aggrieved Employees, said individuals’ applicable Individual Settlement Payment and Individual PAGA Payment may be

1 combined into one check.

2 To the extent that an Individual Settlement Payment check or Individual PAGA Payment
3 check is (1) undeliverable or (2) not cashed, deposited, or otherwise negotiating within 180 days
4 after the date listed on the check, the check will be cancelled and associated funds shall be
5 distributed to CASA Riverside County (Voices for Children), a *cy pres* recipient pursuant to *Code*
6 *of Civil Procedure* section 384. Parties represent that neither Plaintiffs, Defendant, Defense
7 Counsel, nor Class Counsel have any affiliation with the designated *cy pres* recipient.

8 **f. Payment to the LWDA**

9 No later than ten (10) calendar days after the Effective Date, the Settlement Administrator
10 will deliver to the LWDA, 75% of the PAGA Settlement Amount (the “LWDA Payment”) (i.e.,
11 \$56,250) as the LWDA’s share of the PAGA Settlement, which the Parties believe in good faith is
12 a fair and reasonable apportionment.

13 **g. No Additional Contribution by Defendant**

14 Defendant’s monetary obligation under this Settlement and Agreement is limited to the
15 Gross Settlement Fund and the employer’s portion of payroll taxes. Defendant shall not be called
16 upon or required to contribute additional monies above the Gross Settlement Fund under any
17 circumstances whatsoever, except as to Defendant’s share of the employer payroll taxes. All costs,
18 fees, and expenses arising out of or in connection with the performance of this Agreement shall be
19 paid from the Gross Settlement Fund, but shall not include attorneys’ fees incurred (if any) in
20 enforcing the Settlement Agreement caused by a breach of the Settlement Agreement by
21 Defendant.

22 If, for whatever reason and however it may occur, this Agreement is canceled, rescinded,
23 terminated, voided, or nullified or the Settlement is barred by operation of law, or invalidated, or
24 ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have
25 any obligation to pay any portion of the Gross Settlement Fund to anyone under the terms of this
26 Agreement, and all previous disbursements from the Gross Settlement Fund will immediately be
27 paid back to Defendant by the person or entity who received such disbursement. Any unpaid costs
28 already incurred by the Settlement Administrator shall be split by the Parties.

1 **h. No Claims Resulting from Payments**

2 No person shall have any claim of any kind whatsoever against any of the Parties, Defense
3 Counsel, Named Plaintiffs, Class Counsel, any Class Member, or the Settlement Administrator,
4 based on the distribution of payments made in accordance with this Agreement.

5 **i. No Effect on Employee Benefit Plans**

6 The payment to any Class Member or Aggrieved Employee as provided for in this
7 Agreement (including, without limitation, any Individual Settlement Payment, Individual PAGA
8 Payment, or any Enhancement Awards paid to Named Plaintiffs) is not and shall not be deemed to
9 constitute an addition to, a modification of, or a change in any previously credited hours of service,
10 compensation and/or wages under any collective bargaining agreement, employee benefit plan,
11 employment policy, or stock option plan of or sponsored by Defendant or any of its present or
12 former parent corporations or affiliates or any jointly trustee benefit plans. Any such payment to
13 any Class Member and/or Aggrieved Employee shall not form the basis for additional contributions
14 to, additional benefits under, or any other additional entitlements under any collective bargaining
15 agreement, employee benefit plan, employment policy, or stock option plan of or sponsored by
16 Defendant or any of its present or former parent corporations or affiliates or any jointly trustee
17 benefit plans. Defendant and each of its present and former parent corporations and affiliates retain
18 the right to modify and/or amend the language of their employee benefit plans, employment
19 policies, and stock option plans, and to seek to have modified and/or amended the language of any
20 collective bargaining agreement, jointly trustee benefit plans, to make clear that any amounts paid
21 as a result of this Agreement are not compensation or wages, or payments for “hours worked,” as
22 defined by the applicable agreement(s), plans and policies, and that no additional contributions or
23 benefits are required by reason of the Settlement and this Agreement.

24 **j. Notice of the Order and Judgment Granting Final Approval**

25 No individualized notice of the Final Approval Order and Judgment will be required to be
26 given to the Class. Instead, notice of the Final Approval Order and Judgment shall be given to the
27 Class via online posting on the Settlement Administrator’s website. The Settlement Administrator
28 will post the Final Approval Order and Judgment on its website for a period of sixty (60) calendar

1 days.

2 ARTICLE IV

3 LIMITATIONS ON USE OF THIS SETTLEMENT

4 **Section 4.01: No Admission**

5 Defendant vigorously disputes the allegations in the Action. This Agreement is entered into
6 solely for the purpose of compromising claims that are highly disputed by the Parties. Nothing in
7 this Agreement is intended to be or will be construed as an admission of liability or wrongdoing by
8 Defendant and/or any of the Released Parties.

9 **Section 4.02: Nullification**

10 The Parties have agreed to the certification of the Class encompassing all class causes of
11 action pled in the Action for the sole purpose of effectuating this Agreement. If (a) the Court
12 should for any reason fail to certify the Class for settlement, or (b) the Court should for any reason
13 fail to approve this Settlement in the form agreed to by the Parties, or (c) the Court should for any
14 reason fail to enter the Final Approval Order and Judgment, or (d) the Final Approval Order and
15 Judgment is reversed, modified, or declared or rendered void, or (e) the Court should for any
16 reason fail to dispose of the Action in its entirety pursuant to this Settlement, with the exception of
17 the Court's retention of exclusive and continuing jurisdiction of this Action over all Parties and
18 Class Members to interpret and enforce the terms, conditions, and obligations of the Settlement,
19 then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the
20 related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement
21 shall stand in the same position, without prejudice, as they were at the time immediately prior to
22 the execution of the Settlement Agreement and if the Settlement Agreement had been neither
23 entered into nor filed with the Court; and (iv) the fact that the Parties were willing to stipulate to
24 class certification in the Action as part of the Settlement for settlement purposes only will not have
25 any bearing whatsoever on the remainder of the litigation of the Action.

26 Invalidation of any material portion of this Agreement shall invalidate this Agreement in its
27 entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall
28 remain in full force and effect.

1 In the event of a timely appeal from the Final Approval Order and Judgment, the Final
2 Approval Order and Judgment shall be stayed and the Gross Settlement Fund shall not be
3 distributed pending the completion and results of the appeal.

4 **ARTICLE V**

5 **RELEASES**

6 **Section 5.01: Release of Claims As To All Class Members.**

7 Upon the Effective Date, and except as to such rights or claims as may be created by this
8 Agreement, all Settlement Class Members, including the Named Plaintiffs (i.e., Class Members
9 who do not submit a timely and valid Opt-Out Request as described in Section 3.04(b)) shall be
10 bound by this Agreement and shall be deemed to fully and finally release and discharge Defendant
11 and each of its past, current, or future officers, directors, employees, and agents (collectively, the
12 “Released Parties”), from any and all applicable state law wage-and-hour claims, rights, demands,
13 liabilities, and causes of action of every nature and description, arising during the Class Period,
14 based on the facts alleged in the Operative Complaint, including without limitation, statutory,
15 constitutional, contractual or common law claims for wages, damages, unpaid costs, civil or
16 statutory penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs,
17 restitution, or equitable relief, based on the following categories of allegations: unpaid overtime,
18 unpaid meal period premiums, unpaid rest break premiums, unpaid minimum wages, final wages
19 not timely paid, wages not timely paid during employment, non-compliant wage statements, failure
20 to keep requisite payroll records, unreimbursed business expenses, including but not limited to
21 violations of and claims arising under California law, California Labor Code sections 201-204, 206,
22 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 256, 510, 512, 551, 552, 558, 558.1, 1102.5,
23 1174, 1174.5, 1182.12, 1194, 1194.2, 1197-1198, 1198.5, 1199, 2751, 2800, 2802, 2810.5, 6401,
24 6403, the applicable Industrial Welfare Commission Wage Orders; Cal. Code Regs. Title 8, §
25 11070; and the California Business & Professions Code § 17200, *et seq.* as it relates to the
26 underlying California Labor Code claims referenced above, interest, attorneys’ fees and costs,
27 including as permissible under California Code of Civil Procedure § 1021.5 (collectively,
28 “Released Class Claims”).

1 It is agreed that because the Class Members are so numerous, it is impossible or impractical
2 to have each Class Member execute this Agreement. The Class Notice will advise all Class
3 Members of the binding nature of the releases. Excepting only the Class Members who submit a
4 timely and valid Opt-Out Request, the Class Notice shall have the same force and effect as if this
5 Settlement and Agreement were executed by each Settlement Class Member with regard to the
6 Released Class Claims that he or she is releasing pursuant to the Settlement and Agreement.

7 **Section 5.02: Release of Claims As To State of California**

8 Upon the Effective Date, and except as to such rights and claims as may be created by this
9 Agreement, the State of California will be deemed to have fully and finally released and discharged
10 the Released Parties from any and all applicable claims, rights, demands, liabilities, and causes of
11 action for civil penalties, arising during the PAGA Period, with respect to Defendant's employment
12 of Aggrieved Employees during the PAGA Period, based on the facts alleged in the Operative
13 Complaint, based on the following categories of allegations: unpaid overtime, unpaid meal period
14 premiums, unpaid rest break premiums, unpaid minimum wages, final wages not timely paid,
15 wages not timely paid during employment, non-compliant wage statements, failure to keep
16 requisite payroll records, unreimbursed business expenses, including but not limited to violations of
17 and claims arising under California Labor Code sections 201-204, 206, 210, 218.5, 218.6, 221, 226,
18 226.3, 226.7, 227.3, 256, 510, 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194,
19 1194.2, 1197-1198, 1198.5, 1199, 2751, 2800, 2802, 2810.5, 6401, 6403, and the applicable
20 Industrial Welfare Commission Wage Orders (collectively, "Released PAGA Claims").

21 **Section 5.03: General Release by Named Plaintiffs.**

22 Upon the Effective Date, Plaintiffs Jose Saldana and Thomas Johns agree to release all
23 claims known or unknown, accrued or unaccrued, they have or may have against Defendant and the
24 Released Parties.

25 In consideration of the monetary sum provided to Plaintiffs by Defendant, subject to Court
26 approval, upon the Effective Date, the Named Plaintiffs fully release and forever discharge the
27 Released Parties from any and all actions, causes of action, claims, charges, complaints, liabilities,
28 obligations, promises, agreements, controversies, damages, actions, suits, rights, demands, liens,

1 costs, losses, debts, penalties, fines, wages, liquidated damages, restitutionary amounts, attorneys'
2 fees and costs, interest, punitive damages and expenses (including, without limitation, back wages,
3 penalties, liquidated damages, and attorneys' fees and costs actually incurred) or liabilities of any
4 kind which have been or could have been asserted against the Released Parties arising out of or
5 relating to Plaintiffs' employment with Defendant, and/or any other occurrence taking place on or
6 before the effective date of this Agreement, known or unknown, suspected or unsuspected,
7 including but not limited to claims arising out of, based upon, or relating to Plaintiffs' employment
8 with the Defendant, or the remuneration for such employment, and the matters referred to herein,
9 whether or not known or suspected to exist, and whether or not specifically or particularly
10 described herein. Without limiting the generality of the foregoing, Plaintiffs expressly release all
11 claims or rights that exist at the time of the execution of this Agreement arising out of alleged
12 violations of any contracts, express or implied (including but not limited to any contract of
13 employment); any contract or covenant of good faith or fair dealing (express or implied); any tort,
14 including, without limitation, negligence, fraud, misrepresentation under California Labor Code §
15 970, negligent infliction of emotional distress, intentional infliction of emotional distress, slander
16 and defamation; wrongful or constructive termination; any "retaliation" claims; any claims relating
17 to any breach of public policy; any legal restrictions on Defendant's right to discharge employees
18 or refuse to hire applicants; and any federal, state, or other governmental statute, regulation, order
19 or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race,
20 color, religion, sex, and national origin discrimination or harassment, including retaliation for
21 reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) sections 503
22 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (4) Equal Pay Act, 29 U.S.C.
23 § 209(4)(1) (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability
24 discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical
25 leave); (7) California Fair Employment and Housing Act, Cal. Gov't Code § 12900 *et seq.*
26 (discrimination or harassment in employment and/or housing, including discrimination or
27 harassment based on race, religious creed, color, national origin, ancestry, disability, marital status,
28 sex (including pregnancy), sexual orientation, or age, including, without limitation, retaliation for

1 reporting discrimination or harassment); (8) California Family Rights Act, Cal. Gov't Code
2 § 12945.1 *et seq.* (family/medical leave); (9) California Labor Code, including but not limited to
3 California Labor Code § 2698 *et seq.* (PAGA), or any Industrial Welfare Commission Wage Order;
4 (10) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; (11) Executive Order 11246 (race,
5 color, religion, sex, and national origin discrimination or harassment); (12) Executive Order 11141
6 (age discrimination); (13) California Business and Professions Code Section 17200, *et. seq.*, and
7 (14) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits).

8 **Section 5.04: Named Plaintiffs' Release of Unknown Claims**

9 Upon the Effective Date, Named Plaintiffs expressly waive any right or claim of right to
10 assert hereafter that any claim, demand, obligation, and/or cause of action, existing at the time of
11 the execution of this Agreement, have, through ignorance, oversight, or error, been omitted from
12 the terms of this Agreement. Named Plaintiffs agree there is a risk that each and every injury they
13 may have suffered by reason of the Released Parties' relationship with them might not now be
14 known, and there is further risk that said injuries, whether known or unknown at the date of this
15 Agreement, might possibly become progressively worse, and that as a result thereof further
16 damages may be sustained by them. Nevertheless, Named Plaintiffs desire to forever and fully
17 release and discharge the Released Parties, and each of them, and understand that by the execution
18 of this Agreement no further claims for any such injuries that existed at the time of the execution of
19 this Agreement may ever be asserted by them. Named Plaintiffs expressly waive and relinquish all
20 rights and benefits afforded by section 1542 of the Civil Code of the State of California and do so
21 understanding and acknowledging the significance of such specific waiver of section 1542.
22 Specifically, Named Plaintiffs waive their rights under Section 1542 of the Civil Code, which
23 states:

24 **A general release does not extend to claims that the creditor or**
25 **releasing party does not know or suspect to exist in his or her**
26 **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.

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1 Named Plaintiffs make this waiver with full knowledge of their rights and with the specific
2 intent to release all known and unknown claims arising on or before the effective date of this
3 Agreement, and therefore specifically waive the provisions of any statute in any state of the United
4 States which prevents release of unknown claims. Thus, subject to and in accordance with this
5 Agreement, even if Named Plaintiffs may hereafter discover facts in addition to or different from
6 those they now know or believes to be true, Named Plaintiffs, upon the Effective Date, shall be
7 deemed to have fully, finally, and forever settled and released any and all claims against the
8 Released Parties that were alleged or could have been alleged in the Action, as well as any other
9 claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that
10 now exist, upon any theory of law or equity, including, without limitation, conduct that is
11 negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard
12 to the subsequent discovery or existence of such different or additional facts.

13 **Section 5.05: No Additional Attorneys' Fees or Costs**

14 Except for the Attorneys' Fees and Litigation Costs set forth in this Agreement, the Parties
15 agree to bear their own attorneys' fees and costs related to this Action.

16 **ARTICLE VI**

17 **MISCELLANEOUS**

18 **Section 6.01: Amendments, Modification or Rescission**

19 The terms and provisions of this Agreement may be amended or modified only by an
20 express written agreement that is signed by all the Parties (or their successors-in-interest) and their
21 counsel, subject to Court approval. In the event that the Court requires that certain changes be
22 made to this Agreement or to the Notice Packet as a condition of preliminary approval, then a
23 signed stipulation by counsel for the Parties shall be sufficient to amend or modify this Agreement
24 or the Notice Packet without additional signatures from the Named Plaintiffs or Defendant. In the
25 event any Party is entitled to and elects to revoke or rescind this Agreement, such revocation or
26 rescission must be in writing, mailed by certified mail to Parties' counsel (at the mailing address
27 designated herein) and e-mailed to Parties' counsel.

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1 **Section 6.02: Assignment**

2 None of the rights, commitments, or obligations recognized under this Agreement may be
3 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
4 written consent of each other Party and its or their respective counsel. The representations,
5 warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the
6 Parties, the Class Members, State of California, and the Released Parties, and shall not be
7 construed to confer any right or to avail any remedy to any other person or entity.

8 **Section 6.03: Entire Agreement**

9 This Agreement, including, without limitation, the Exhibit referred to herein, which form an
10 integral part hereof, contains the entire understanding of the Parties hereto with respect to the
11 subject matter contained herein. In case of any conflict between text contained in Articles I
12 through VI of this Agreement and text contained in the Exhibits to this Agreement, the former (*i.e.*,
13 Articles I through VI) shall be controlling. There are no restrictions, promises, representations,
14 warranties, covenants, or undertakings governing the subject matter of this Agreement other than
15 those expressly set forth or referred to herein. Upon its full execution, this Agreement supersedes
16 all prior agreements and understandings among the Parties hereto with respect to the Settlement,
17 including, without limitation, correspondence between Class Counsel and Defense Counsel, and
18 drafts of prior agreements or proposals.

19 **Section 6.04: Waiver of Compliance**

20 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
21 material obligation, covenant, agreement, or condition herein may be expressly waived in writing,
22 subject to Court approval, to the extent permitted under applicable law, by the Party or Parties and
23 their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or
24 condition. A waiver or failure to insist upon strict compliance with any representation, warranty,
25 covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any
26 subsequent or other failure.

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1 **Section 6.05: Counterparts and Fax/PDF Signatures**

2 This Agreement, and any amendments hereto, may be executed in any number of
3 counterparts and any Party and/or their respective counsel hereto may execute any such
4 counterpart, each of which when executed and delivered shall be deemed to be an original and all
5 of which counterparts taken together shall constitute one instrument. A fax, electronic, DocuSign
6 or PDF signature on this Agreement shall be as valid as an original signature.

7 **Section 6.06: Attorneys' Fees and Litigation Costs**

8 No Class Member or Class Counsel or any other attorney acting for any Class Member may
9 recover or seek to recover any amounts for fees, costs, or disbursements from the Defendant and/or
10 the Released Parties or the Gross Settlement Fund except as expressly provided herein.

11 **Section 6.07: Meet and Confer Regarding Disputes**

12 If any dispute arises among the Parties or their respective counsel regarding the
13 implementation or interpretation of this Agreement, Class Counsel, and Defendant's counsel shall
14 meet and confer in an attempt to resolve such dispute prior to submitting it to the Court.

15 **Section 6.08: Administration Costs**

16 The Parties agree to cooperate in the Settlement administration process and to make all
17 reasonable efforts to control and minimize the costs and expenses incurred in administration of the
18 Settlement.

19 **Section 6.09: Circular 230 Disclaimer**

20 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
21 "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER
22 THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES
23 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
24 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
25 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
26 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
27 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
28 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 C.F.R. PART 10,
AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
THE RECOMMENDATION OF ANY OTHER PARTY, OR ANY ATTORNEY OR
ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON

1 ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
2 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON
3 THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY
4 OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
5 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
6 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
7 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX
8 TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY
9 TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

10 **Section 6.10: Privacy of Documents and Information**

11 The Named Plaintiffs and Class Counsel agree that none of the documents and information
12 provided to them by Defendant shall be used for any purpose other than prosecution of this Action.

13 **Section 6.11: No Admission by the Parties**

14 Defendant and the Released Parties deny any and all claims alleged in this Action and deny
15 all wrongdoing whatsoever. The Parties have stipulated to class certification as set forth herein for
16 settlement purposes only. This Agreement is not a concession or admission, and shall not be used
17 against Defendant or any of the Released Parties as an admission or indication with respect to any
18 claim of any fault, concession, or omission by Defendant or any of the Released Parties.

19 **Section 6.12: Exhibit and Headings**

20 The terms of this Agreement include the terms set forth in any attached Exhibit, which are
21 incorporated by this reference as though fully set forth in this Agreement. Any Exhibit to this
22 Agreement is an integral part of the Settlement. The descriptive headings of any paragraphs or
23 sections of this Agreement are inserted for convenience of reference only and do not constitute a
24 part of this Agreement.

25 **Section 6.13: Interim Stay of Proceedings**

26 The Parties agree that all orders and deadlines in the litigation are stayed, except such
27 proceedings necessary to implement and complete the Settlement. In the event the Settlement is not
28 approved by the Court, the Parties shall return to the current status of the litigation.

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1 **Section 6.14: Authorization to Enter Into Settlement Agreement**

2 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
3 whom they represent to negotiate this Agreement and to take all appropriate action required or
4 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
5 execute any other documents required to effectuate the terms of this Agreement. The Parties and
6 their counsel will cooperate with each other and use their best efforts to affect the implementation
7 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
8 any document needed to implement the Settlement, or on any supplemental provisions that may
9 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
10 the Court to resolve such disagreement. The person signing this Agreement on behalf of Defendant
11 represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendant.

12 **Section 6.15: Binding on Successors and Assigns**

13 This Agreement shall be binding upon, and inure to the benefit of, the Parties, the Released
14 Parties, and their respective successors or assigns.

15 **Section 6.16: California Law Governs**

16 All terms of this Agreement and the attached Exhibits shall be governed by and interpreted
17 according to the laws of the State of California and the procedures of the Court.

18 **Section 6.17: This Settlement is Fair, Adequate, and Reasonable**

19 The Parties believe this Settlement is a fair, adequate, and reasonable settlement of this
20 Action and have arrived at this Settlement in arm's length negotiations, taking into account all
21 relevant factors, present and potential. This Settlement was reached after extensive negotiations,
22 including an arms' length negotiation at mediation before respected mediator Jeffrey Krivis, Esq..

23 **Section 6.18: Cooperation and Drafting**

24 Each of the parties has cooperated in the drafting and preparation of this Agreement.
25 Hence, in any construction made to this Agreement, the same shall not be construed against any of
26 the Parties.

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1 **Section 6.19: Invalidity of Any Provision**

2 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
3 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
4 as to define all provisions of this Agreement valid and enforceable. The provisions of this
5 Agreement are severable. To the extent any provision is deemed unlawful, to the extent possible,
6 such provision shall be severed and the remainder of the Agreement shall remain valid and
7 enforceable.

8 **Section 6.20: Defense**

9 To the extent permitted by law, this Agreement may be pleaded as a full and complete
10 defense to, and may be used as the basis for an injunction against, any action, suit, or other
11 proceedings that may be instituted, prosecuted, or attempted with respect to the Released Class
12 Claims and/or Released PAGA Claims in breach of or contrary to this Settlement.

13 **Section 6.21: Named Plaintiffs' Waiver of Right to be Excluded**

14 The Named Plaintiffs agree to sign this Agreement and, by signing this Agreement, they
15 agree: (1) to be bound by its terms, (2) not to request to be excluded from the Class Settlement, and
16 (3) represent that they have no objection to any of the terms of this Agreement. Non-compliance
17 by the Named Plaintiffs with this paragraph shall be void and of no force or effect. Any such
18 request for exclusion or objection shall therefore be void and of no force or effect.

19 **Section 6.22: Public Statements**

20 Named Plaintiffs, Defendant, Defense Counsel, and Class Counsel agree to limit public
21 comment on this Settlement and Agreement, the Action, and the claims asserted in the Action, to
22 stating that the matter has been resolved to the satisfaction of the Parties. Named Plaintiffs,
23 Defendant, Defense Counsel, and Class Counsel shall not initiate public comment on this
24 Settlement and Agreement, the Action and the claims asserted in the Action with the exception that
25 Class Counsel shall not be precluded from submitting this Agreement to the LWDA in conformity
26 with the requirements of the PAGA statute, and/or communicating with Class Members, the
27 LWDA, or other entities as required to implement this Settlement. Defendant and/or the Released
28 Parties can communicate the existence of and/or use the Agreement as a defense to any claim(s)

covered by the releases in this Agreement.

Section 6.23: Enforcement

The Parties agree this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of this Action over all Parties and Class Members to interpret and enforce the terms, conditions, and obligations of the Settlement. The Named Plaintiffs, Class Members, and Defendant hereby submit to the personal and exclusive jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith. Only in an action or proceeding brought by a Party against another Party to enforce this Agreement, the prevailing party in such an action or proceeding shall be awarded his, her, or its costs and attorneys' fees.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this First Amended Joint Stipulation of Class and PAGA Settlement and Release between Plaintiffs and Defendant as of the date(s) set forth below:

06/22/2021

June __, 2021

By:

Electronically Signed
AssureSign®
2021-06-22 22:03:23 UTC - 172.58.28.44
a70bc236-bdaf-41ce-a229-ad40130b5c3

Jose Saldana
Named Plaintiff

June __, 2021

By:

Thomas Johns
Named Plaintiff

June __, 2021

By:

Mark Carter, Founder and Chairman
International E-Z Up, Inc.

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covered by the releases in this Agreement.

Section 6.23: Enforcement

The Parties agree this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of this Action over all Parties and Class Members to interpret and enforce the terms, conditions, and obligations of the Settlement. The Named Plaintiffs, Class Members, and Defendant hereby submit to the personal and exclusive jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith. Only in an action or proceeding brought by a Party against another Party to enforce this Agreement, the prevailing party in such an action or proceeding shall be awarded his, her, or its costs and attorneys' fees.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this First Amended Joint Stipulation of Class and PAGA Settlement and Release between Plaintiffs and Defendant as of the date(s) set forth below:

June __, 2021

By: _____
Jose Saldana
Named Plaintiff

06/22/2021

June __, 2021

By:  _____
Thomas Johns
Named Plaintiff

Electronically Signed: 2021-06-23 04:25:27 UTC - 35.129.122.23
AssureSign® 01219dab-d502-4fa2-afa6-ad4d13076af

June __, 2021

By: _____
Mark Carter, Founder and Chairman
International E-Z Up, Inc.

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covered by the releases in this Agreement.

Section 6.23: Enforcement

The Parties agree this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of this Action over all Parties and Class Members to interpret and enforce the terms, conditions, and obligations of the Settlement. The Named Plaintiffs, Class Members, and Defendant hereby submit to the personal and exclusive jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith. Only in an action or proceeding brought by a Party against another Party to enforce this Agreement, the prevailing party in such an action or proceeding shall be awarded his, her, or its costs and attorneys' fees.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this First Amended Joint Stipulation of Class and PAGA Settlement and Release between Plaintiffs and Defendant as of the date(s) set forth below:

June __, 2021

By: _____

Jose Saldana
Named Plaintiff

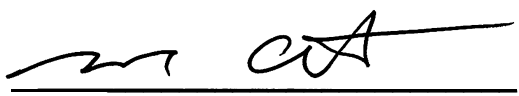
June __, 2021

By: _____

Thomas Johns
Named Plaintiff

June 22, 2021

By: _____


Mark Carter, Founder and Chairman
International E-Z Up, Inc.

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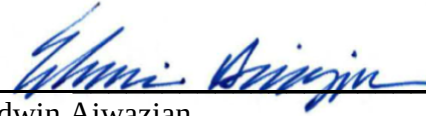
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1 **Agreed as to form:**

2
3 June 23, 2021

Lawyers *for* Justice, PC

4
5 By: 
6 Edwin Aiwasian
Attorney for Plaintiffs

7 June __, 2021

CDF Labor Law LLP

8
9 By: _____
10 Brent M. Giddens
11 Ashley Halberda
12 Brian E. Cole II
13 Attorneys for Defendant
14
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1 **Agreed as to form:**

2
3 June __, 2021

Lawyers *for* Justice, PC

4

5

By: _____

Edwin Aiwazian
Attorney for Plaintiffs

6

7 June 22, 2021

CDF Labor Law LLP

8

9

By: _____


Brent M. Giddens
Ashley Halberda
Brian E. Cole II
Attorneys for Defendant

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EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Jose Saldana v. International E-Z Up, Inc.
Superior Court of California for the County of Riverside, Case No. RIC1902873

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class and PAGA representative action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the class action settlement, object to the class action settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and PAGA representative action settlement has been reached between Plaintiffs Jose Saldana and Thomas Johns ("Plaintiffs") and Defendant International E-Z Up Inc. ("Defendant") (Plaintiffs and Defendant together are referred to as the "Parties") in the case entitled *Jose Saldana v. International E-Z Up Inc.*, Riverside County Superior Court, Case No. RIC1902873 (the "Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" means all hourly-paid employees who worked for Defendant within the State of California at any time during the Class Period.

"Class Member" means a member of the Class.

"Class Period" means the time period from May 10, 2015 until May 8, 2020.

"Class Settlement" means the settlement of claims that do not arise under the Private Attorneys General Act of 2004, California Labor Code section 2698.

"Aggrieved Employees" means Plaintiffs and Class Members who worked for Defendant within the PAGA Period.

"PAGA Period" means the time period from May 10, 2018 until May 8, 2020.

"PAGA Settlement" means the settlement of claims arising under the Private Attorneys General Act of 2004, California Labor Code section 2698.

II. BACKGROUND OF THE ACTION

On May 10, 2019, Plaintiff Saldana started the Action by filing the Class Action Complaint for Damages in the Riverside County Superior Court. On March 25, 2021, Plaintiffs filed the First Amended Complaint ("Operative Complaint"). Plaintiffs claim that Defendant failed to properly pay overtime wages, provide compliant meal and rest breaks and associated premiums, properly pay minimum wages, timely pay wages upon termination and during employment and associated penalties, provide accurate wage statements, keep required payroll records, and reimburse business expenses, and thereby engaged in unfair business practices, and assert that Defendant owes penalties under the California Private Attorneys General Act of 2004, California Labor Code section 2698. ("PAGA"). Plaintiffs seek, among other things, recovery of unpaid wages and meal and rest period premiums, recovery of loss, damage, or injury, penalties, interest, and attorneys' fees and costs.

Defendant denies all of Plaintiffs' claims in the Action and denies that it violated any law. Defendant asserts that at all

times it has complied with federal, state, and local laws.

The Parties participated in negotiations to try to resolve their dispute with a third-party neutral mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the First Amended Joint Stipulation of Class and PAGA Settlement and Release, which is an agreement setting forth the terms of the settlement of Plaintiffs' claims in the Action ("Settlement," "Agreement," or "Settlement Agreement").

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Simpluris, Inc. as the administrator of the Settlement ("Settlement Administrator"), Plaintiffs as representatives of the Class ("Class Representatives"), and the following attorneys as counsel for the Class ("Class Counsel"):

Edwin Aiwarzian
Arby Aiwarzian
Joanna Ghosh
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for International E-Z Up Inc. are:

Brent M. Giddens
Ashley A. Halberda
Brian E. Cole II
CDF Labor Law LLP
18300 Von Karman Ave., Suite 800
Irvine, California 92612
Telephone: (949) 622-1661

The Settlement represents a compromise and settlement of highly disputed claims. Defendant does not admit that the claims in the Action have any merit or that Defendant owes anything to Plaintiffs or to Class Members. Plaintiffs and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continuing the lawsuit, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members. The Court has determined only that there is sufficient evidence to suggest that the Settlement might be fair, adequate, and reasonable; a final determination of whether the Settlement is fair, adequate, and reasonable will be made at the Final Approval Hearing. The Court has made no ruling on the merits of the claims. After Defendant provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's length negotiations between the Parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk that the Court will not allow the case to proceed as a class action, the risks associated with winning at trial, and the delays and uncertainties associated with an ongoing lawsuit.

If you are still employed by Defendant, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendant's policies strictly prohibit unlawful retaliation. Defendant will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Class Member because of his/her decision to either participate or not participate in the Settlement.

III. SUMMARY OF THE SETTLEMENT

A. Settlement Formula

The total settlement amount is Nine Hundred and Fifty Thousand Dollars (\$950,000) (the "Total Settlement Amount"). The portion of the Total Settlement Amount that is available for payment to Class Members is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Total Settlement Amount minus the following payments which are subject to approval by the Court: (1) Attorneys' Fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount (that is, Three Hundred Thirty-Two Five Hundred Dollars (\$332,500)); (2) Lawsuit Costs, for reimbursement of actual costs and expenses in an amount not to exceed Forty Thousand Dollars (\$40,000) to Class Counsel;

(3) Enhancement Awards in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff Saldana and in an amount not to exceed Five Thousand Dollars (\$5,000) to Plaintiff Johns for their services in the Action; (4) PAGA Settlement Amount in the amount of Seventy-Five Thousand Dollars (\$75,000) allocated toward penalties under PAGA, of which seventy-five percent (75%), or Fifty-Six Thousand Two Hundred Fifty Dollars (\$56,250), will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%), or Eighteen Thousand Seven Hundred Fifty Thousand Dollars (\$18,750) (“Net PAGA Payment”), will be distributed to Aggrieved Employees; and (5) Settlement Administration Costs in an amount not to exceed Ten Thousand Dollars (\$10,000) to the Settlement Administrator.

B. Individual Settlement Payments and Individual PAGA Payments

Each Class Member is eligible to receive payment under the Settlement of his or her share of the Net Settlement Amount (“Individual Settlement Payment”) based on the number of weeks during the Class Period commencing on Sunday and ending on the following Saturday in which a Class Member worked one or more days (“Workweek(s)”).

To calculate each Individual Settlement Payment, the Settlement Administrator divided the Net Settlement Amount by the total number of Workweeks of all Class Members to arrive at a dollar value per Workweek, and then multiplied each Class Member’s individual number of Workweeks by the Workweek dollar value.

Based on the Net Settlement Amount, the range of estimated Individual Settlement Payments to Class Members is [lowest estimated share to be provided by Settlement Administrator] (\$_____) to [highest estimated share to be provided by Settlement Administrator] (\$_____). The estimated average Individual Settlement Payment is [average estimated share to be provided by Settlement Administrator] (\$_____).

Each Individual Settlement Payment will be allocated one-third (33.33%) as wages which will be reported on an IRS Form W-2 and two-thirds (66.67%) as penalties and interest, which will be reported on an IRS Form 1099. Class Members who do not request exclusion from the Class Settlement as set forth below in Section IV.B (“Settlement Class Members”) will be issued payment of their net Individual Settlement Payment, after reduction for the employee’s share of payroll taxes, contributions, and withholdings with respect to the wages portion of the Individual Settlement Payment.

Each Aggrieved Employee will also receive a share of the Net PAGA Payment (“Individual PAGA Payment”), regardless of whether he or she requests exclusion from the Class Settlement. Each Individual PAGA Payment has been calculated based on the number of pay periods during the PAGA Period during which an Aggrieved Employee worked for Defendant as an hourly-paid or non-exempt employee in California (“Pay Period(s)”).

To calculate each Individual PAGA Payment, the Settlement Administrator divided the Net PAGA Payment of Eighteen Thousand Seven Hundred Fifty Thousand Dollars (\$18,750) by the total Pay Periods of all Aggrieved Employees to arrive at a dollar value per Pay Period, and then multiplied each Aggrieved Employee’s individual number of Pay Periods by the Pay Period dollar value. Individual PAGA Payments will be allocated one hundred percent (100%) as penalties, and will be paid without any withholding amount and reported on an IRS Form 1099.

The range of estimated Individual PAGA Payments to Aggrieved Employees is [lowest estimated payment to be provided by Settlement Administrator] (\$_____) to [highest estimated payment to be provided by Settlement Administrator] (\$_____). The estimated average Individual PAGA Payment is [average estimated payment to be provided by Settlement Administrator] (\$_____).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to Aggrieved Employees, at the address that is on file with the Settlement Administrator. For those Settlement Class Members who are also Aggrieved Employees, the Settlement Administrator may combine their Individual Settlement Payment and Individual PAGA Payment into one (1) check. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

C. Released Claims

Upon the Effective Date, and except as to such rights and claims as may be created by the Settlement, Plaintiffs and all Class Members who have not submitted a valid and timely Opt-Out Request (that is, Settlement Class Members) will be deemed to fully and finally release and discharged the Released Parties from Released Class Claims.

Upon the Effective Date, and except as to such rights and claims as may be created by the Settlement, the State of California will be deemed to have fully and finally released and discharged the Released Parties from Released PAGA Claims.

“Released Class Claims” means any and all applicable state law wage-and-hour claims, rights, demands, liabilities, and causes of action of every nature and description, arising during the Class Period, based on the facts alleged in the Operative Complaint, including without limitation, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, civil or statutory penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, based on the following categories of allegations: unpaid overtime, unpaid meal period premiums, unpaid rest break premiums, unpaid minimum wages, final wages not timely paid, wages not timely paid during employment, non-compliant wage statements, failure to keep requisite payroll records, unreimbursed business expenses, including but not limited to violations of and claims arising under California law, California Labor Code sections 201-204, 206, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 256, 510, 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197-1198, 1198.5, 1199, 2751, 2800, 2802, 2810.5, 6401, 6403, the applicable Industrial Welfare Commission Wage Orders; Cal. Code Regs. Title 8, § 11070; and the California Business & Professions Code § 17200, *et seq.* as it relates to the underlying California Labor Code claims referenced above, interest, attorneys’ fees and costs, including as permissible under California Code of Civil Procedure § 1021.5.

“Released PAGA Claims” means any and all applicable claims, rights, demands, liabilities, and causes of action for civil penalties, arising during the PAGA Period, with respect to Defendant’s employment of Aggrieved Employees during the PAGA Period, based on the facts alleged in the Operative Complaint, based on the following categories of allegations: unpaid overtime, unpaid meal period premiums, unpaid rest break premiums, unpaid minimum wages, final wages not timely paid, wages not timely paid during employment, non-compliant wage statements, failure to keep requisite payroll records, unreimbursed business expenses, including but not limited to violations of and claims arising under California Labor Code sections 201-204, 206, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 256, 510, 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197-1198, 1198.5, 1199, 2751, 2800, 2802, 2810.5, 6401, 6403, and the applicable Industrial Welfare Commission Wage Orders.

“Released Parties” means Defendant and each of its past, current, or future officers, directors, employees, and agents.

D. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount up to thirty-five percent (35%) of the Total Settlement Amount (that is, up to Three Hundred Thirty-Two Thousand Five Hundred Dollars (\$332,500) and reimbursement of actual costs and expenses in an amount up to Forty Thousand Dollars (\$40,000) (collectively, “Attorneys’ Fees and Costs”). Subject to approval by the Court, the Attorneys’ Fees and Costs will be paid to Class Counsel from the Gross Settlement Fund. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and Class Members without being paid any money to date and has been paying all costs and expenses of the lawsuit, and will only be paid if there is a recovery in the Action.

E. Enhancement Payments to Plaintiffs

Plaintiffs will seek an amount up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff Saldana and up to Five Thousand Dollars (\$5,000) to Plaintiff Johns (“Enhancement Awards”), in recognition of their services in connection with the Action. Subject to approval by the Court, the Enhancement Awards will be paid from the Gross Settlement Fund and, if awarded, will be paid to Plaintiffs in addition to their Individual Settlement Payments and Individual PAGA Payment (if applicable) that they are entitled to under the Settlement.

F. Settlement Administration Costs to the Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Ten Thousand Dollars (\$10,000) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Opt-Out Requests, Objections, and disputes of Workweeks, calculating and distributing payments and tax forms under the Settlement, and other activities required to administer the Settlement. Subject to approval by the Court, the Settlement Administration Costs will be paid to the Settlement Administrator from the Gross Settlement Fund.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

If you are a Class Member, **you do not need to take any action in order to be issued an Individual Settlement Payment**, but you have the opportunity to request exclusion from the Class Settlement (i.e., the portion of the Settlement as it pertains to the class action claims) (in which case you will not receive an Individual Settlement Payment, but you will still receive an Individual PAGA Payment, if eligible), object to the Class Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully below.

If you are an Aggrieved Employee, you do not need to take any action in order to be issued an Individual PAGA Payment.

A. Participate in the Settlement

You are eligible to participate in the Settlement. According to the Defendant’s records:

From May 10, 2015 through May 8, 2020, you were employed by Defendant as an hourly-paid employee within the State of California for [REDACTED] Workweeks.

From May 10, 2018 through May 8, 2020, you were employed by Defendant as an hourly-paid employee within the State of California for [REDACTED] Pay Periods.

Individual Settlement Payments are based on the number of Workweeks credited to a Class Member and Individual PAGA Payments are based on the number of Pay Periods credited to an Aggrieved Employee. Based on the number of Workweeks and PAGA Periods credited to you as noted above:

Your Individual Settlement Payment is estimated to be \$[REDACTED]. Individual Settlement Payments are subject to reduction for the employee’s share of taxes, contributions, and withholding with respect to the wages portion of the Individual Settlement Payment and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Your Individual PAGA Payment is estimated to be \$[REDACTED]. Individual PAGA Payments will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. The Individual Settlement Payment and the Individual PAGA Payment (if applicable) reflected in this Notice are only estimates. Your actual payment(s) under the Settlement may be higher or lower.

If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment based on the number of Workweeks noted above, unless you decide to exclude yourself from the Class Settlement.

If you are an Aggrieved Employee you will be automatically included in the PAGA Settlement and issued your Individual PAGA Payment based on the number of Pay Periods credited to you, as noted above, regardless of whether you request exclusion from the Class Settlement.

If you do not exclude yourself from the Class Settlement and the Settlement is granted final approval by the Court, you will be deemed a Settlement Class Member, you will be bound by all terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will release the claims described in the Released Claims section above. All

Aggrieved Employees (even those who decide to exclude themselves from the Class Settlement) will be issued an Individual PAGA Payment.

If you want to participate in the Class Settlement, but you wish to dispute the number of Workweeks credited to you, you must submit a written letter to the Settlement Administrator that: (1) contains your full name, telephone number, address, and the last four digits of your Social Security number; (2) contains the case name and number of the Action (*Jose Saldana v. International EZ Up, Inc.*, Case No. RIC1902873); (3) clearly states that you believe the Workweeks allocated to you are not correct; (4) clearly state the number of Workweeks you contend are correct; (5) attach any written documentation to support your contention; and (6) is returned by fax or mail to the Settlement Administrator at the address or fax number specified in Section IV.B below, postmarked or fax-stamped **on or before [the Response Deadline]**.

As a Class Member, you will not be separately responsible for the payment of attorney's fees or the costs and expenses of the Action, unless you hire your own attorney, in which event you will be responsible for your own attorney's fees and expenses.

B. Request Exclusion from the Settlement

If you do not wish to participate in the Class Settlement, you must submit a timely and valid request to be excluded from the Settlement to the Settlement Administrator, by either completing and returning an Exclusion Form (which is enclosed with this Notice) or submitting a written statement ("Opt-Out Request") that: (1) contains your full name, telephone number, address, and the last four digits of your Social Security number; (2) contains the case name and number of the Action (*Jose Saldana v. International EZ Up, Inc.*, Case No. RIC1902873); and (3) clearly states that you wish to be excluded from the Class Settlement.

Your Opt-Out Request or Exclusion Form must be submitted to the Settlement Administrator by mail or fax, postmarked or fax-stamped **on or before [Response Deadline]**, at the following mailing address or fax number:

International E-Z Up Class Action Settlement
[Simpluris, Inc.]
[Mailing Address]
[Fax number]

If the Court grants final approval of the Settlement, any Class Member who does not affirmatively request exclusion from the Class Settlement by submitting a valid and timely Opt-Out Request will be deemed a Settlement Class Member and will be bound by all of the terms of the Class Settlement, as well as any judgment that may be entered by the Court based thereon. Any Class Member who submits a valid and timely Opt-Out Request will not have any right to object to, appeal, or comment on the Settlement, will not be entitled to receive an Individual Settlement Payment, and will not be bound by the Class Settlement and release of Released Class Claims (described in Section III.C above)—however, if such individuals are Aggrieved Employees, they will still be issued an Individual PAGA Payment.

C. Object to the Settlement

You can object to the terms of the Settlement as long as you have not submitted an Opt-Out Request. To object to the Settlement, you must submit a valid and timely objection to the Settlement Agreement ("Objection") to the Settlement Administrator, by either completing and returning an Objection Form (which is enclosed with this Notice) or submitting a written statement that: (1) includes your full name, telephone number, address, and the last four digits of your Social Security number; (2) contains the case name and number of the Action (*Jose Saldana v. International EZ Up, Inc.*, Case No. RIC1902873); (3) clearly states that you object to the Class Settlement; and (4) clearly states the factual and/or legal basis of your objection.

Your Objection must be submitted to the Settlement Administrator at the address of fax number listed in Section IV.B above, postmarked or fax-stamped **on or before [Response Deadline]**.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 1 of the Riverside County Superior Court, located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501, on [date], at [time], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award the Attorneys' Fees and Lawsuit Costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued. If the hearing is continued, the Settlement Administrator will only give notice of the continuance to Class Members who have submitted an Objection. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed First Amended Joint Stipulation of Class and PAGA Settlement and Release, which is attached as Exhibit 1 to the Declaration of Edwin Aiwasian in Support of Plaintiffs' Renewed Motion for Preliminary Approval of Class Action Settlement filed on [DATE] and other papers which are on file with the Records Management Division of the Riverside County Superior Court, located at the Riverside County Superior Court, Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501. Some documents and information regarding the Action can also be accessed online for free or at a minimal charge at the Riverside County Superior Court's website (<http://public-access.riverside.courts.ca.gov/OpenAccess/CivilMainMenu.asp>). To look up and access documents and information on the Court's systems, you will need to use the case number for the Action (Case No. RIC1902873).

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THE ACTION OR SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.

EXHIBIT B

EXCLUSION FORM

Jose Saldana v. International E-Z Up, Inc.
Superior Court of California for the County of Riverside, Case No. RIC1902873

COMPLETE AND RETURN THIS FORM ONLY IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT.

For more information regarding the settlement, important terms, and deadlines, please review the Notice of Class Action Settlement.

If you wish to exclude yourself from the Class Settlement, you must read and sign the following statement and return this form by mail or fax to the Settlement Administrator, postmarked or fax-stamped on or before **[RESPONSE DEADLINE]**, at the following mailing address or fax number:

International E-Z Up Class Action Settlement
Simpluris, Inc.
[INSERT MAILING ADDRESS]
[INSERT FAX NUMBER]

I request to be excluded from the Class Settlement in the matter of *Jose Saldana v. International E-Z Up Inc.* By excluding myself from the Class Settlement, I understand that I will not be bound by the Class Settlement and release of Released Class Claims, and that I will not be eligible to receive an Individual Settlement Payment from the Class Settlement. I understand that, nevertheless, if I am an Aggrieved Employee, I will still receive an Individual PAGA Payment.

Date: _____ Full Name: _____

Signature: _____

Address: _____

Telephone No.: (____ __ __) ____ __ __ __ __ __

Last Four Digits of Social Security Number: ____ __ __ __

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

JOSE SALDANA, individually, and on behalf
of other members of the general public
similarly situated; THOMAS JOHNS,
individually and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiffs,

vs.

INTERNATIONAL E-Z UP INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant.

CASE NO. RIC1902873

OBJECTION FORM

Department: 1
Judge: Hon. Craig G. Riemer

Complaint Filed: May 10, 2019
Trial Date: None Set

**COMPLETE AND RETURN THIS FORM ONLY IF YOU WISH TO OBJECT TO THE
CLASS SETTLEMENT.**

For more information regarding the settlement, important terms, and deadlines, please review the
Notice of Class Action Settlement.

If you wish to object to the Class Settlement, you must state the factual and/or legal basis (i.e.,
the grounds) for your objection (space is provided below for doing so), sign and enter your full
name, address, telephone number, and last four digits of your Social Security number on the
following page, and return this form by mail or fax to the Settlement Administrator, postmarked
or fax-stamped on or before **[RESPONSE DEADLINE]**, at the following mailing address or fax
number:

International E-Z Up Class Action Settlement

Simpluris, Inc.

[INSERT MAILING ADDRESS]

[INSERT FAX NUMBER]

I wish to object to the Class in the matter of *Jose Saldana v. International E-Z Up Inc.* on
the following grounds:

Date: _____

Full Name: _____

Signature: _____

Address: _____

Telephone No.: (____ __ __) ____ ____ ____ ____ ____ ____

Last Four Digits of Social Security Number: ____ ____ ____ ____

EXHIBIT 2

CDF LABOR LAW LLP
Brent M. Giddens, State Bar No. 133652
bgiddens@cdflaborlaw.com
Ashley A. Halberda, State Bar No. 272762
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Telephone: (949) 622-1661

Attorneys for Defendant
~~INTERNATIONAL, International~~ E-Z ~~UP INC~~Up, Inc.

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs Jose Saldana and Thomas Johns

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, RIVERSIDE COURT

JOSE SALDANA, individually, and on behalf of other members of the general public similarly situated; <u>THOMAS JOHNS</u> ,	) Case No. RIC1902873)) Judge: Craig G. Riemer) Dept: 01)) <u>CLASS ACTION</u>) <u>FIRST AMENDED JOINT STIPULATION</u>) <u>OF CLASS AND PAGA SETTLEMENT</u>) <u>AND RELEASE</u>)) Action Filed: May 10, 2019) <u>Amended Complaint Filed: March 25, 2021</u>)))
<u>Plaintiff individually and on behalf of other</u> <u>aggrieved</u> <u>employees pursuant to the California Private</u> <u>Attorneys General Acts,</u>	
vs. <u>Plaintiffs,</u>	
INTERNATIONAL E-Z UP INC., a California corporation; and DOES 1 through 100, inclusive,	
Defendant.	

FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA SETTLEMENT AND RELEASE

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**FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA
SETTLEMENT AND RELEASE**

It is stipulated and agreed by and among the undersigned Parties, subject to the approval of the Court, that the full and final ~~Settlement~~ settlement of this Action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms shall have the meanings set forth in Article I or as defined elsewhere in this First Amended Joint Stipulation of Class and PAGA Settlement and Release (hereinafter the “Agreement” or “Class Settlement Agreement”). Pursuant to Section 6.01 of the Joint Stipulation of Class and PAGA Settlement and Release that the Parties entered into on or about March 3, 2021, this First Amended Joint Stipulation of Class and PAGA Settlement and Release hereby supplants the Joint Stipulation of Class and PAGA Settlement and Release.

This Agreement is made and entered into by and between Plaintiffs Jose Saldana and Thomas Johns, on behalf of themselves and other similarly situated employees (“Plaintiffs”), on the one hand, and Defendant International E-Z Up, Inc. (“Defendant”). Plaintiffs and Defendant collectively are referred to in the Agreement as “the Parties” and individually are referred to as “Party.”

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay no more than the settlement sum of \$950,000 as provided in Section 3.06(a) below (“Gross Settlement Fund”), with the addition of the employer’s portion of payroll taxes on the wage portion of the Settlement (which will be paid by Defendant separately and in addition to the Gross Settlement Fund), upon the terms and conditions of the Agreement and for the consideration set forth herein, including, but not limited to, a general release of claims by Named Plaintiffs Jose Saldana and Thomas Johns as described herein, and the ~~release of the Class Members’~~ releases of claims as set forth in this Agreement.

ARTICLE I
DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

1
FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA SETTLEMENT AND RELEASE

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~~action claims,~~ claims that do not arise under the Private Attorneys General Act of 2004, California Labor Code §§ 2698, et seq..

///

k. “Court” means the Riverside County Superior Court, the court in which the Action is pending.

l. “Defendant” means International E-Z Up, Inc.

m. “Defendant’s Counsel” or “Defense Counsel” means:

CDF LABOR LAW LLP
Brent M. Giddens
bgiddens@cdflaborlaw.com
Ashley A. Halberda
ahalberda@cdflaborlaw.com
Brian E. Cole II
bcole@cdflaborlaw.com
18300 Von Karman Ave., Suite 800
Irvine, CA 92612
Tel: (949) 622-1661

n. “Disposition” means the method by which the Court adopts the terms of the Settlement and Agreement, which may be by judgment or other final order, and retains jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Settlement and Agreement.

o. “Effective Date” of this Settlement shall be the later of the time when: (i) the date of final affirmance of the Final Approval Order and Judgment on an appeal of the Final Approval Order and Judgment, the expiration of the time for, or the denial of, a petition to review the Final Approval Order and Judgment, or if review is granted, the date of final affirmance of the Final Approval Order and Judgment following review pursuant to that grant, (ii) the date of final dismissal of any appeal from the Final Approval Order and Judgment or the final dismissal of any proceeding to review the Final Approval Order and Judgment, provided that the Final Approval Order and Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or withdrawal) of any filed appeal or other proceeding to set aside the Final Approval Order and Judgment in a way that affirms the Final Approval Order and Judgment in a form substantially

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1 identical to the form of the Final Approval Order and Judgment entered by the Court, and the time
2 to petition for review with respect to any appellate decision affirming the Final Approval Order and
3 Judgment has expired; or (iv) if no ~~objection~~Objection is made or a timely made
4 ~~objection~~Objection is made and then withdrawn, then the Effective Date shall be the day the Court
5 enters ~~final approval of the Settlement~~Final Approval Order and ~~the~~ Judgment approving this
6 Agreement.

7 p. “Enhancement Awards” means a monetary amount of up to \$7,500.00 for Plaintiff
8 Jose Saldana and \$5,000 to Plaintiff Thomas Johns, subject to Court approval, which will be paid
9 pursuant to Section 3.06(c) of this Agreement.

10 q. “Final Approval Hearing” means the hearing at which the Court enters ~~a judgment~~
11 ~~or other the~~ order approving the Settlement and Agreement and terminating the Action by entry of
12 judgment.

13 r. “Final Approval Order and Judgment” or “Final Order” means the ~~final~~
14 formal court order signed by the Court at or after the Final Approval Hearing in accordance with
15 the terms herein approving this Agreement and terminating the Action by entry of judgment.

16 s. “Gross Settlement Fund” means the maximum settlement sum of \$950,000, to be
17 paid by Defendant under the terms and conditions of this Agreement. Defendant shall remit its
18 share of the employer’s payroll taxes, as provided herein, separately and in addition to the Gross
19 Settlement Fund.

20 t. “Individual Settlement Payments” means the amount of money from the Net
21 Settlement Amount that shall be paid to the Settlement Class Members. Individual Settlement
22 Payments will be each Settlement Class Member’s *pro rata* share of the Net Settlement Amount
23 (which share shall be determined by the calculations provided in this Agreement), minus the
24 employee’s share of payroll and income taxes on the portion which is wages and all other
25 applicable deductions or withholding required by law or expressly authorized by the Class
26 Member.

27 u. “Individual PAGA Payments” means the amount of money from the PAGA
28 Settlement Amount that shall be paid to the Aggrieved Employees. Individual PAGA Payments

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1 will be each Aggrieved Employee's *pro rata* share of 25% of the PAGA Settlement Amount
2 (which share shall be determined by the calculations provided in this Agreement).

3 v. "Litigation Costs" means the reimbursement of actual litigation costs and expenses
4 incurred by Class Counsel in the course of this Action in an amount not to exceed \$40,000.00.

5 w. "LWDA" means the California Labor and Workforce Development Agency.

6 x. "Named Plaintiffs" or "Plaintiffs" means Jose Saldana and Thomas Johns.

7 y. "Net Settlement Amount" means the Gross Settlement Fund less all of the following
8 as approved by the Court: (a) Enhancement Awards to Plaintiffs; (b) Attorneys' Fees to Class
9 Counsel; (c) Litigation Costs to Class Counsel; (d) Settlement Administration Costs to Settlement
10 Administrator; and (e) PAGA Settlement Amount to the LWDA and Aggrieved Employees.

11 z. "Class Notice" means the Notice of Proposed Class Action Settlement substantially
12 in the form attached hereto as "Exhibit A" (the "Notice").

13 aa. "Operative Complaint" means the First Amended Class Action Complaint for
14 Damages and Enforcement of the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq.*
15 attached hereto as "Exhibit B" pursuant to Section II.b. below, filed in the Action on March 25,
16 2021.

17 bb. "Opt-Out Request" means a written request to be excluded from the Class
18 Settlement or completed Exclusion Form pursuant to Section 3.04(b) below.

19 cc. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code
20 §§ 2698, *et seq.*

21 dd. "PAGA Period" ~~(s)~~ means the time period from May 10, 2018 to May 8, 2020 ~~or~~
22 ~~the date of preliminary approval, whichever is sooner.~~

23 ee. "PAGA Settlement" means this Settlement as it pertains to the settlement of claims
24 arising under ~~PAGA, the Private Attorneys General Act of 2004, California Labor Code §§ 2698, et~~
25 ~~seq.~~

26 ff. "PAGA Settlement Amount" means \$75,000 allocated to the settlement of claims
27 arising under PAGA, seventy-five percent (75%) of which, or Fifty-Six Thousand Two Hundred
28 Fifty Dollars (\$56,250.00), will be paid to the LWDA and twenty-five percent (25%) of which, or

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1 Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00), will be paid to Aggrieved
2 Employees.

3 gg. “Parties” means collectively Plaintiffs and Defendant.

4 hh. “Pay Period” means a pay period during the PAGA Period during which an
5 Aggrieved Employee worked for Defendant as an hourly-paid or non-exempt employee in
6 California. Each Aggrieved Employee will be credited with at least one (1) Pay Period.

7 ii. “Preliminary Approval Date” means the date on which the Court preliminarily
8 approves the Settlement embodied in this Agreement, including, without limitation, the Class
9 Notice, Exclusion Form, and Objection Form.

10 jj. “Settlement” means the resolution of this Action and all related claims effectuated
11 by this Agreement.

12 kk. “Settlement Class Members” means all Class Members who do not ~~request~~
13 ~~exclusion from the Class Settlement~~ submit timely and valid Opt-Out Requests.

14 ll. “Settlement Administration Costs” means all costs incurred by the Settlement
15 Administrator in administration of the Settlement, including, but not limited to, any notices that
16 must be provided to the Class (including a Spanish translation), calculating employer payroll taxes,
17 performing address updates and verifications as necessary prior to the first mailing of the Notice
18 Packet, performing a single address follow-up on any returned mail, calculating Individual
19 Settlement Payments and Individual PAGA Payments and tax withholdings, providing declarations,
20 generating Individual Settlement Payment and Individual PAGA Payment checks and related tax
21 reporting forms, completing administrative work related to unclaimed checks, if any, ~~processing~~
22 ~~and sending uncashed checks to defense counsel on behalf of Defendant~~, generating checks to
23 Class Counsel for Attorneys’ Fees and Litigation Costs, and to Plaintiffs for their Enhancement
24 Awards, and any other actions of the Settlement Administrator as set forth in this Agreement, all
25 pursuant to the terms of this Agreement.

26 mm. “Settlement Administrator” means Simpluris, Inc., which was mutually selected by
27 the Parties for the administration of the Settlement including, without limitation, the distribution of
28 the Individual Settlement Payments and Individual PAGA Payments ~~to be made by Defendant~~ from

FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA SETTLEMENT AND RELEASE

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the Gross Settlement Fund and related matters under this Agreement.

nn. “Total Pay Periods” means the total aggregate number of Pay Periods of all Aggrieved Employees.

oo. “Total Workweeks” means the total aggregate number of Workweeks of all Settlement Class Members

pp. “Workweek²(s)” means a week during the Class Period commencing on Sunday and ending on the following Saturday in which a Class Member worked one or more days. Each Class Member will be credited with at least one (1) Workweek.

///

///

ARTICLE II

FACTUAL BACKGROUND

a. On or about May 10, 2019, Plaintiff Jose Saldana filed the Class Action Complaint for Damages, commencing the Action in ~~California Superior Court for the County of Riverside, Case No. RIC1902873~~ alleging putative class the California Superior Court for the County of Riverside, Case No. RIC1902873. On March 25, 2021, the First Amended Class Action Complaint for Damages and Enforcement of the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq.* (“First Amended Complaint” or “Operative Complaint”) was filed in the Action, adding Thomas Johns as a plaintiff and a cause of action under the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq.* The Operative Complaint alleges claims for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code §§ 226.7 (Unpaid Rest Break Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9)

FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA SETTLEMENT AND RELEASE

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1 Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); ~~and~~
2 (10) Violation of California Business & Professions Code §§ 17200, *et seq.* ~~Plaintiff Saldana will~~
3 ~~seek leave to file and file the First Amended Class Action Complaint for Damages and~~
4 ~~Enforcement; and Violation~~ of the Private ~~Attorneys' Attorneys~~ General Act, Cal. Lab. Code §
5 2698, *Et Seq.*, ~~("First Amended Complaint")~~ in the Action to add Plaintiff Johns as a named
6 plaintiff and formally alleged a claim for civil penalties under PAGA. The ~~First Amended~~
7 ~~Complaint is the "Operative Complaint"~~ alleges putative class claims on behalf of a putative
8 class and seeks civil penalties on behalf of the State of California with respect to alleged aggrieved
9 employees.

10 b. Defendant generally denies all of the allegations asserted in the Action, including
11 those in the Operative Complaint, and specifically denies any violation of (i) the ~~(i)~~ California
12 Labor Code, (ii) the California Industrial Welfare Commission Wage Orders, and/or (iii) California
13 Business and Professions Code. Defendant further denies any pendant or related charges, denies
14 violating any other law or right of Plaintiffs, or any Class Member, ~~or any Aggrieved Employee~~
15 and denies any liability is owed to ~~Plaintiff~~ Plaintiffs, Class Members, ~~and Aggrieved Employees or~~
16 the State of California.
17 ///

18 c. On December 11, 2019 and then on February 8, 2020, the Parties engaged in private
19 mediation with Jeffrey Krivis, Esq., an experienced wage and hour class action mediator, and
20 thereafter reached an agreement to resolve this matter. The settlement discussions were conducted
21 at arm's-length. The Settlement is the result of an informed and detailed analysis of the risks
22 facing both parties in litigating this case, including but not limited to, careful consideration of the
23 legal and factual obstacles to Plaintiffs' prospects of obtaining class certification and representative
24 adjudication, and on the merits, and Defendant's defenses, as well as Defendant's potential
25 exposure and the additional costs of litigating the Action.

26 ~~d. It is the desire of the Parties to fully, finally, and forever settle, compromise and~~
27 ~~discharge any and all known and unknown claims that were raised, or could have been raised~~
28 ~~during the Class Period and PAGA Period based upon the facts alleged in this Action, including~~

FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA SETTLEMENT AND RELEASE

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1 those to be alleged in the Operative Complaint. In order to achieve a full and complete release of
2 Defendant, each Class Member acknowledges that this Settlement Agreement is intended to
3 ~~include in its effect all claims of any nature that were raised in the Action, or could have been~~
4 ~~raised based upon the facts alleged in this Action on behalf of Class Members, including, but not~~
5 ~~limited to (1) all statutory and common law causes of action referenced in the Action and~~
6 ~~corresponding provisions of the applicable Industrial Welfare Commission Wage Orders,~~
7 ~~including, but not limited to unpaid overtime, unpaid meal period premiums, unpaid rest break~~
8 ~~premiums, unpaid minimum wages, final wages not timely paid, wages not timely paid during~~
9 ~~employment, non-compliant wage statements, failure to keep requisite payroll records,~~
10 ~~unreimbursed business expenses, including but not limited to violations of and claims arising under~~
11 ~~California law, Labor Code sections 201-204, 206, 210, 218.5, 218.6, 221, 226, 226.3, 226.7,~~
12 ~~227.3, 256, 510, 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197-~~
13 ~~1198, 1198.5, 1199, 2751, 2698 et seq., 2800, 2802, 2810.5, 6401, 6403, and claims for civil~~
14 ~~penalties pursuant to or based on these sections can only be recovered in a PAGA action; the~~
15 ~~applicable Industrial Welfare Commission Wage Orders; Cal. Code Regs. Title 8, § 11070; and the~~
16 ~~Business & Professions Code §17200, et seq. as it relates to the underlying Labor Code claims~~
17 ~~referenced above, interest, attorneys' fees and costs, including as permissible under California~~
18 ~~Code of Civil Procedure § 1021.5, or (2) any of the facts, transactions, events, occurrences, acts,~~
19 ~~disclosures, statements, omissions, or failures to act which were or could have been asserted based~~
20 ~~on the facts and claims pleaded in the Action.~~

21 e. — It is the intention of the Parties that this Settlement Agreement shall constitute a full
22 and complete settlement and release of all claims set forth in Section 5.01 below.

23 d. — It is the desire of the Parties to fully, finally, and forever settle, compromise and
24 discharge the Released Class Claims and Released PAGA Claims. It is the intention of the Parties
25 that this Settlement Agreement shall constitute a full and complete settlement and release of all
26 claims set forth in Section 5.01 and Section 5.02 below.

27 f.e. — Named Plaintiffs and Class Counsel have each conducted a thorough investigation
28 into the facts of ~~this class action case~~ the Action, including an extensive review of relevant

FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA SETTLEMENT AND RELEASE

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documents, and have diligently pursued an investigation of Class Members' claims and the PAGA
claims against Defendant. Based on their respective own independent investigation and evaluation,
Named Plaintiffs and Class Counsel are each of the opinion that the Settlement with Defendant for
the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
adequate and is in the best interest of the Settlement Class and the State of California in light of all
known facts and circumstances, including the risk of significant delay, the risk the Class will not be
certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues.

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g.f. The Parties agree to cooperate and take all steps necessary and appropriate to
consummate this Settlement and that the Final Approval Order and ~~Judgement~~Judgment shall have
a *res judicata* effect.

h.g. The maximum total payment under the Settlement, including all Individual
Settlement Payments, Attorneys' Fees, Litigation Costs, Enhancement ~~Award, and~~Awards, PAGA
Settlement Amount, and any other payments provided by this Settlement, is the Gross Settlement
Fund. Notwithstanding the foregoing, Defendant shall be responsible for paying the employer's
portion of payroll taxes on the wage portion of each Individual Settlement Payment. It is
understood and agreed that other than the employer's portion of payroll taxes on the wage portion
of each Individual Settlement Payment, Defendant's maximum total liability under this Settlement
shall not exceed the Gross Settlement Fund.

i.h. It is understood that the Gross Settlement Fund is non-reversionary. To the extent
that an Individual Settlement Payment check or Individual PAGA Payment ~~Check~~check is (1)
undeliverable, after skip tracing performed by the Settlement Administrator as provided in
paragraph 3.03 below, or (2) ~~uncashed~~has not been cashed, deposited, or otherwise negotiated
within 180 days after the date listed on the check, ~~the amount of those~~ checks will be cancelled and
the funds associated with said cancelled checks will be distributed to a *cy pres* recipient pursuant to
Code of Civil Procedure section 384 (i.e., in no event will any of the funds revert to Defendant).

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j.i. It is further understood and agreed that Named Plaintiffs and/or Class Counsel shall
not issue any public statement to the media, press, or otherwise concerning this Action and/or any
business practice, procedure, or policy of Defendant, except as specified in Section 6.25 of this

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1 Agreement.

2 ~~k-j.~~ The Settlement embodied in this Agreement contemplates the (i) entry of an order
3 approving certification of a Class for settlement purposes only, (ii) entry of a Final Approval Order
4 and Judgment, (iii) entry of Disposition enforcing the terms of the Settlement and retaining
5 jurisdiction, (iv) -release, as set forth below in ~~Section~~Sections 5.01 and 5.02 below, by all
6 Settlement Class Members, including Named Plaintiffs, of all Released Class Claims and release
7 by ~~all Aggrieved Employees~~the State of California of all Released PAGA Claims, and (vi) a
8 general release by Named Plaintiffs of all known and unknown claims against Defendant, its ~~past.~~
9 ~~current, or future~~ officers, directors, and employees pursuant to California Civil Code section 1542.

10 **ARTICLE III.**

11 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

12 Because the Parties have stipulated to the certification of the Class with respect to all ~~class~~
13 causes of action alleged in the Operative Complaint in this Action for settlement purposes only, this
14 Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter
15 into this Agreement on a conditional basis. This Agreement is contingent upon the approval and
16 certification of the Class by the Court. If the Effective Date does not occur, this Agreement shall
17 be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or
18 used for any purpose whatsoever.

19 The Parties and their respective counsel shall take all reasonable steps that may be
20 requested by the Court relating to the approval and implementation of this Agreement and shall
21 otherwise use their respective best efforts to obtain Court approval and implement this Agreement.
22 If the Court does not grant the motion for ~~Preliminary Approval~~preliminary approval and/or the
23 motion for ~~Final Approval~~final approval, the Parties agree to meet and confer to address the
24 Court's concerns.

25 The procedure for obtaining Court approval of and implementing this Agreement shall be as
26 follows:

27 **Section 3.01 Motion for Preliminary Approval of Class Action and PAGA Settlement**

28 Promptly upon execution of this Agreement, the Parties shall submit this Agreement to the

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1 Court and request preliminary approval and determination by the Court as to its fairness, adequacy,
2 and reasonableness. Class Counsel will prepare and file the motion for preliminary approval of
3 settlement. Upon receipt of the motion for preliminary approval and all supporting documents,
4 Defendant shall have a minimum of two (2) calendar days to review the motion for preliminary
5 approval of settlement before Class Counsel files the motion for preliminary approval with the
6 Court.

7 ~~##~~

8 ~~Pursuant~~At the time of filing the motion for preliminary approval, pursuant to California
9 Labor Code section 2699(1)(2), ~~Plaintiff~~Plaintiffs will simultaneously cause this Settlement
10 Agreement to be filed with the LWDA using the appropriate website and intake forms located at:
11 <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

12 In seeking preliminary approval of this Agreement, the Parties shall apply to the Court for
13 the entry of a preliminary order seeking certification ~~this Action~~the Class under section 382 of the
14 California Code of Civil Procedure and Rules 3.760 *et seq.* of the California Rules of Court ~~as a~~
15 ~~class action~~for purposes of settlement only ~~with respect to the Class~~; approving the proposed
16 Notice as to form and content; directing the mailing of the ~~notice~~Notice Packet to the Class
17 Members; ~~and~~ preliminarily approving the Settlement subject only to ~~the objections~~Objection of
18 ~~Settlement~~ Class Members and final review by the Court; ~~preliminarily approving Class Counsel's~~
19 ~~request for Attorneys' Fees and Litigation Costs subject to final review by the Court; preliminarily~~
20 ~~approving estimated Settlement Administration Costs payable to the Settlement Administrator; and~~
21 ~~preliminarily approving Named Plaintiffs' Enhancement Awards.~~

22 **Section 3.02 The Settlement Administrator**

23 The Parties have chosen Simpluris, Inc. to administer this Settlement and to act as the
24 Settlement Administrator, including, but not limited to, distributing any notices ~~and forms~~ that must
25 be provided to the Class, performing address updates and verifications as necessary prior to the first
26 mailing ~~of the Notice Packet~~, performing a single address follow-up on any returned mail,
27 responding to inquiries about the Class Notice, determining the validity of all Opt-Out Requests,
28 calculating the Net Settlement Amount and the Individual Settlement Payments, calculating the

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1 Individual PAGA Payments, calculating employer payroll taxes, preparing tax statements and/or
2 reports and remitting the necessary tax payments, providing necessary progress reports, preparing
3 declarations required by the Court, preparing a detailed declaration that sets forth the number of
4 Settlement Class Members and each of the Class Members who ~~did~~ submitted a timely and valid
5 Opt-Out Requests, and, with notice and consent of the Parties, generating and issuing the
6 Individual Settlement Payment checks and distributing them to Settlement Class Members and
7 generating and issuing Individual PAGA Payment checks and distributing them to Aggrieved
8 Employees, and issuing the payments to Class Counsel for Attorneys' Fees and Litigation Costs,
9 the Enhancement Award checks to the Named Plaintiffs, processing and remitting ~~unashed funds~~
10 associated with cancelled checks (if any) to the *cy pres* recipient, and any other actions of the
11 Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this
12 Agreement.

13 The Settlement Administrator shall expressly agree to all of the terms and conditions of this
14 Agreement relating to the administration of the Settlement. The Parties each represent that they do
15 not have any financial interest in the Settlement Administrator or otherwise have a relationship
16 with the Settlement Administrator that could create a conflict of interest.

17 The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly
18 report that certifies: (i) the number of Class Members to whom the Settlement Administrator has
19 mailed the Class-Notice Packet; (ii) the number of ~~Class-Notices~~Notice Packets that were returned
20 as undeliverable; (iii) the number of Class Members who have submitted valid Opt-Out Requests;
21 (iv) the number of Class Members who have submitted Workweek Challenges; and (v) the number
22 of Settlement Class Members who have submitted Objections. Additionally, the Settlement
23 Administrator will provide to Defense Counsel and Class Counsel any updated reports regarding
24 the administration of the Settlement Agreement.

25 The Settlement Administrator shall maintain throughout the administration of the
26 Settlement all of the Opt-Out Requests that it receives. At the conclusion of the administration of
27 the Settlement, the Settlement Administrator shall retain all Opt-Out Requests for an additional
28 four years. The Settlement Administrator shall provide to Defense Counsel and Class Counsel all

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1 Opt-Out Requests.

2 All costs of administering the Settlement, including, but not limited to, all costs and fees
3 associated with preparing, issuing, and mailing any and all notices to Class Members and/or
4 Settlement Class Members, all costs and fees associated with computing, processing, reviewing,
5 and mailing the Individual Settlement Payments and Individual PAGA Payments, all costs and fees
6 associated with preparing any tax returns and any other filings required by any governmental taxing
7 authority or agency, all costs and fees associated with preparing any other checks, notices, reports,
8 or filings to be prepared in the course of administering disbursements from the ~~NetGross~~
9 Settlement ~~AmountFund~~, and any other costs and fees incurred and/or charged by the Settlement
10 Administrator in connection with the carrying out of its duties under this Agreement are
11 contemplated and paid by the Settlement Administration Costs, shall be deducted from the Gross
12 Settlement Fund.

13 The Settlement Administrator shall be required to acknowledge that in its role as Settlement
14 Administrator it owes fiduciary obligations to the Named Plaintiffs and Class Members and will be
15 required to attest that it will make payments consistent only with the terms of this Agreement,
16 including the allocation instructions set forth in this Agreement, or as ordered by the Court. In no
17 event shall the Settlement Administrator permit the disbursement of any portion of the Gross
18 Settlement Fund before the Effective Date. The obligations of the Settlement Administrator are
19 released upon all funds being disbursed by the Settlement Administrator pursuant to this
20 Agreement and/or order(s) of the Court.

21 ///

22 ///

23 **Section 3.03 Notice to the Class**

24 Notice of the Settlement shall be provided to the Class Members in both English and
25 Spanish, and the Class Members may submit Objections and/or Opt-Out Requests ~~from~~with
26 respect to the Class Settlement by using the following procedures:

27 Within ten (10) calendar days after the Court preliminarily approves the Settlement,
28 Defense Counsel will provide the Class List to the Settlement Administrator.

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1 Within ten (10) calendar days after the receipt of the Class List, the Settlement Administrator
2 shall update the addresses using the United States Postal Service's NCOALink system and mail the
3 Class Notice, Exclusion Form, and Objection Form (together, "Notice Packet") by first-class United
4 States mail to each Class Member. Any Notice Packet returned to the Settlement Administrator as
5 non-delivered on or before the Response Deadline shall be re-mailed once to the forwarding address
6 affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly
7 attempt to determine a correct address by use of telephonic inquiry, skip-tracing, or other search
8 using the name, address, and/or Social Security number of the Class Member involved, and shall
9 then perform one re-mailing, if another mailing address is identified by the Settlement Administrator.
10 The Settlement Administrator shall promptly notify Class Counsel and Defense Counsel if any
11 Notice Packets are returned as undeliverable and no forwarding address is available. Settlement Class
12 Members ~~who receive~~ to whom a re-mailed Notice Packet is re-mailed shall have their Response
13 Deadline extended by fifteen (15) calendar days.

14 No later than twenty-one (21) calendar days prior to the Final Approval Hearing, or seven
15 (7) calendar days prior to Plaintiffs' ~~submission of~~ deadline to file the motion for final approval and
16 for approval of fees and costs, whichever is earlier, the Settlement Administrator shall provide
17 Class Counsel and Defense Counsel with a declaration attesting to completion of the notice
18 process, including but not limited to any attempts to obtain valid mailing addresses for Class
19 Members and re-sending any returned Notice Packets, as well as the number of Opt-Out Requests,
20 Objections, or Workweek Challenges that the Settlement Administrator received and the dates that
21 the Settlement Administrator received those Opt-Out Requests, Objections, or Workweek
22 Challenges.

23 ///

24 Compliance with the procedures described in this Section shall constitute due and sufficient
25 notice to Class Members of this proposed Settlement and the Final Approval Hearing, and shall
26 satisfy the requirements of due process. Nothing else shall be required of, or done by, the Parties,
27 Class Counsel, Defense Counsel, or the Settlement Administrator to provide notice of the proposed
28 Settlement and the Final Approval Hearing.

Section 3.04 Responses to Notice

a. No Claim Forms

Settlement Class Members are not required to submit claim forms in order to be issued payment for their share of the Net Settlement Amount.

Any Settlement Class Member who disagrees with the number of Workweeks used to calculate his or her Individual Settlement Payment as reflected on the Class Notice shall be allowed to indicate and explain their challenge by submitting a written dispute to the Settlement Administrator (“Workweek Challenge”). In order to be timely, a Workweek Challenge must be postmarked or faxed to the Settlement Administrator no later than forty-five (45) days after the date the Notice Packet is first mailed (the “Response Deadline”), unless extended as provided in section 3.03, above. In order to be valid, a Workweek Challenge must: (1) contain the Class Member’s full name, telephone number, address, and the last four numbers of his or her Social Security number; (2) list the case name and number of the Action; (3) clearly state that the Class Member believes the Workweeks allocated to him or her is not correct; (4) clearly state the number of Workweeks the Class Member contends is correct; and (5) attach any written documentation to support the Class Member’s contention.

The Settlement Administrator shall resolve the Workweek Challenge with the Class Member using the employee records provided by Defendant and the Class Member, in consultation with Class Counsel and Defense Counsel. Any disputes not otherwise resolved by the Settlement Administrator ~~and~~ Class Counsel, and Defense Counsel concerning Workweek Challenges and/or administration of the Settlement shall be resolved by the Court, under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the Workweek Challenges. The date of the postmark on the return envelope or the fax confirmation of the Settlement Administrator shall be the exclusive means used to determine whether a Class Member has submitted a timely Workweek Challenge.

b. Request for Exclusion from Class

By entering into this Agreement, Named Plaintiffs agree that they are not requesting and will not be requesting exclusion from the Class Settlement.

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1 The Notice shall provide that Class Members who wish to exclude themselves from the
2 Class Settlement must submit a written request to be excluded from the Class Settlement or a
3 completed Exclusion Form (attached hereto as "**Exhibit CB**") to the Settlement Administrator
4 ~~("(i.e., Opt-Out Request").~~). In order to be timely, an Opt-Out Request must be postmarked or
5 faxed to the Settlement Administrator no later than the applicable Response Deadline. In order to
6 be valid, an Opt-Out Request must: (1) contain the Class Member's full name, telephone number,
7 address, and the last four numbers of his or her Social Security number; (2) list the case name and
8 number of the Action; and (3) clearly state that the Class Member wishes to be excluded from the
9 Class Settlement. The date of the postmark on the return mailing envelope or the fax confirmation
10 of the Settlement Administrator shall be the exclusive means used to determine whether an Opt-Out
11 Request has been timely submitted. Any Class Member who ~~opts out of the Class-~~
12 ~~Settlement~~submits a valid and timely Opt-Out Request will not be entitled to any recovery under
13 the Class Settlement and will not be bound by the Class Settlement or any release of the Released
14 Class Claims ~~in the Action~~ or have any right to object, appeal, or comment on the Class Settlement.
15 Class Members who fail to submit a valid and timely Opt-Out Request on or before the Response
16 Deadline shall be bound by all terms of the Settlement and any Final Approval Order and Judgment
17 entered in this Action if the Settlement is approved by the Court, including a full and final release
18 of all ~~claims set forth in the Action.~~Released Class Claims. No later than five (5) calendar days
19 after the Response Deadline, the Settlement Administrator shall provide ~~Defense Counsel a~~
20 declaration with a complete list of ~~all each of the~~ Class Members who ~~have submitted a~~ timely and
21 ~~properly requested exclusion from the Class-~~valid Opt-Out Requests.

22 Class Members who worked for Defendant within the PAGA Period will remain Aggrieved
23 Employees, and the State of California will be bound to the PAGA Settlement and release Released
24 PAGA Claims, regardless of whether they submit a timely and valid Opt-Out Request, and said
25 Aggrieved Employees will ~~release the Released PAGA Claims and receive~~each be issued an
26 Individual PAGA Payment.

27 **c. Objections to Class Settlement**

28 The Notice shall provide that Class Members who wish to object to the Class Settlement

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1 must either submit a written statement objecting to the Class Settlement or completed Objection
2 Form (attached hereto as "Exhibit DC") to the Settlement Administrator (~~collectively,~~
3 ~~Objection~~) or appear at the Final Approval Hearing and make an oral objection. In order to be
4 timely, an Objection must be postmarked or faxed to the Settlement Administrator no later than the
5 applicable Response Deadline. In order to be valid, an Objection must: (1) contain the Settlement
6 Class Member's full name, telephone number, address, and the last four numbers of his or her
7 Social Security number; (2) list the case name and number of the Action; (3) clearly state that the
8 Settlement Class Member objects to the Class Settlement; and (4) clearly state the factual and/or
9 legal basis of their objection. The Parties will be permitted to respond in writing to such
10 Objections before the Final Approval Hearing or within the time period set by the Court. Class
11 Members who fail to make objections in the manner specified above shall be deemed to have
12 waived any objections and shall be foreclosed from making any objections (whether by appeal or
13 otherwise) to the Class Settlement.

14 **d. No Solicitation of Objections or Opt-Out Requests**

15 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
16 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
17 to submit oral or written ~~objections to the Settlement~~Objections or Opt-Out Requests, appeal from
18 the Court's Final Approval Order and Judgment or seek to vacate or set aside the ~~final~~
19 ~~judgment~~Final Approval Order and Judgment. Further, at no time shall any of the Parties or their
20 counsel discourage any Class Members from participating in the Class Settlement.

21 **e. Failure to Object**

22 Any Settlement Class Member who fails to timely submit a valid Objection shall be
23 foreclosed from making any ~~objection~~Objection to ~~this~~the Class Settlement and Agreement, unless
24 otherwise ordered by the Court, except that any Settlement Class Member may appear at the Final
25 Approval Hearing and make an oral objection, as provided in subsection (c), above.

26 **f. Right of Plaintiffs and Defendant to Void Agreement**

27 If five percent (5%) or more of the Class Members submit timely and valid Opt-Out
28 Requests as described in Section 3.04(b) above, Defendant will have the right, but not the

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obligation, to revoke and void this Agreement at ~~their~~its discretion. Defendant must exercise its right to revoke this Agreement within fourteen (14) calendar days of being informed by the Settlement Administrator that more than five percent (5%) of the Class Members ~~opted out of this Agreement submitted valid and timely Opt-Out Requests.~~ If Defendant exercises its right to void the Agreement, then the Parties will have no further obligations under the Agreement, including, without limitation, any obligation by Defendant to pay the Gross Settlement Fund, or any amounts that otherwise would have been owed under this Agreement. If the number of Workweeks for the time period from May 10, 2015 to November 20, 2019 exceeds 24,053 (i.e., the number of Workweeks provided to Class Counsel prior to mediation) by 5% or more, Plaintiffs will have the right, but not the obligation, to revoke and void this Agreement at ~~his~~their discretion. Plaintiffs must exercise ~~his~~their right to revoke this Agreement within fourteen (14) calendar days of being informed by the Settlement Administrator of the ~~applicable~~applicable number of Workweeks.

Section 3.05 Final Approval Hearing

A Final Approval Hearing shall be held before the Court on the date set forth in the ~~Order for Preliminary Approval~~order granting preliminary approval of the Settlement and ~~the~~ Class Notice. At the Final Approval Hearing, the Court shall (1) review this Agreement and determine whether the Court should ~~give~~grant it final approval, (2) set the amounts of the Enhancement ~~Award~~Awards and Attorneys' Fees and Litigation Costs, and (3) consider any timely objections made pursuant to Section 3.04(c) above and all responses by the Parties to such objections. At the Final Approval Hearing, the Parties shall ask the Court to ~~give~~grant final approval to this Settlement and Agreement and shall submit to the Court a proposed Final Approval Order and Judgment, which the Parties shall jointly agree upon in advance and which shall be entered in the Action.

After entry of the Final Approval Order and Judgment, the Court shall have continuing jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection with this Agreement, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement, and all orders and judgments entered in

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1 connection with this Agreement.

2 **a. ~~Waiver of Right to Appeal~~**

3 Provided that the Final Approval Order and Judgment is consistent with the terms and
4 conditions of this Agreement, Named Plaintiffs, ~~as well as any Settlement Class Members who did~~
5 ~~not timely submit an Objection and/or appear at the Final Approval Hearing and offer an oral~~
6 ~~objection~~, hereby ~~waives~~waive any and all rights to appeal from the Final Approval Order and
7 Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a
8 motion to vacate or set aside judgment, a motion for new trial, and any extraordinary writ, and the
9 Final ~~Order therefore will become final and non-appealable at the time it is entered.~~Approval Order
10 and Judgment. This waiver does not include any waiver of the right to oppose any appeal,
11 appellate proceedings, or post-judgment proceedings nor does this waiver preclude Plaintiffs and/or
12 Class Counsel from appealing any award of Enhancement Awards or Attorneys' Fees and
13 Litigation Costs of suit. A Settlement Class Member who submitted a timely Objection must also
14 satisfy any additional requirements under applicable law, in addition to objecting, in order to have
15 standing to appeal from the class action settlement espoused herein.

16 **b. Vacating, Reversal, or Material Modification on Appeal or Review**

17 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
18 or application, the reviewing court vacates, reverses, or modifies the Final Approval Order and
19 Judgment such that there is a material modification to the Settlement and Agreement, and that
20 court's decision is not completely reversed and the Final Approval Order and Judgment is not fully
21 affirmed on review by a higher court, then Named Plaintiffs and Defendant will each have the right
22 to void the Settlement and Agreement, which the Parties must do by giving written notice to the
23 other Parties, the reviewing court, and the Court not later than fourteen (14) calendar days after the
24 reviewing court's decision vacating, reversing, or materially modifying the Final Approval Order
25 and Judgment becomes final. A vacation, reversal, or modification of the Court's award of an
26 Enhancement Award or Class Counsel's ~~fees~~Attorneys' Fees or ~~costs~~Litigation Costs will not
27 constitute a vacation, reversal, or material modification of the Final Approval Order and Judgment
28 within the meaning of this paragraph, provided that Defendant's obligation to make payments

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remains limited as set forth in this Agreement.

c. Rendering the Settlement Null and Void

In the event: (i) either ~~party~~Party elects to void this Agreement pursuant to Section 3.04(f) above; (ii) the Court does not enter any order specified in this Agreement; (iii) the Court does not finally approve the Settlement as provided in this Agreement; (iv) the Court does not enter a Final Approval Order and Judgment as provided in this Agreement which becomes final as a result of the occurrence of the Effective Date; or (v) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void, the Parties ~~and any funds to be awarded~~ under this Settlement shall be returned to their respective positions at the time of the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be split between the Parties.

d. Administration of the Settlement with Appeal Pending

In the event an appeal is filed from the Court's Final Approval Order and Judgment, or any other appellate review is sought prior to the Effective ~~Date of Finality~~, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

Section 3.06 Settlement Payment Procedures

a. Settlement Sum

The Gross Settlement Fund of \$950,000 includes the following: (a) Enhancement Awards to Plaintiff Saldana in an amount not to exceed \$7,500.00 and to Plaintiff Johns in an amount not to exceed \$5,000.00; (b) an award of Attorneys' Fees to Class Counsel in an amount not to exceed \$332,500; (c) an award of Litigation Costs to Class Counsel in an amount not to exceed \$40,000.00; (d) the Settlement Administration Costs not to exceed \$10,000 to the Settlement Administrator; and (e) the allocation of the PAGA Settlement Amount in the amount of \$75,000 to be distributed to the LWDA and Aggrieved Employees.

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1 The Gross Settlement Fund has a maximum value of \$950,000. Under no circumstances
2 will Defendant be required to pay more than \$950,000, pursuant to the terms set forth in this
3 Agreement, except that Defendant shall separately pay for the employer's portion of any payroll
4 taxes due on the wage portion of each Individual Settlement Payment.

5 **b. Payment of Attorneys' Fees and Costs**

6 Class Counsel may request that the Court approve, and Defendant will not oppose, an award
7 of up to \$332,500 for Attorneys' Fees and up to \$40,000.00 for Litigation Costs. The Attorneys'
8 Fees and Litigation Costs will cover: all work performed and all fees and costs incurred to date and
9 all work to be performed and all fees and costs to be incurred in connection with the approval by
10 the Court of this Settlement, Class Counsel's supervision of administration of the Settlement, and
11 obtaining final approval of this Settlement and entry of judgment. Plaintiffs' Counsel shall not be
12 permitted to petition the Court for, or accept, any additional payments for attorneys' fees or costs.
13 Plaintiffs' Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the
14 Attorneys' Fees and Litigation Costs. The Settlement shall not be contingent upon the Court
15 awarding Class Counsel any particular amount for attorneys' fees and costs. The Parties agree that
16 any reduction in the amount of Attorneys' Fees and Litigation Costs awarded by the Court is not a
17 basis to void the Agreement and Plaintiffs' Counsel has the right to appeal the Court's ruling
18 regarding the Attorneys' Fees and Litigation Costs. If Plaintiffs' Counsel appeals an adverse ruling
19 of the Court regarding its fee and cost application, the ruling of the appellate court (regardless of its
20 substance) shall not constitute a material alteration of a term of this Agreement. The Attorneys'
21 Fees and Litigation Costs shall be paid by the Settlement Administrator to Class Counsel no later
22 than ten (10) calendar days after the Effective Date. The Settlement Administrator may, at the
23 expense of Class Counsel, purchase an annuity to utilize US treasuries and bonds or other attorney
24 fee deferral vehicles for Class Counsel.

25 The Settlement Administrator's payment of the Attorneys' Fees and Litigation Costs to
26 Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person,
27 attorney, or law firm for attorneys' fees or costs in the Action incurred by any attorney on behalf of
28 the Named ~~Plaintiff~~Plaintiffs, and Class Members, and shall relieve Defendant, the Settlement

1 Administrator, and Defense Counsel of any other claims or liability to any other attorney or law
2 firm for any attorneys' fees or costs to which any of them may claim to be entitled on behalf of the
3 Named Plaintiffs and Class Members.

4 **c. Payment of Enhancement Awards to Named Plaintiffs**

5 Plaintiffs' Counsel may request that the Court approve, and Defendant will not oppose,
6 Enhancement Awards to the Named Plaintiffs in an amount not to exceed \$7,500.00 to Plaintiff
7 Saldana and \$5,000.00 to Plaintiff Johns², to be paid to the Named Plaintiffs for their time and
8 effort spent pursuing the Action. Defendant agrees not to oppose such an application, so long as it
9 is consistent with the provisions of this Agreement. The Settlement Administrator shall deliver any
10 Enhancement Awards to Named Plaintiffs within ten (10) calendar days after the Effective Date.
11 The Named Plaintiffs will also be entitled to receive Individual Settlement Payments and
12 Individual PAGA Payments, (if applicable), pursuant to this Agreement in addition to their
13 Enhancement Awards. The Settlement shall not be contingent upon the Court awarding Named
14 Plaintiffs any particular amount for the Enhancement Awards. Class Counsel and Named Plaintiffs
15 shall have no right or ability to nullify the Settlement in the event that the Court awards an amount
16 less than the Enhancement Awards described in this Agreement.

17 Because it is the intent of the Parties that the Enhancement Awards represent payment to
18 the Named Plaintiffs in commendation for their services to the Class ~~Members~~and State of
19 California, and not wages, the Settlement Administrator will not withhold any taxes from the
20 Enhancement Awards. The Enhancement Awards will be reported on a Form 1099 to Named
21 Plaintiffs. Although it is the contemplation of the Parties that the Enhancement Awards do not
22 represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other
23 taxing authority may take the position that the Enhancement Awards constitute compensation for
24 income tax and withholding purposes. Named Plaintiffs agree to assume the responsibility of
25 remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other
26 relevant taxing authority the amounts required by law, if any, to be withheld by Defendant from the
27 Enhancement Awards paid under this Agreement. In addition, Named Plaintiffs shall hold
28 Defendant harmless and indemnify Defendant for all taxes, interest, penalties, and costs, excluding

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attorneys' fees, incurred by Defendant by reason of any claims relating to the non-withholding of taxes from the Enhancement Awards. The Settlement Administrator will issue a Form 1099 to the Named Plaintiffs with regard to the Enhancement Award payments. The Settlement Administrator will provide Defense Counsel with a copy of ~~this the~~ Form 1099 issued to ~~counsel for~~ ~~Defendant~~ Named Plaintiffs.

d. Payment of Settlement Administration Costs

The Settlement Administration Costs shall be deducted from the Gross Settlement Fund and are not to exceed \$10,000. All disputes relating to the Settlement Administrator's performance of its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out. The Settlement Administrator will remit to itself the Settlement Administration Costs within fifteen (15) calendar days of the Effective Date but no sooner than all other payments under this Agreement have been made.

e. Payment of Individual Settlement Payments to Settlement Class Members and Individual PAGA Payments to Aggrieved Employees

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Settlement Class Members based on the number of Workweeks allocated to each of them. The amount that each Settlement Class Member is entitled to receive is determined by multiplying Net Settlement Amount by a ratio that is determined by dividing a Settlement Class Member's Workweeks by the Total Workweeks, as expressed in the following formula:

$$\begin{array}{rcccl} \text{Individual} & & \text{Net} & & \text{Settlement Class Member's} \\ \text{Settlement} & = & \text{Settlement} & \times & \frac{\text{Workweeks}}{\text{Total Workweeks}} \\ \text{Payment} & & \text{Amount} & & \end{array}$$

It is the intent of the Parties that the Net Settlement Amount shall be sufficient to pay Settlement Class Members in accordance with the formula set forth above. Each Individual Settlement Payment will be allocated as one-third (1/3) to wages and two-thirds (2/3) to penalties and interest. The Settlement Administrator shall calculate, withhold, and remit to applicable governmental agencies sufficient amounts as may be owed for employees' share of taxes due on

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1 the portion of the Individual Settlement Payment allocated to wages that will be reported on an IRS
2 Form W2 ~~basis~~. These amounts shall be paid from the Net Settlement Amount. The Settlement
3 Administrator shall also report those portions of the Individual Settlement Payments allocated to
4 interest and penalties on an IRS Form 1099 ~~basis~~ as required by law.

5 The Settlement Administrator shall also calculate, receive from Defendant, and remit to the
6 applicable government agencies such amount as may be owed by Defendant as an employer for
7 payroll taxes on a maximum wage allocation of each Individual Settlement Payment that will be
8 reported on an IRS Form W2 ~~basis~~. These employer payroll taxes allocated to the wage portion of
9 the Individual Settlement Payments shall be paid by Defendant in addition to the Gross Settlement
10 Fund.

11 The Parties agree that twenty-five percent of the PAGA Settlement Amount (“~~Net~~ PAGA
12 Payment”) (i.e., \$18,750) shall be used to fund Individual PAGA Payments. The Parties agree that
13 the PAGA Payment shall be divided between all Aggrieved Employees based on the number of Pay
14 Periods allocated to each of them. The amount that each Aggrieved Employees is entitled to receive
15 is determined by multiplying the Net PAGA Payment by a ratio that is determined by dividing an
16 Aggrieved Employee’s Pay Periods by the Total Pay Periods, as expressed in the following formula:

$$\begin{array}{lcl} \text{Individual} & & \text{Net PAGA} \\ \text{PAGA} & = & \text{Payment} \\ \text{Payment} & & \times \frac{\text{Aggrieved Employee's Pay Periods}}{\text{Total Pay Periods}} \end{array}$$

19
20 Each Individual PAGA Payment will be allocated as entirely as penalties and will be
21 reported on an IRS Form 1099 ~~basis~~ as required by law.

22 No later than ten (10) calendar days after the Court grants final approval of the Settlement,
23 Defendant will pay the Gross Settlement Fund to the Settlement Administrator, who shall segregate
24 and secure such funds in an interest-bearing account with all interest accruing for the benefit of
25 Defendant. No later than ten (10) calendar days after the Effective Date, the Settlement
26 Administrator shall prepare and mail the ~~checks for the~~ Individual Settlement ~~Payments~~ Payment
27 checks to Settlement Class Members and Individual PAGA Payments ~~(which to Aggrieved~~
28 Employees, minus applicable withholdings. For those Settlement Class Members who are also

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1 Aggrieved Employees, said individuals' applicable Individual Settlement Payment and Individual
2 PAGA Payment may be combined into one check ~~when applicable), minus applicable~~
3 ~~withholdings, to Settlement Class Members.~~

4 To the extent that an Individual Settlement Payment check or Individual PAGA Payment
5 check is (1) undeliverable, ~~or (2) uncashed or (2) not cashed, deposited, or otherwise negotiating~~
6 within 180 days after the date listed on the check, the check will be cancelled and associated funds
7 shall be distributed to CASA Riverside County (Voices for Children), a *cy pres* recipient pursuant
8 to *Code of Civil Procedure* section 384. Parties represent that neither Plaintiffs, Defendant,
9 Defense Counsel, nor Class Counsel have any affiliation with the designated cy pres recipient.

10 **f. Payment to the LWDA**

11 No later than ten (10) calendar days after the Effective Date, the Settlement Administrator
12 will deliver to the LWDA, 75% of the PAGA Settlement Amount (the "LWDA Payment") (i.e.,
13 \$56,250) as the LWDA's share of the ~~settlement of the~~ PAGA ~~claims~~ Settlement, which the Parties
14 believe in good faith is a fair and reasonable apportionment.

15 **g. No Additional Contribution by Defendant**

16 Defendant's monetary obligation under this Settlement and Agreement is limited to the
17 Gross Settlement Fund and the ~~employer~~ employer's portion of payroll taxes. Defendant shall not
18 be called upon or required to contribute additional monies above the Gross Settlement Fund under
19 any circumstances whatsoever, except as to Defendant's share of the employer payroll taxes. All
20 costs, fees, and expenses arising out of or in connection with the performance of this Agreement
21 shall be paid from the Gross Settlement Fund, but shall not include attorneys' fees incurred (if any)
22 in enforcing the Settlement Agreement caused by a breach of the Settlement Agreement by
23 Defendant.

24 If, for whatever reason and however it may occur, this Agreement is canceled, rescinded,
25 terminated, voided, or nullified or the Settlement is barred by operation of law, or invalidated, or
26 ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have
27 any obligation to pay any portion of the Gross Settlement Fund to anyone under the terms of this
28 Agreement, and all previous disbursements from the Gross Settlement Fund will immediately be

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1 paid back to Defendant by the person or entity who received such disbursement. Any unpaid costs
2 already incurred by the Settlement Administrator shall be split by the Parties.

3 **h. No Claims Resulting from Payments**

4 No person shall have any claim of any kind whatsoever against any of the Parties, Defense
5 Counsel, Named Plaintiffs, Class Counsel, any Class Member, or the Settlement Administrator,
6 based on the distribution of payments made in accordance with this Agreement.

7 **i. No Effect on Employee Benefit Plans**

8 The payment to any Class Member or Aggrieved Employee as provided for in this
9 Agreement (including, without limitation, any Individual Settlement Payment, Individual PAGA
10 Payment, or any Enhancement Awards paid to Named Plaintiffs) is not and shall not be deemed to
11 constitute an addition to, a modification of, or a change in any previously credited hours of service,
12 compensation and/or wages under any collective bargaining agreement, employee benefit plan,
13 employment policy, or stock option plan of or sponsored by Defendant or any of its present or
14 former parent corporations or affiliates or any jointly trustee benefit plans. Any such payment to
15 any Class Member and/or Aggrieved Employee shall not form the basis for additional contributions
16 to, additional benefits under, or any other additional entitlements under any collective bargaining
17 agreement, employee benefit plan, employment policy, or stock option plan of or sponsored by
18 Defendant or any of its present or former parent corporations or affiliates or any jointly trustee
19 benefit plans. Defendant and each of its present and former parent corporations and affiliates retain
20 the right to modify and/or amend the language of their employee benefit plans, employment
21 policies, and stock option plans, and to seek to have modified and/or amended the language of any
22 collective bargaining agreement, jointly trustee benefit plans, to make clear that any amounts paid
23 as a result of this Agreement are not compensation or wages, or payments for "hours worked," as
24 defined by the applicable agreement(s), plans and policies, and that no additional contributions or
25 benefits are required by reason of the Settlement and this Agreement.

26 **j. Notice of the Order and Judgment Granting Final Approval**

27 ~~No individualized notice of the Final Approval Order and Judgment will be required~~
28 to be given to the Class. Instead, notice of the Final Approval Order and Judgment shall be given

27
FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA SETTLEMENT AND RELEASE

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1 to the Class via online posting on the Settlement Administrator's website. The Settlement
2 Administrator will post the Final Approval Order and Judgement on its website for a period of sixty
3 (60) calendar days.

4 ARTICLE IV

5 LIMITATIONS ON USE OF THIS SETTLEMENT

6 **Section 4.01: No Admission**

7 Defendant vigorously disputes the allegations in the Action. This Agreement is entered into
8 solely for the purpose of compromising claims that are highly disputed by the Parties. Nothing in
9 this Agreement is intended to be or will be construed as an admission of liability or wrongdoing by
10 Defendant and/or any of the Released Parties.

11 **Section 4.02: Non-Evidentiary Use Nullification**

12 ~~Whether or not the Effective Date occurs, neither this Agreement nor any of its terms will~~
13 ~~be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for~~
14 ~~any purpose adverse to Defendant or any of the Released Parties, including, but not limited to,~~
15 ~~evidence of a presumption, concession, indication, or admission by Defendant or any of the~~
16 ~~Released Parties of any liability, fault, wrongdoing, omission, concession, or damage;~~
17 ~~(b) disclosed, referred to, or offered in evidence against any of the Defendant or Released Parties in~~
18 ~~any further proceeding in the Action, or any other civil, criminal, or administrative action or~~
19 ~~proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for~~
20 ~~Defendant to establish that a Class Member has resolved any of his/her claims released through this~~
21 ~~Agreement, (c) but may be used as evidence in any subsequent action for breach or enforcement of~~
22 ~~this Agreement.~~

23 **Section 4.03: Nullification**

24 The Parties have agreed to the certification of the Class encompassing all class causes of
25 action pled in the Action for the sole purpose of effectuating this Agreement. If (a) the Court
26 should for any reason fail to certify the Class for settlement, or (b) the Court should for any reason
27 fail to approve this Settlement in the form agreed to by the Parties, or (c) the Court should for any
28 reason fail to enter the Final Approval Order and Judgment, or (d) the Final Approval Order and

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1 Judgment is reversed, modified, or declared or rendered void, or (e) the Court should for any
2 reason fail to dispose of the Action in its entirety pursuant to this Settlement, with the exception of
3 the Court's retention of exclusive and continuing jurisdiction of this Action over all Parties and
4 Class Members to interpret and enforce the terms, conditions, and obligations of the Settlement,
5 then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the
6 related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement
7 shall stand in the same position, without prejudice, as they were at the time immediately prior to
8 the execution of the Settlement Agreement and if the Settlement Agreement had been neither
9 entered into nor filed with the Court; and (iv) the fact that the Parties were willing to stipulate to
10 class certification ~~of all causes of action pled~~ in the Action as part of the Settlement for settlement
11 purposes only will not have any bearing whatsoever on the remainder of the litigation of the
12 Action.

13 Invalidation of any material portion of this Agreement shall invalidate this Agreement in its
14 entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall
15 remain in full force and effect.

16 In the event of a timely appeal from the Final Approval Order and Judgment, the Final
17 Approval Order and Judgment shall be stayed and the Gross Settlement Fund shall not be
18 distributed pending the completion and results of the appeal.

19 ARTICLE V

20 RELEASES

21 **Section 5.01: Release of Claims As To All Class Members.**

22 ~~All Settlement Class Members, including the Named Plaintiffs (i.e., Class Members who do~~
23 ~~not timely opt out of the Settlement as described in Section 3.04(b)) shall be bound by this~~
24 ~~Agreement and shall be deemed to have fully and finally released all claims that were set forth, or~~
25 ~~could have been set forth based on the facts alleged in the Operative Complaint.~~

26 Upon the Effective Date, and except as to such rights or claims as may be created by this
27 Agreement, ~~the all~~ Settlement Class ~~will be deemed to have, comprised of each member of~~
28 ~~the Members, including the Named Plaintiffs (i.e., Class Members who has do not submitted submit~~

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1 a timely and valid Opt-Out Request, as described in Section 3.04(b)) shall be bound by this
2 Agreement and shall be deemed to fully and finally release and discharge Defendant and each of its
3 past, current, or future officers, directors, employees, and agents (collectively, the “Released
4 Parties”), from any and all applicable state law wage-and-hour claims, rights, demands, liabilities,
5 and causes of action of every nature and description, arising during the Class Period, based on the
6 facts alleged in the Operative Complaint, including without limitation, statutory, constitutional,
7 contractual or common law claims for wages, damages, unpaid costs, civil or statutory penalties,
8 liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or
9 equitable relief, based on the following categories of allegations: unpaid overtime, unpaid meal
10 period premiums, unpaid rest break premiums, unpaid minimum wages, final wages not timely
11 paid, wages not timely paid during employment, non-compliant wage statements, failure to keep
12 requisite payroll records, unreimbursed business expenses, including but not limited to violations of
13 and claims arising under California law, California Labor Code sections 201-204, 206, 210, 218.5,
14 218.6, 221, 226, 226.3, 226.7, 227.3, 256, 510, 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5,
15 1182.12, 1194, 1194.2, 1197-1198, 1198.5, 1199, 2751, ~~2698 et seq.~~, 2800, 2802, 2810.5, 6401,
16 6403, ~~and claims for civil penalties under PAGA pursuant to or based on these sections;~~ the
17 applicable Industrial Welfare Commission Wage Orders; Cal. Code Regs. Title 8, § 11070; and the
18 California Business & Professions Code § 17200, *et seq.* as it relates to the underlying California
19 Labor Code claims referenced above, interest, attorneys’ fees and costs, including as permissible
20 under California Code of Civil Procedure § 1021.5 (collectively, “Released Class Claims”). ~~The~~
21 ~~Class Members’ Released Class Claims include claims meeting the above definition under any and~~
22 ~~all applicable California laws, statutes, regulations, and Wage Orders.~~

23 ~~The Released Class Claims which arise under PAGA are referred to as the “Released~~
24 ~~PAGA Claims.” Upon the Effective Date, all Aggrieved Employees, regardless of whether they~~
25 ~~submitted a timely and valid Opt Out Request, will be deemed to have fully and finally released~~
26 ~~and discharged the Released Parties from the Released PAGA Claims which arose during the~~
27 ~~PAGA Period.~~

28 It is agreed that because the Class Members are so numerous, it is impossible or impractical

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1 to have each Class Member execute this Agreement. The Class Notice will advise all Class
2 Members of the binding nature of the releases. Excepting only the Class Members who ~~timely~~
3 submit a timely and valid Opt-Out Request, the Class Notice shall have the same force and effect as
4 if this Settlement and Agreement were executed by each Settlement Class Member with regard to
5 the ~~claims~~Released Class Claims that he or she is releasing pursuant to the Settlement and
6 Agreement.

7 **Section 5.02: Release of Claims As To State of California**

8 Upon the Effective Date, and except as to such rights and claims as may be created by this
9 Agreement, the State of California will be deemed to have fully and finally released and discharged
10 the Released Parties from any and all applicable claims, rights, demands, liabilities, and causes of
11 action for civil penalties, arising during the PAGA Period, with respect to Defendant's employment
12 of Aggrieved Employees during the PAGA Period, based on the facts alleged in the Operative
13 Complaint, based on the following categories of allegations: unpaid overtime, unpaid meal period
14 premiums, unpaid rest break premiums, unpaid minimum wages, final wages not timely paid,
15 wages not timely paid during employment, non-compliant wage statements, failure to keep
16 requisite payroll records, unreimbursed business expenses, including but not limited to violations of
17 and claims arising under California Labor Code sections 201-204, 206, 210, 218.5, 218.6, 221, 226,
18 226.3, 226.7, 227.3, 256, 510, 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194,
19 1194.2, 1197-1198, 1198.5, 1199, 2751, 2800, 2802, 2810.5, 6401, 6403, and the applicable
20 Industrial Welfare Commission Wage Orders (collectively, "Released PAGA Claims").

21 **Section 5.03: General Release by Named Plaintiffs.**

22 Upon the Effective Date, Plaintiffs Jose Saldana and Thomas Johns agree to release all
23 claims known or unknown, accrued or unaccrued, they have or may have against Defendant and the
24 Released Parties, ~~including execution of a California Civil Code section 1542 release and waiver.~~

25 In consideration of the monetary sum provided to Plaintiffs by Defendant, subject to Court
26 approval, upon the Effective Date, the Named Plaintiffs fully release and forever discharge the
27 Released Parties from any and all actions, causes of action, claims, charges, complaints, liabilities,
28 obligations, promises, agreements, controversies, damages, actions, suits, rights, demands, liens,

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1 costs, losses, debts, penalties, fines, wages, liquidated damages, restitutionary amounts, attorneys’
2 fees and costs, interest, punitive damages and expenses (including, without limitation, back wages,
3 penalties, liquidated damages, and attorneys’ fees and costs actually incurred) or liabilities of any
4 kind which have been or could have been asserted against the Released Parties arising out of or
5 relating to Plaintiffs’ employment with Defendant, and/or any other occurrence taking place on or
6 before the effective date of this Agreement, known or unknown, suspected or unsuspected,
7 including but not limited to claims arising out of, based upon, or relating to Plaintiffs’ employment
8 with the Defendant, or the remuneration for such employment, and the matters referred to herein,
9 whether or not known or suspected to exist, and whether or not specifically or particularly
10 described herein. Without limiting the generality of the foregoing, Plaintiffs expressly release all
11 claims or rights that exist at the time of the execution of this Agreement arising out of alleged
12 violations of any contracts, express or implied (including but not limited to any contract of
13 employment); any contract or covenant of good faith or fair dealing (express or implied); any tort,
14 including, without limitation, negligence, fraud, misrepresentation under California Labor Code §
15 970, negligent infliction of emotional distress, intentional infliction of emotional distress, slander
16 and defamation; wrongful or constructive termination; any “retaliation” claims; any claims relating
17 to any breach of public policy; any legal restrictions on Defendant’s right to discharge employees
18 or refuse to hire applicants; and any federal, state, or other governmental statute, regulation, order
19 or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race,
20 color, religion, sex, and national origin discrimination or harassment, including retaliation for
21 reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) sections 503
22 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (4) Equal Pay Act, 29 U.S.C.
23 § 209(4)(1) (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability
24 discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical
25 leave); (7) California Fair Employment and Housing Act, Cal. Gov’t Code § 12900 *et seq.*
26 (discrimination or harassment in employment and/or housing, including discrimination or
27 harassment based on race, religious creed, color, national origin, ancestry, disability, marital status,
28 sex (including pregnancy), sexual orientation, or age, including, without limitation, retaliation for

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reporting discrimination or harassment); (8) California Family Rights Act, Cal. Gov't Code § 12945.1 *et seq.* (family/medical leave); (9) California Labor Code, including but not limited to California Labor Code § 2698 *et seq.* (PAGA), or any Industrial Welfare Commission Wage Order; (10) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; (11) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (12) Executive Order 11141 (age discrimination); (13) California Business and Professions Code Section 17200, *et seq.*, and (14) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits).

Section 5.0304: Named Plaintiffs' Release of Unknown Claims

Upon the Effective Date, Named Plaintiffs expressly waive any right or claim of right to assert hereafter that any claim, demand, obligation, and/or cause of action, existing at the time of the execution of this Agreement, have, through ignorance, oversight, or error, been omitted from the terms of this Agreement. Named Plaintiffs agree there is a risk that each and every injury they may have suffered by reason of the Released Parties' relationship with them might not now be known, and there is further risk that said injuries, whether known or unknown at the date of this Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained by them. Nevertheless, Named Plaintiffs desire to forever and fully release and discharge the Released Parties, and each of them, and understand that by the execution of this Agreement no further claims for any such injuries that existed at the time of the execution of this Agreement may ever be asserted by them. Named Plaintiffs expressly waive and relinquish all rights and benefits afforded by section 1542 of the Civil Code of the State of California and do so understanding and acknowledging the significance of such specific waiver of section 1542. Specifically, Named Plaintiffs waive their rights under Section 1542 of the Civil Code, which states:

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

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1 Named Plaintiffs make this waiver with full knowledge of their rights and with the specific
2 intent to release all known and unknown claims arising on or before the effective date of this
3 Agreement, and therefore specifically waive the provisions of any statute in any state of the United
4 States which prevents release of unknown claims. Thus, subject to and in accordance with this
5 Agreement, even if Named Plaintiffs may hereafter discover facts in addition to or different from
6 those they now know or believes to be true, Named Plaintiffs, upon the Effective Date, shall be
7 deemed to have fully, finally, and forever settled and released any and all claims against the
8 Released Parties that were alleged or could have been alleged in the Action, as well as any other
9 claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that
10 now exist, upon any theory of law or equity, including, without limitation, conduct that is
11 negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard
12 to the subsequent discovery or existence of such different or additional facts.

13 **Section 5.05: No Additional Attorneys' Fees or Costs**

14 Except for the Attorneys' Fees and Litigation Costs set forth in this Agreement, the Parties
15 agree to bear their own attorneys' fees and costs related to this Action.

16 **ARTICLE VI**
17 **MISCELLANEOUS**

18 **Section 6.01: Amendments, Modification or Rescission**

19 The terms and provisions of this Agreement may be amended or modified only by an
20 express written agreement that is signed by all the Parties (or their successors-in-interest) and their
21 counsel, subject to Court approval. In the event that the Court requires that certain changes be
22 made to this Agreement or to the Notice Packet as a condition of preliminary approval, then a
23 signed stipulation by counsel for the Parties shall be sufficient to amend or modify this Agreement
24 or the Notice Packet without additional signatures from the Named Plaintiffs or Defendant. In the
25 event any ~~party~~Party is entitled to and elects to revoke or rescind this Agreement, such revocation
26 or rescission must be in writing, mailed by certified mail to Parties' counsel (at the mailing address
27 designated herein) and e-mailed to Parties' counsel.

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Section 6.02: ~~Additional Representations and Warranties~~

~~This Agreement is contingent upon Defendant paying the Gross Settlement Fund for a complete resolution of the claims at issue in the Action, including, without limitation, attorneys' fees and costs, but excluding any employer's payroll taxes or the Settlement Administrator's fees.~~

Section 6.03: Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and its or their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties, the Class Members, State of California, and the Released Parties, and shall not be construed to confer any right or to avail any remedy to any other person or entity.

Section 6.0403: Entire Agreement

This Agreement, including, without limitation, the Exhibit referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto with respect to the subject matter contained herein. In case of any conflict between text contained in Articles I through VI of this Agreement and text contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be controlling. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. Upon its full execution, this Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the Settlement, including, without limitation, correspondence between Class Counsel and Defense Counsel, and drafts of prior agreements or proposals.

Section 6.0504: Waiver of Compliance

Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any material obligation, covenant, agreement, or condition herein may be expressly waived in writing, subject to Court approval, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty,

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covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

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Section 6.0605: Counterparts and Fax/PDF Signatures

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one instrument. A fax, electronic, ~~DocuSign~~ DocuSign or PDF signature on this Agreement shall be as valid as an original signature.

Section 6.0706: Attorneys' Fees and Litigation Costs

No Class Member or Class Counsel or any other attorney acting for any Class Member may recover or seek to recover any amounts for fees, costs, or disbursements from the Defendant and/or the Released Parties or the Gross Settlement Fund except as expressly provided herein.

Section 6.0807: Meet and Confer Regarding Disputes

If any dispute arises among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Class Counsel, and ~~Defendant's~~ Defendant's counsel shall meet and confer in an attempt to resolve such dispute prior to submitting it to the Court.

Section 6.0908: Administration Costs

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

Section 6.1009: Circular 230 Disclaimer

EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR

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1 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
2 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
3 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 C.F.R. PART 10,
4 AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
5 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
6 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
7 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
8 THE RECOMMENDATION OF ANY OTHER PARTY, OR ANY ATTORNEY OR
9 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON
10 ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
11 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON
12 THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY
13 OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
14 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
15 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
16 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX
17 TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY
18 TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

19 **Section 6.4110: Privacy of Documents and Information**

20 The Named Plaintiffs and Class Counsel agree that none of the documents and information
21 provided to them by Defendant shall be used for any purpose other than prosecution of this Action.

22 **Section 6.4211: No Admission by the Parties**

23 Defendant and the Released Parties deny any and all claims alleged in this Action and deny
24 all wrongdoing whatsoever. The Parties have stipulated to class certification as set forth herein for
25 settlement purposes only. This Agreement is not a concession or admission, and shall not be used
26 against Defendant or any of the Released Parties as an admission or indication with respect to any
27 claim of any fault, concession, or omission by Defendant or any of the Released Parties. ~~Whether~~
28 ~~the Settlement is finally approved, the Settlement, any document, statement, proceeding or conduct~~
~~related to this Agreement, and/or any reports or accounts of this Agreement, shall not in any event~~
~~be:~~

~~a. construed as, offered, or admitted in evidence as, received as, or deemed to be~~
~~evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of~~
~~a presumption, concession, indication, or admission by any of the Released Parties of any liability,~~
~~fault, wrongdoing, omission, concession, or damage; or,~~

~~b. disclosed, referred to, or offered or received in evidence against any of the Released~~

~~FIRST AMENDED JOINT STIPULATION OF CLASS AND PAGA SETTLEMENT AND RELEASE~~

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1 ~~Parties, in any further proceeding in the Action, or any other civil, criminal, or administrative~~
2 ~~action or proceeding except for purposes of settling this Action pursuant to this Agreement.~~

3 **Section 6.1312: Exhibit and Headings**

4 The terms of this Agreement include the terms set forth in any attached Exhibit, which are
5 incorporated by this reference as though fully set forth in this Agreement. Any Exhibit to this
6 Agreement is an integral part of the Settlement. The descriptive headings of any paragraphs or
7 sections of this Agreement are inserted for convenience of reference only and do not constitute a
8 part of this Agreement.

9 **Section 6.1413: Interim Stay of Proceedings**

10 The Parties agree that all orders and deadlines in the litigation are stayed, except such
11 proceedings necessary to implement and complete the Settlement. In the event the Settlement is not
12 approved by the Court, the Parties shall return to the current status of the litigation.

13 ///

14 ///

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16 **Section 6.1614: Authorization to Enter Into Settlement Agreement**

17 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
18 whom they represent to negotiate this Agreement and to take all appropriate action required or
19 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
20 execute any other documents required to effectuate the terms of this Agreement. The Parties and
21 their counsel will cooperate with each other and use their best efforts to ~~effect~~ affect the
22 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
23 form or content of any document needed to implement the Settlement, or on any supplemental
24 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may
25 seek the assistance of the Court to resolve such disagreement. The person signing this Agreement
26 on behalf of Defendant represents and warrants that he/she is authorized to sign this Agreement on
27 behalf of Defendant.

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Section 6.1715: Binding on Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the Parties, the Released Parties, and their respective successors or assigns.

Section 6.1816: California Law Governs

All terms of this Agreement and the attached ~~Exhibit A~~Exhibits shall be governed by and interpreted according to the laws of the State of California and the procedures of the Court.

Section 6.1917: This Settlement is Fair, Adequate, and Reasonable

The Parties believe this Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this Settlement in arm's length negotiations, taking into account all relevant factors, present and potential. This Settlement was reached after extensive negotiations, including an arms' length negotiation at mediation before respected mediator Jeffrey Kravis, Esq. ~~on December 11, 2019 and February 8, 2020.~~

Section 6.2018: Cooperation and Drafting

Each of the parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the Parties.

///

///

Section 6.2119: Invalidity of Any Provision

Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable. The provisions of this Agreement are severable. To the extent any provision is deemed unlawful, to the extent possible, such provision shall be severed and the remainder of the Agreement shall remain valid and enforceable.

Section 6.2220: Defense

To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other

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proceedings that may be instituted, prosecuted, or attempted with respect to the Released Class Claims and/or Released PAGA Claims in breach of or contrary to this Settlement.

Section 6.2321: Named Plaintiffs' Waiver of Right to be Excluded

The Named Plaintiffs agree to sign this Agreement and, by signing this Agreement, they agree: (1) to be bound by its terms, (2) not to request to be excluded from the Class Settlement, and (3) represent that they have no objection to any of the terms of this Agreement. Non-compliance by the Named Plaintiffs with this paragraph shall be void and of no force or effect. Any such request for exclusion or objection shall therefore be void and of no force or effect.

Section 6.2422: Public Statements

Named Plaintiffs, Defendant, Defense Counsel, and Class Counsel agree to limit public comment on this Settlement and Agreement, the Action, and the claims asserted in the Action, to stating that the matter has been resolved to the satisfaction of the Parties. Named Plaintiffs, Defendant, Defense Counsel, and Class Counsel shall not initiate public comment on this Settlement and Agreement, the Action and the claims asserted in the Action with the exception that Class Counsel shall not be precluded from submitting this Agreement to the LWDA in conformity with the requirements of the PAGA statute, and/or communicating with Class Members, the LWDA, or other entities as required to see preliminary and final approval of implement this Settlement. Defendant and/or the Released Parties can communicate the existence of and/or use the Agreement as a defense to any claim(s) covered by the releases in this Agreement.

Section 6.2523: Enforcement

The Parties agree this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of this Action over all Parties and Class Members to interpret and enforce the terms, conditions, and obligations of the Settlement. The Named Plaintiffs, Class Members, and Defendant hereby submit to the personal and exclusive jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith. The prevailing partyOnly in anyan action or proceeding brought by a Party against another Party to enforce this Agreement or otherwise concerning, the terms of the Settlementprevailing party in such an action

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or proceeding shall be awarded his, her, or its costs and attorneys' fees.

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1 IN WITNESS WHEREOF, the parties hereto
2 knowingly and voluntarily executed this Joint
3 Stipulation of Settlement and Release between
4 Plaintiffs and Defendant as of the date(s) set
5 forth below:

6 February __, 2021

By: _____
Jose Saldana
Named Plaintiff

7 _____
8 ~~February __, 2021~~

By: _____
Thomas Johns
Named Plaintiff

9 ~~February __, 2021~~

By: _____
Mark Carter, Founder and Chairman
International E-Z Up, Inc.

11 **Agreed as to form:**

12
13
14
15
16 February __, 2021

Lawyers for Justice, PC

By: _____
Edwin Aiwazian
Attorney for Plaintiff

17
18
19
20
21 February __, 2021

CDF Labor Law LLP

By: _____
Brent M. Giddens
Ashley Halberda
Brian E. Cole II
Attorneys for Defendant
International E-Z Up, Inc.

22
23
24
25
26 IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this First
27 Amended Joint Stipulation of Class and PAGA Settlement and Release between Plaintiffs and
28 Defendant as of the date(s) set forth below:

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1 June , 2021 By: _____
2 _____ Jose Saldana
3 _____ Named Plaintiff

4 June , 2021 By: _____
5 _____ Thomas Johns
6 _____ Named Plaintiff

7 June , 2021 By: _____
8 _____ Mark Carter, Founder and Chairman
9 _____ International E-Z Up, Inc.

10 ///

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16 Agreed as to form:

17 June , 2021 _____ Lawyers for Justice, PC

18 _____
19 _____
20 By: _____
21 _____ Edwin Aiwazian
22 _____ Attorney for Plaintiffs

23 June , 2021 _____ CDF Labor Law LLP

24 By: _____
25 _____ Brent M. Giddens
26 _____ Ashley Halberda
27 _____ Brian E. Cole II
28 _____ Attorneys for Defendant

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EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Jose Saldana, ~~et al.~~ v. International E-Z Up, Inc.
Superior Court of California for the County of Riverside, Case No. RIC1902873

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class **and PAGA representative** action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the **class action** settlement, object to the **class action** settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class **and PAGA representative** action settlement has been reached between Plaintiffs Jose Saldana and Thomas Johns ("Plaintiffs") and Defendant International E-Z Up Inc. ("Defendant") (Plaintiffs and Defendant together are referred to as the "Parties") in the case entitled *Jose Saldana, ~~et al.~~ v. International E-Z Up Inc.*, Riverside County Superior Court, Case No. RIC1902873 (the "Action"), which may affect your legal rights. On **[date of Preliminary Approval]**, the Court granted preliminary approval of the settlement and scheduled a hearing on **[hearing date]** at **[hearing time]** ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" means all hourly-paid ~~or non-exempt~~ employees who worked for Defendant within the State of California at any time during the Class Period.

"Class Member" means a member of the Class.

"Class Period" means the time period from May 10, 2015 until May 8, 2020 ~~or [date of Preliminary Approval], whichever is sooner.~~

"Class Settlement" means the settlement of claims that do not arise under the Private Attorneys General Act of 2004, California Labor Code section 2698.

"Aggrieved Employees" means Plaintiffs and Class Members who worked for Defendant within the PAGA Period.

"PAGA Period" means the time period from May 10, 2018 until May 8, 2020 ~~or [date of Preliminary Approval], whichever is sooner.~~

"PAGA Settlement" means the settlement of claims arising under the Private Attorneys General Act of 2004, California Labor Code section 2698.

II. BACKGROUND OF THE ACTION

On May 10, 2019, Plaintiff Saldana started the Action by filing the Class Action Complaint for Damages in the Riverside County Superior Court. On ~~FAC Date~~, **March 25, 2021**, Plaintiffs filed the First Amended ~~Class Action~~ Complaint ~~for Damages & Enforcement Under the Private Attorneys General Act of 2004, California Labor Code sections 2698, Et Seq. ("First Amended~~ ("Operative Complaint"). Plaintiffs claim that Defendant failed to properly pay overtime wages, provide compliant meal and rest breaks and associated premiums, properly pay minimum wages, timely pay wages upon termination and during employment and associated penalties, provide accurate wage statements, keep required payroll records, and reimburse business expenses, and thereby engaged in unfair business practices, and ~~asserts~~ **assert** that Defendant owes

penalties under the California Private Attorneys General Act of 2004, California Labor Code ~~sections~~section 2698, ~~Et Seq.~~ (“PAGA”). Plaintiffs seek, among other things, recovery of unpaid wages and meal and rest period premiums, recovery of loss, damage, or injury, penalties, interest, and attorneys’ fees and costs.

Defendant denies all of ~~the~~ Plaintiffs’ claims in the Action and denies that it violated any law. Defendant asserts that at all times it has complied with federal, state, and local laws.

The Parties participated in ~~a full day mediation session (a process where parties negotiations to~~ try to resolve their dispute with a third-party neutral ~~mediator) with a respected class action~~ mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the ~~ThirdFirst~~ Amended Joint Stipulation of Class ~~Action~~ and PAGA Settlement and Release, ~~which is an agreement setting forth the terms of the settlement of Plaintiffs’ claims in the Action~~ (“Settlement,” “Agreement,” or “Settlement Agreement”).

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Simpluris, Inc. as the administrator of the Settlement (“Settlement Administrator”), Plaintiffs as representatives of the Class (“Class Representatives”), and the following attorneys as counsel for the Class (“Class Counsel”):

Edwin Aiwarzian
Arby Aiwarzian
Joanna Ghosh
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for International E-Z Up Inc. are:

Brent M. Giddens
Ashley A. Halberda
Brian E. Cole II
CDF Labor Law LLP
18300 Von Karman Ave., Suite 800
Irvine, California 92612
Telephone: (949) 622-1661

The Settlement represents a compromise and settlement of highly disputed claims. ~~Nothing in the Settlement is intended or will be taken as an admission by~~ Defendant ~~does not admit~~ that the claims in the Action have ~~any~~ merit or that Defendant owes anything to Plaintiffs or to Class Members. Plaintiffs and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continuing the lawsuit, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members. The Court has determined only that there is sufficient evidence to suggest that the ~~proposed~~ Settlement might be fair, adequate, and reasonable, ~~and that any; a final determination of those issues whether the Settlement is fair, adequate, and reasonable~~ will be made at the Final Approval Hearing. The Court has made no ruling on the merits of the ~~Class Members’ claims and has determined only that a class action is the best option to manage the Class for settlement purposes.~~ After Defendant provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s length negotiations between the Parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk ~~of denial of that the Court will not allow the case to proceed as a class certification action~~, the ~~inherent risk of risks associated with winning at trial on the merits~~, and the delays and uncertainties associated with ~~an ongoing litigation lawsuit~~.

If you are still employed by Defendant, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendant’s ~~policy policies~~ strictly prohibit unlawful retaliation. Defendant will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any ~~Settlement~~ Class ~~member~~Member because of his/her decision to either participate or not participate in the Settlement.

III. SUMMARY OF THE SETTLEMENT

A. Settlement Formula

The total ~~gross~~ settlement amount is Nine Hundred and Fifty Thousand Dollars (\$950,000) (the “~~GrossTotal~~ Settlement ~~FundAmount~~”). The portion of the ~~GrossTotal~~ Settlement ~~FundAmount~~ that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the ~~GrossTotal~~ Settlement ~~FundAmount~~ minus the following payments which are subject to approval by the Court: (1) Attorneys’ Fees in an amount not to exceed thirty-five percent (35%) of the ~~GrossTotal~~ Settlement ~~FundAmount~~ (that is, Three Hundred Thirty-Two Five Hundred Dollars (\$332,500)); (2) ~~LitigationLawsuit~~ Costs, ~~consisting of~~ reimbursement of actual costs and expenses in an amount not to exceed Forty Thousand Dollars (\$40,000) to Class Counsel; (3) Enhancement Awards in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff Saldana and in an amount not to exceed Five Thousand Dollars (\$5,000) to Plaintiff Johns for their services in the Action; (4) PAGA Settlement Amount in the amount of Seventy-Five Thousand Dollars (\$75,000) allocated toward penalties under PAGA, of which seventy-five percent (75%), or Fifty-Six Thousand Two Hundred Fifty Dollars (\$56,250), will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%), or Eighteen Thousand Seven Hundred Fifty Thousand Dollars (\$18,750); ~~(“Net PAGA Payment”).~~ will be distributed to ~~Class Members (“PAGA Payment”);~~ Aggrieved Employees; and (5) Settlement Administration Costs in an amount not to exceed Ten Thousand Dollars (\$10,000) to the Settlement Administrator.

B. Individual Settlement Payments and Individual PAGA Payments

Each Class Member is eligible to receive payment under the Settlement of his or her share of the Net Settlement Amount (“Individual Settlement Payment”) based on the number of weeks during the Class Period commencing on Sunday and ending on the following Saturday in which a Class Member worked one or more days. ~~(“Workweeks”). (“Workweek(s)”).~~

~~The~~ To calculate each Individual Settlement Payment, the Settlement Administrator ~~multiplied~~ divided the Net Settlement Amount by ~~a fraction that has as its numerator the number of Workweeks an individual Class Member has worked and as its denominator the total number of Workweeks of all Class Members (“Total Workweeks”) (which is listed in Section IV.A below); to arrive at a dollar value per Workweek, and then multiplied each Class Member’s individual number of Workweeks by the Workweek dollar value.~~

Based on the Net Settlement Amount, the range of estimated Individual Settlement Payments to Class Members is [lowest estimated share to be provided by Settlement Administrator] (\$ _____) to [highest estimated share to be provided by Settlement Administrator] (\$ _____). The estimated average Individual Settlement Payment is [average estimated share to be provided by Settlement Administrator] (\$ _____).

Each Individual Settlement Payment will be allocated one-third (33.33%) as wages which will be reported on an IRS Form W-2 and two-thirds (66.667%) as penalties and interest, which will be reported on an IRS Form 1099. Class Members who do not request exclusion from the Class Settlement as set forth below in Section IV.B (“Settlement Class Members”) will be issued payment of their net Individual Settlement Payment, after reduction for the employee’s share of payroll taxes, contributions, and withholdings with respect to the wages portion of the Individual Settlement Payment, ~~resulting in a net payment to the Settlement Class Member.~~

Each Aggrieved Employee will also receive a share of the Net PAGA Payment (“Individual PAGA Payment”), regardless of whether he or she ~~submits a timely and valid Opt Out Request. There requests exclusion from the Class Settlement. Each Individual PAGA Payment is a pro-rata share of the PAGA Payment has been calculated~~ based on the number of pay periods during the PAGA Period during which an Aggrieved Employee worked for Defendant as an hourly-paid or non-exempt employee in California. ~~The (“Pay Period(s)). To calculate each Individual PAGA Payment, the Settlement Administrator has multiplied divided the Net PAGA Payment of Eighteen Thousand Seven Hundred Fifty Thousand Dollars (\$18,750) by a fraction that has as its numerator the Aggrieved Employee’s Pay Periods and as the denominator the the total Pay Periods of all Aggrieved Employees. (which is listed in Section IV.A below); to arrive at a dollar value per Pay Period, and then multiplied each Aggrieved Employee’s individual number of Pay Periods by the Pay Period dollar value.~~ Individual PAGA Payments will be allocated one hundred percent (100%) as penalties. ~~Thus, the Individual PAGA Payments, and~~ will be paid without any withholding amount and reported on an IRS Form 1099.

The range of estimated Individual PAGA Payments to Aggrieved Employees is [lowest estimated payment to be provided by Settlement Administrator] (\$) to [highest estimated payment to be provided by Settlement Administrator] (\$). The estimated average Individual PAGA Payment is [average estimated payment to be provided by Settlement Administrator] (\$).

If the Court grants final approval of the Settlement, Individual ~~PAGA Payments and Individual~~ Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to Aggrieved Employees, ~~respectively~~, at the address that is on file with the Settlement Administrator. For those Settlement Class Members who are also Aggrieved Employees, the Settlement Administrator may ~~include the Individual PAGA Payment in the same check as the combine their~~ Individual Settlement Payment and Individual PAGA Payment into one (1) check. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

C. Released Claims

Upon the Effective Date, and except as to such rights and claims as may be created by the Settlement, Plaintiffs and all Class Members who have not submitted a valid and timely Opt-Out Request (that is, Settlement Class Members) will be deemed to ~~have fully, and finally, and forever released, settled, compromised, relinquished, release~~ and discharged the Released Parties ~~of all from~~ Released Class Claims.

Upon the Effective Date, ~~all Aggrieved Employees, regardless of whether they have opted out of and~~ except as to such rights and claims as may be created by the Class Settlement, the State of California will be deemed to have fully and finally released and discharged the Released Parties from ~~the~~ Released PAGA Claims.

“Released Class Claims” means any and all applicable state law wage-and-hour claims, rights, demands, liabilities, and causes of action of every nature and description, arising during the Class Period, based on the facts alleged in the Operative Complaint, including without limitation, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, civil or statutory penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, based on the following categories of allegations: unpaid overtime, unpaid meal period premiums, unpaid rest break premiums, unpaid minimum wages, final wages not timely paid, wages not timely paid during employment, non-compliant wage statements, failure to keep requisite payroll records, unreimbursed business expenses, including but not limited to violations of and claims arising under California law, California Labor Code sections 201-204, 206, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 256, 510, 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197-1198, 1198.5, 1199, 2751, ~~2698 et seq.~~, 2800, 2802, 2810.5, 6401, 6403, and claims for civil penalties under PAGA pursuant to or based on these sections; the applicable Industrial Welfare Commission Wage Orders; Cal. Code Regs. Title 8, § 11070; and the California Business & Professions Code § 17200, *et seq.* as it relates to the underlying California Labor Code claims referenced above, interest, attorneys’ fees and costs, including as permissible under California Code of Civil Procedure § 1021.5.

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“Released PAGA Claims” means the Released Class Claims which arise under PAGA during the PAGA Period.

“Released Parties” means ~~Defendant and~~ “Released PAGA Claims” means any and all applicable claims, rights, demands, liabilities, and causes of action for civil penalties, arising during the PAGA Period, with respect to Defendant’s employment of Aggrieved Employees during the PAGA Period, based on the facts alleged in the Operative Complaint, based on the following categories of allegations: unpaid overtime, unpaid meal period premiums, unpaid rest break premiums, unpaid minimum wages, final wages not timely paid, wages not timely paid during employment, non-compliant wage statements, failure to keep requisite payroll records, unreimbursed business expenses, including but not limited to violations of and claims arising under California Labor Code sections 201-204, 206, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 256, 510, 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197-1198, 1198.5, 1199, 2751, 2800, 2802, 2810.5, 6401, 6403, and the applicable Industrial Welfare Commission Wage Orders.

“Released Parties” means Defendant and each of its past, current, or future officers, directors, employees, ~~or~~ and agents.

D. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount up to thirty-five percent (35%) of the ~~Gross Total~~ Settlement ~~Fund Amount~~ (that is, up to Three Hundred Thirty-Two Thousand Five Hundred Dollars (\$332,500) and reimbursement of actual costs and expenses in an amount up to Forty Thousand Dollars (\$40,000) (collectively, “Attorneys’ Fees and Costs”). Subject to approval by the Court, the Attorneys’ Fees and Costs will be paid to Class Counsel from the Gross Settlement Fund. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and Class Members ~~on a contingency fee basis (that is, without being paid any money to date)~~ and has been paying all costs and expenses of the lawsuit, ~~and will only be paid if there is a recovery in the Action.~~

E. Enhancement ~~Payment~~ Payments to Plaintiffs

Plaintiffs will seek an amount up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff Saldana and up to Five Thousand Dollars (\$5,000) to Plaintiff Johns (“Enhancement Awards”), in recognition of their services in connection with the Action. Subject to approval by the Court, the Enhancement Awards will be paid from the Gross Settlement Fund and, if awarded, will be paid to Plaintiffs in addition to their Individual ~~PAGA Payment and Individual~~ Settlement Payments ~~and Individual PAGA Payment (if applicable)~~ that they are entitled to under the Settlement.

F. Settlement Administration Costs to the Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Ten Thousand Dollars (\$10,000) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Opt-Out Requests, Objections, and disputes of Workweeks, calculating and distributing payments and tax forms under the Settlement, and other activities required to administer the Settlement. Subject to approval by the Court, the Settlement Administration Costs will be paid to the Settlement Administrator from the Gross Settlement Fund.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

If you are a Class Member, **you do not need to take any action in order to receive be issued an Individual PAGA Payment and Individual Settlement Payment**, but you have the opportunity to request exclusion from the Class Settlement (i.e., the portion of the Settlement as it pertains to the class action claims) (in which case you will not receive an Individual Settlement Payment, but you will still receive an Individual PAGA Payment, if eligible), object to the Class Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully below.

If you are an Aggrieved Employee, you do not need to take any action in order to be issued an Individual PAGA Payment.

A. Participate in the Settlement

You are eligible to participate in the Settlement. According to the Defendant’s records:

From May 10, 2015 through May 8, 2020, you were employed by Defendant as an hourly-paid ~~or non-exempt~~ employee within the State of California for [] Workweeks.

From May 10, 2018 through May 8, 2020, you were employed by Defendant as an hourly-paid ~~or non-exempt~~ employee within the State of California for [] ~~Workweeks~~ Pay Periods.

~~As explained above in Section III.B, your estimated Individual PAGA Payment and Individual Individual Settlement Payment is~~ Payments are based on the number of Workweeks credited to ~~you a Class Member and Individual PAGA~~ Payments are based on the number of Pay Periods credited to an Aggrieved Employee. Based on the number of Workweeks and PAGA Periods credited to you as noted above:

Your Individual Settlement Payment is estimated to be \$ []. ~~The Individual Settlement Payment is~~ Payments are subject to reduction for the employee’s share of taxes, contributions, and

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withholding with respect to the wages portion of the Individual Settlement Payment and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Your Individual PAGA Payment is estimated to be \$ [REDACTED]. ~~The Individual PAGA Payment~~ Payments will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. ~~Your Individual PAGA Payment and The Individual Settlement Payment and the Individual PAGA Payment (if applicable)~~ reflected in this Notice are only estimates. Your actual ~~Individual PAGA Payment and Individual payment(s) under the Settlement Payment~~ may be higher or lower.

If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment based on the number of Workweeks noted above, unless you decide to exclude yourself from the Class Settlement, ~~and if,~~

~~If~~ you are an Aggrieved Employee you will be automatically included in the PAGA Settlement and issued your Individual PAGA Payment based on the number of Pay Periods credited to you, as noted above, regardless of whether you ~~opt-out~~ request exclusion from the Class Settlement.

If you do not exclude yourself from the Class Settlement and the Settlement is granted ~~Final Approval~~ final approval by the Court, you will be deemed a Settlement Class Member, you will be bound by all terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will release the claims described in ~~Section III: The Released Claims section~~ above. All Aggrieved Employees (even those who decide to exclude themselves from the Class Settlement) will ~~receive~~ be issued an Individual PAGA Payment ~~and release the Released PAGA Claims as described above.~~

If you want to participate in the Class Settlement, but you wish to dispute the ~~above~~ number of Workweeks credited to you, you must submit a written letter to the Settlement Administrator that: (1) contains your full name, telephone number, address, and the last four digits of your Social Security number; (2) contains the case name and number of the Action (*Jose Saldana, et al. v. International EZ Up, Inc.*, Case No. RIC1902873); (3) clearly states that you believe the Workweeks allocated to you are not correct; (4) clearly state the number of Workweeks you contend are correct; (5) ~~attached~~ attach any written documentation to support your contention; and (6) is returned by fax or mail to the Settlement Administrator at the address or fax number specified in Section IV.B below, postmarked or fax-stamped **on or before [the Response Deadline]**.

As a Class Member, you will not be separately responsible for the payment of attorney's fees or the costs and expenses of the Action, unless you hire your own attorney, in which event you will be responsible for your own attorney's fees and expenses.

B. Request Exclusion from the Settlement

If you do not wish to participate in the Class Settlement, you must submit a timely and valid request to be excluded from the Settlement to the Settlement Administrator, by either completing and returning an Exclusion Form (which is enclosed with this Notice) or submitting a written statement ("Opt-Out Request") that: (1) ~~includes~~ contains your full name, telephone number, address, and the last four digits of your Social Security number; (2) contains the case name and number of the Action (*Jose Saldana, et al. v. International EZ Up, Inc.*, Case No. RIC1902873); and (3) clearly states that you wish to be excluded from the Class Settlement.

Your Opt-Out Request or Exclusion Form must be submitted to the Settlement Administrator by mail or fax, postmarked or fax-stamped **on or before [Response Deadline]**, at the following mailing address or fax number:

International E-Z Up Class Action Settlement
[Simpluris, Inc.]
[Mailing Address]
[Fax number]

If the Court grants final approval of the Settlement, any Class Member who does not affirmatively request exclusion from

the Class Settlement by submitting a valid and timely Opt-Out Request will be deemed a Settlement Class Member and will be bound by all of the terms of the Class Settlement, as well as any judgment that may be entered by the Court based thereon. Any Class Member who submits a valid and timely Opt-Out Request will not have any right to object to, appeal, or comment on the Settlement, will not be entitled to receive an Individual Settlement Payment, and will not be bound by the Class Settlement and release of Released Class Claims (described in Section III.C above). ~~If you~~—however, if such individuals are ~~an~~ Aggrieved Employees, ~~you~~they will ~~however~~ still ~~receive~~be issued an Individual PAGA Payment.

C. Object to the Settlement

You can object to the terms of the Settlement as long as you have not submitted an Opt-Out Request. To object to the Settlement, you must submit a valid and timely objection to the Settlement Agreement (“Objection”) to the Settlement Administrator, by either completing and returning an Objection Form (which is enclosed with this Notice) or submitting a written statement that: (1) includes your full name, telephone number, address, and the last four digits of your Social Security number; (2) contains the case name and number of the Action (*Jose Saldana, et al. v. International EZ Up, Inc.*, Case No. RIC1902873); (3) clearly states that you object to the Class Settlement; and (4) clearly states the factual and/or legal basis of ~~you~~your objection.

Your Objection must be ~~mailed~~submitted to the Settlement Administrator at the address of fax number listed in Section IV.B above, postmarked of fax-stamped on or before **[Response Deadline]**.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 1 of the Riverside County Superior Court, located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award the Attorneys’ Fees and ~~Litigation~~Lawsuit Costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued. If the hearing is continued, the Settlement Administrator will only give notice of the continuance to Class Members who have submitted ~~a valid~~an Objection. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed First Amended Joint Stipulation of Class ~~Action~~ and PAGA Settlement and Release, which is attached as Exhibit 1 to the Declaration of Edwin Aiwarzian in Support of Plaintiffs’ Renewed Motion for Preliminary Approval of Class Action Settlement filed on **[DATE]** and other papers which are on file with the Records Management Division of the Riverside County Superior Court, located at the Riverside County Superior Court, Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501. Some documents and information regarding the Action can also be accessed online for free or at a minimal charge at the Riverside County Superior Court’s website (<http://public-access.riverside.courts.ca.gov/OpenAccess/CivilMainMenu.asp>). To look up and access documents and information on the Court’s systems, you will need to use the case number for the Action (Case No. RIC1902873).

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING ~~THIS~~THE ACTION OR SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**

EXHIBIT B

EXCLUSION FORM

Jose Saldana v. International E-Z Up, Inc.
Superior Court of California for the County of Riverside, Case No. RIC1902873
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

JOSE SALDANA, individually, and on behalf
of other members of the general public
similarly situated,

Plaintiff,
vs.

INTERNATIONAL E-Z UP INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant.

CASE NO. RIC1902873

EXCLUSION FORM

Department: 1

Judge: Hon. Craig G. Riemer

Complaint Filed: May 10, 2019

Trial Date: None Set

TO: [NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[LAST FOUR DIGITS OF SSN]

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USE COMPLETE AND RETURN THIS FORM **ONLY IF** YOU WISH TO EXCLUDE
YOURSELF FROM THE **CLASS** SETTLEMENT.

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For more information regarding the settlement, important terms, and deadlines, please review the
Notice of Class Action Settlement.

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If you wish to exclude yourself from the Class settlementSettlement, you must read and sign
the following statement and return this form by ~~fax or mail~~ or fax to the Settlement Administrator,
postmarked or fax-stamped on or before **[RESPONSE DEADLINE]**, at the following mailing
address or fax number:

International E-Z Up Class Action Settlement
Simpluris, Inc.
[INSERT MAILING ADDRESS]
[INSERT FAX NUMBER]

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I request to be excluded from the ~~class-Class action-s~~Settlement in the matter of *Jose
Saldana, et al. v. International E-Z Up Inc.* By excluding myself from the **Class**
~~settlementSettlement~~, I understand that I will not be bound by the Class Settlement and release of
Released Class Claims, and that I will not **be eligible to** receive an Individual Settlement Payment
from the Class Settlement. I understand that, nevertheless, if I am an Aggrieved Employee, but
~~that~~ I will still receive an Individual PAGA Payment.

Date: _____ Full Name: _____

Date: _____ Signature: _____

Address: _____

Telephone No.: (_____) _____

Last Four Digits of Social Security Number: _____

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EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

JOSE SALDANA, individually, and on behalf
of other members of the general public
similarly situated; THOMAS JOHNS,
individually and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiffs,
vs.

INTERNATIONAL E-Z UP INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant.

CASE NO. RIC1902873

OBJECTION FORM

Department: 1
Judge: Hon. Craig G. Riemer

Complaint Filed: May 10, 2019
Trial Date: None Set

TO: [NAME]
[ADDRESS]
[TELEPHONE NUMBER]

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**USE COMPLETE AND RETURN THIS FORM ONLY IF YOU WISH TO OBJECT TO
THE CLASS SETTLEMENT.**

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For more information regarding the settlement, important terms, and deadlines, please review the
Notice of Class Action Settlement.

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If you wish to object to the Class settlement Settlement, you must state all the factual and/or
legal grounds basis (i.e., the grounds) for your objection (space is provided below for doing so),
sign and enter your full name, address, telephone number, and last four digits of your Social
Security number on the following page, and return this form by mail or fax to the Settlement
Administrator, at the following mailing address or fax number, postmarked or fax-stamped on or
before [RESPONSE DEADLINE], at the following mailing address or fax number:

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International E-Z Up Class Action Settlement
Simpluris, Inc.

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[INSERT MAILING ADDRESS]

[INSERT FAX NUMBER]

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I wish to object to the Class settlement in the matter of Jose Saldana v. International E-Z
Up Inc. on the following grounds:

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Date: _____ Signature: _____

Date: _____ Full Name: _____

Signature: _____

Address: _____

Telephone No.: ()

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Last Four Digits of Social Security Number: _____

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