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on behalf of himself and similarly situated employees

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

DARRION BRADLEY, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

MOTIVATE, LLC; Does 1 through 20,
inclusive,

Defendants.

CASE NO. CGC- 20-587511

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT
AND RELEASE BETWEEN PLAINTIFF,
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED, AND
DEFENDANTS**

Complaint Filed: October 23, 2020
Trial Date: April 11, 2022

1. Plaintiff and Defendant are collectively referred to herein as “the Parties.” On August 10, 2020, Plaintiff filed a PAGA Notice with the Labor and Workforce Development Agency, which provided notice to Defendant and the State of California of Labor Code violations allegedly committed by Defendant. On October 23, 2020, Plaintiff filed a complaint in San Francisco County Superior Court on behalf of himself and all other non-exempt employees who worked for Defendant in California (“Complaint”). Defendant denies all of Plaintiff’s claims and denies that it violated the Labor Code.

3. Plaintiff has not filed a motion for class certification in this action, nor has a date been set by the Court for the filing of such a motion.

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1 There have been on-going investigations, and there has been an exchange of extensive
2 documentation and information.

3 5. For purposes of this Settlement, the “Settlement Class” or “Class Members” shall
4 consist of Plaintiff and all other non-exempt employees who were employed by Defendant
5 Motivate, LLC (“Defendant” or “Motivate”) or Motivate International Inc. in California and either
6 resigned or were terminated between October 23, 2017, and the date of preliminary approval of
7 the settlement (the “Class Period”).

8 6. The Settlement Class shall not include any person who previously settled or
9 released the claims covered by this Settlement, any person who previously was paid or received
10 awards through civil or administrative actions for the claims covered by this Settlement, or any
11 person who submits a timely and valid Request for Exclusion as provided in this Settlement.

12 7. Solely for the purpose of settling this case, the Parties stipulate and agree that the
13 requisites for establishing class certification with respect to the Settlement Class have been met
14 and are met. More specifically, the Parties stipulate and agree that:

15 a. The Settlement Class is ascertainable and so numerous as to make it
16 impracticable to join all Class Members.

17 b. There are common questions of law and fact including, but not limited to,
18 the following:

19 i. Whether Defendant complied with applicable laws affecting
20 Plaintiff and the Settlement Class under the California Labor Code and the Wage Orders of the
21 California Industrial Welfare Commission; and

22 ii. Whether Plaintiff and the Settlement Class are entitled to alleged
23 penalties, interest, and attorneys’ fees and costs.

24 c. Plaintiff believes Plaintiff’s claims are typical of the claims of the members
25 of the Settlement Class.

26 d. Plaintiff believes Plaintiff will fairly and adequately protect the interests of
27 the Settlement Class, and that Plaintiff’s counsel Timothy B. Del Castillo and Kent L. Bradbury

1 of Castle Law: California Employment Counsel, PC should be “Class Counsel,” and will fairly
2 and adequately protect the interests of the Settlement Class.

3 e. The prosecution of separate actions by individual members of the
4 Settlement Class would create the risk of inconsistent or varying adjudications, which would
5 establish incompatible standards of conduct.

6 f. With respect to the Settlement Class, Plaintiff believes that questions of law
7 and fact common to the members of the Settlement Class predominate over any questions affecting
8 any individual member in such Class, and a class action is superior to other available means for
9 the fair and efficient adjudication of the controversy.

10 8. Defendant denies any liability or wrongdoing of any kind whatsoever associated
11 with the claims alleged in the Action, and further denies that, for any purpose other than settling
12 this Action, this Action is appropriate for class or representative treatment. With respect to
13 Plaintiff’s claims, Defendant contends, among other things, that it has complied with all applicable
14 state, federal and local laws affecting Plaintiff and the Settlement Class.

15 9. It is the desire of the Parties to fully, finally and forever settle, compromise and
16 discharge all disputes and claims arising from or related to the Action. To achieve a full and
17 complete release of Defendant Motivate, LLC, Motivate International, Inc., and the Released
18 Parties, each Class Member acknowledges that this Stipulation of Settlement is intended to include
19 in its effect all claims under state, federal and local law that were or could have been asserted based
20 on the facts and allegations made in the Action, and any amendments thereto, as to the Class
21 Members, including without limitation, California Labor Code sections 201, 202, 203, 208, 2698,
22 *et seq.*, California Industrial Commission Wage Orders, and Business and Professions Code
23 sections 17200, *et seq.*, and including all claims for or related to timely payment of wages at
24 separation, failure to pay wages at place of discharge, unfair competition, unfair business
25 practices, unlawful business practices, fraudulent business practices, conversion, class actions,
26 representative actions, aggrieved party claims, injunctive relief, declaratory relief, accounting,
27 liquidated damages, penalties of any nature (including but not limited to civil penalties, waiting-

1 time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations
2 alleged in the Action, from October 23, 2017 through the date the Court preliminarily approves
3 the Settlement.

4 10. It is the intention of the Parties that this Stipulation of Settlement shall constitute a
5 full and complete settlement and release of all claims arising from the allegations of this class and
6 representative action case, which release includes in its effect (i) Motivate, LLC; (ii) Motivate
7 International, Inc. (iii) each of Defendant's past, present, and future direct and indirect parents;
8 (iv) the respective past, present, and future direct and indirect subsidiaries and affiliates of any of
9 the foregoing; (v) the past, present, and future shareholders, directors, officers, agents, employees,
10 attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives,
11 administrators, fiduciaries, benefit plans, insurers, transferees, predecessors, successors and
12 assigns of any of the foregoing; and (vi) any individual or entity which could be jointly liable with
13 any of the foregoing.

14 11. Counsel for the Settlement Class have conducted a thorough investigation into the
15 facts of this Action, and have diligently pursued an investigation of Class Members' claims against
16 Defendant. Based on their own independent investigation and evaluation, Class Counsel are of
17 the opinion that the Settlement with Defendant for the consideration and on the terms set forth in
18 this Stipulation of Settlement is fair, reasonable and adequate and is in the best interest of the
19 Settlement Class in light of all known facts and circumstances, including the risk of significant
20 delay, the risk the Settlement Class will not be certified by the Court, defenses asserted by
21 Defendant and numerous potential appellate issues. Defendant and Defendant's counsel also agree
22 that the Settlement is fair and in the best interest of the Parties.

23 12. The Parties agree to cooperate and to take all steps necessary and appropriate to
24 consummate this Settlement and for entry of judgment in accordance with this Stipulation of
25 Settlement.

26 13. This Settlement requires Defendant to pay Settlement Awards (defined below)
27 according to a specified formula to each Class Member. The maximum settlement amount is

1 \$170,000 (Gross Fund Value), which includes payments for the Settlement Awards, Class
2 Counsel's attorneys' fees, Class Counsel's litigation expenses and costs, the enhancement award
3 to the class representative, \$20,000 allocated to penalties under the California Private Attorneys
4 General Act ("PAGA") with \$15,000 (three-quarters) paid to the California Labor and Workforce
5 Development Agency ("LWDA") and \$5,000 (one-fourth) paid to the Settlement Class as
6 described below, and settlement administration expenses ("maximum total liability"). It is
7 understood and agreed that Defendants' maximum total liability under the Settlement shall not
8 exceed \$170,000. It is further understood and agreed that Defendants shall have no obligation to
9 pay any person, entity, or organization more than the amount of its maximum total liability under
10 the Settlement.

11 TERMS OF SETTLEMENT

12 14. NOW THEREFORE, in consideration of the mutual covenants, promises and
13 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

14 a. It is agreed by and among Plaintiff and Defendant that this Action and any
15 claims, damages or causes of action arising out of the disputes which are the subject of this Action,
16 be settled and compromised as between the Settlement Class and Defendant, subject to the terms
17 and conditions set forth in this Stipulation of Settlement and the approval of the Court.

18 b. Effective Date: The Effective Date of the Settlement embodied in this
19 Stipulation of Settlement will be the date of final approval if no objections are filed to the
20 settlement. If objections are filed and overruled, and no appeal is taken of the final approval order,
21 then the Effective Date of final approval will be sixty-five (65) days after the trial court enters final
22 approval. If an appeal is taken from the Court's overruling of objections to the settlement, then
23 the Effective Date of final approval will be twenty (20) days after the appeal is withdrawn or after
24 an appellate decision affirming the final approval decision becomes final. No money will be
25 distributed unless and until the Effective Date of final approval occurs.

26 c. Gross Fund Value, and Net Fund Value: To implement the terms of this
27 Settlement, Defendant agrees to pay \$170,000 ("Gross Fund Value"). The Parties agree the Gross
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1 Fund Value will be fully paid out, with no residue returning to Defendant. At no time shall
2 Defendant have the obligation to segregate the funds comprising the Gross Fund Value, and
3 Defendant shall retain exclusive authority over, and the responsibility for, those funds subject to
4 the disbursement of funds necessary to effectuate the Settlement. All Settlement Awards paid to
5 Class Members, the attorneys' fees and costs to Class Counsel, the enhancement award to the Class
6 Representative, the fees and expenses of the Settlement Administrator, the payment to the LWDA
7 pursuant to PAGA, and any other payments provided by this Settlement, shall be paid out of the
8 Gross Fund Value. The Net Fund Value, the amount available for potential distribution to Class
9 Members, shall be calculated by deducting all Class Counsel's attorneys' fees, Class Counsel's
10 litigation expenses, the enhancement award, \$15,000 payable to the LWDA for PAGA, and
11 settlement administration expenses from the Gross Fund Value ("Net Fund Value"). Class
12 Members shall not be required to submit claim forms to participate in the Settlement; all Class
13 Members will be mailed settlement award checks, unless such person opts out of the Settlement.

14 i. Class Size: Defendant represented to Plaintiff during settlement
15 negotiations that the putative class consisted of approximately 600 individuals as of July 2021.
16 Defendant provided sample data for 20% of the putative Class Members including dates of
17 employment, dates final paychecks were prepared and/ or provided to Defendant's employees, and
18 the waiting time penalties already paid to certain Class Members.

19 ii. Settlement Awards to Class Members: Each Class Member who
20 fails to opt out will be entitled, provisionally, to a share of the Net Settlement. The Parties have
21 developed a distribution formula for payments to Class Members based on (1) each Class
22 Member's termination or resignation date, (2) the date of payment of the final pay check to the
23 Class Member, (3) whether Defendant paid the Class Member any waiting time penalties, and (4)
24 the amount of any waiting time penalties paid to the Class Member by Defendant. Defendant's
25 records regarding these dates shall control, unless a particular Class Member proves otherwise to
26 the Settlement Administrator by credible written evidence. The parties have agreed to work
27 together in good faith to resolve any disputes regarding the relevant dates used to calculate the
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1 individual settlement amounts. All disputes regarding individual settlement amounts will be
2 resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision
3 on all disputes will be final and non-appealable. Any person who opts out of the Settlement is not
4 a Class Member, and is ineligible to object to the Settlement.

5 iii. Private Attorneys General Act Allocation and PAGA Payments to
6 PAGA Members: The Parties have agreed to allocate \$20,000 to penalties under the California
7 Private Attorneys General Act ("PAGA"). Seventy-five percent (75%) of this amount, or in other
8 words \$15,000, will be paid out of the Gross Fund Value to the Labor and Workforce Development
9 Agency ("LWDA") of the State of California, and the remaining balance of \$5,000 will remain
10 included in the Net Fund Value for distribution to PAGA Members. All Class Members who were
11 terminated or resigned after August 10, 2019 ("PAGA Members") shall be entitled to a PAGA
12 Payment irrespective of whether the PAGA Member submits a Request for Exclusion. The \$5,000
13 shall be divided equally between the PAGA Members, and each PAGA Member shall be paid
14 his/her pro rata share.

15 iv. Allocation of Settlement Awards: The Parties have agreed, based
16 on the allegations in the Action, that individual Settlement Awards payable to eligible Class
17 Members will be allocated from the Net Fund Value and paid out as follows: 100% of settlement
18 payments will be allocated to alleged unpaid penalties for which IRS Forms 1099-MISC will issue.

19 v. Settlement Awards Do Not Trigger Additional Benefits: It is
20 expressly understood and agreed that the receipt of such Settlement Awards will not entitle any
21 Class Member to additional compensation or benefits under any company bonus, contest or other
22 compensation or benefit plan or agreement in place during the period covered by the Settlement,
23 nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching
24 benefits, or deferred compensation benefits. It is the intent of this Settlement that the Settlement
25 Awards provided for in this Agreement are the sole payments to be made by Defendant to the
26 Class Members in connection with this Settlement, and that the Class Members are not entitled to
27 any new or additional compensation or benefits as a result of having received the Settlement

1 Awards (notwithstanding any contrary language or agreement in any benefit or compensation plan
2 document that might have been in effect during the period covered by this Settlement).

3 vi. Attorneys' Fees and Litigation Costs: Subject to Court approval or
4 modification, Defendant further agrees that Class Counsel's attorneys' fees and litigation costs
5 shall be paid from the Gross Fund Value as set forth in Paragraph 16 below.

6 vii. Class Representative: The Parties agree to the designation of
7 Plaintiff as the "Class Representative." Subject to Court approval, Defendant agrees to pay
8 Plaintiff an Enhancement Award at no additional cost to Defendant or the Released Parties, and
9 subject to Class Representative's execution of a separate and confidential general release of all
10 claims under California Code of Civil Procedure Section 1542. The Enhancement Award cannot
11 exceed \$10,000, and is in addition to any claimed individual Settlement Award to which Plaintiff
12 is entitled. The Enhancement Award is to be part of, and to be deducted from, the Gross Fund
13 Value. The Settlement Administrator will issue an IRS Form 1099-MISC for the Enhancement
14 Award to the Plaintiff for his service as the Class Representative, and Plaintiff will be responsible
15 for correctly characterizing this compensation for tax purposes and for paying any taxes on the
16 amounts received. Should the Court approve an Enhancement Award to the Class Representative
17 in an amount less than that set forth above, the difference between the lesser amount approved by
18 the Court and the Enhancement Award set forth above shall be added to the Net Fund Value.

19 viii. Settlement Administrator: The Settlement Administrator will be
20 Simpluris, or such other settlement administrator as may be mutually agreeable to the Parties and
21 approved by the Court. All administration expenses shall be paid out of the Gross Fund Value.

22 ix. Mailing of Settlement Awards: Within fourteen (14) days of the
23 latter of preliminary approval of this settlement or court approval of settlement notice to the class,
24 the Settlement Administrator will send Class Members, by first-class mail, at their last known
25 address, the court approved notice of this settlement and notice of the opportunity to opt out of the
26 Settlement Class. The notice will include a calculation of the Class Member's anticipated share of
27 the Net Fund Value.

1 x. Class Notice: For each Class Member, there will be pre-printed
2 information on the Notice of Pendency of Class Action and Proposed Settlement (“Class Notice”),
3 based on Defendant’s records, stating the Class Member’s estimated Settlement Award amount,
4 assuming all Class Members participate. The information in Defendant’s records used to calculate
5 the Class Members’ Settlement Awards shall be presumed to be correct unless written proof to the
6 contrary is provided to the Settlement Administrator. A Class Member may challenge the pre-
7 printed information on the Class Notice as to proportion of the Net Settlement owed by submitting
8 written evidence to the Settlement Administrator. All disputes regarding settlement payments will
9 be resolved and decided by the Settlement Administrator, and the Settlement Administrator’s
10 decision on all disputes will be final and binding.

11 d. Enhancement Award to Plaintiff for Plaintiff’s Service as Class
12 Representative: The Settlement Administrator will pay the Enhancement Award approved by the
13 Court to Plaintiff within 15 calendar days after the Effective Date of the Settlement (defined above
14 in Paragraph 14).

15 e. Right to Rescission: If more than 10 percent (10%) of the Settlement Class
16 opts out of the Settlement Class by submitting valid and timely Requests for Exclusion as set forth
17 in the Class Notice, Defendant shall have the right (but need not) in its sole discretion to rescind
18 and void the Settlement, before final approval by the Court, by providing written notice to Class
19 Counsel at least thirty (30) calendar days following the opt out deadline, provided the Settlement
20 Administrator has previously furnished Defendant with the number and percentage of valid and
21 timely Requests for Exclusion. If Defendant exercises this option, Defendant shall pay all
22 Settlement Administrator’s costs incurred through such date.

23 CLAIMS ADMINISTRATION

24 15. The Parties have agreed to the appointment of Simpluris to perform the customary
25 duties of Settlement Administrator; provided, however, the Parties shall have the right to select or
26 substitute a different Settlement Administrator by mutual agreement and approval by the Court.
27 The Settlement Administrator will mail the Class Notice to all Class Members. Upon receipt of
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1 funds from Defendant, the Settlement Administrator will issue and send out Settlement Award
2 checks to Class Members. Tax treatment of the Settlement Awards will be as set forth herein, and
3 in accordance with state and federal tax laws. All disputes relating to the Settlement
4 Administrator's performance of its duties shall be referred to the Court, if necessary, which will
5 have continuing jurisdiction over the terms and conditions of this Stipulation of Settlement until
6 all payments and obligations contemplated by this Stipulation of Settlement have been fully carried
7 out.

8 ATTORNEYS' FEES AND LITIGATION COSTS

9 16. Subject to final approval or modification by the Court, Class Counsel shall be
10 entitled to receive attorneys' fees not to exceed 35 percent of the Maximum Settlement Amount,
11 or in other words up to \$59,500, and attorneys' costs not to exceed \$5,000, from the Gross Fund
12 Value. Defendant will not object to Class Counsel's application for attorneys' fees and litigation
13 costs up to these amounts. The amounts set forth above will cover all work performed by Class
14 Counsel and all fees and costs incurred to date, and all work to be performed and all fees and costs
15 to be incurred in connection with the approval by the Court of this Stipulation of Settlement, the
16 administration of the Settlement, and obtaining the final judgment. Should Class Counsel request
17 lesser amounts, or should the Court approve lesser amounts for attorneys' fees and litigation costs,
18 the difference between the lesser amounts and the maximum amounts set forth above shall be
19 added to the Net Fund Value.

20 17. The attorneys' fees and litigation costs approved by the Court shall be paid to Class
21 Counsel within 15 calendar days after the Effective Date of the Settlement (defined above in
22 Paragraph 14).

23 NOTICE TO THE PLAINTIFF CLASS

24 18. Class Notice in substantially the form attached hereto as **Exhibit A**, and as
25 approved by the Court, shall be sent by the Settlement Administrator to the Class Members by
26 first class mail. Any returned envelopes from this mailing with forwarding addresses will be used
27 by the Settlement Administrator to forward the Notice to the Class Members.

1 a. Within ten (10) days of the date of preliminary approval of this Settlement
2 by the Court, Defendant shall provide to the Settlement Administrator a spreadsheet of the Class
3 Members' names, last-known addresses, last-known telephone numbers, Social Security numbers
4 ("Class Member Information"), and data related to each Class Member's date of termination or
5 resignation, date of his/her final paycheck, and the number of days of waiting time penalties paid
6 to the Class Member. The Class Members' contact information and Social Security numbers will
7 be used only by the Settlement Administrator for the sole purpose of effectuating the Settlement,
8 and will not be provided to Class Counsel at any time or in any form. To the extent Class Counsel
9 possesses or comes to possess the Class Members' contact information and/or Social Security
10 numbers, Class Counsel shall return all such information (including copies and data or information
11 derived therefrom) within five (5) days of the date the Court preliminarily approves the Settlement,
12 shall not retain copies of such information, and shall not maintain or use such information for any
13 purpose. The spreadsheet provided for above, shall be based on Defendant's payroll and other
14 business records and in a format acceptable to the Settlement Administrator. Within 14 calendar
15 days of preliminary approval of this Settlement, the Settlement Administrator will mail the Class
16 Notice to Class Members.

17 b. Notices returned to the Settlement Administrator as non-delivered during
18 the 45 calendar day period for objecting to the Settlement, or disputing the estimated Settlement
19 Payment, shall be resent to the forwarding address, if any, on the returned envelope. If there is no
20 forwarding address, the Settlement Administrator will do a check of the Class Members' addresses
21 against those on file with the U.S. Postal Service's National Change of Address List and will skip-
22 trace return mail and re-mail within ten (10) calendar days of receipt using the Class Member's
23 social security number; this search will be performed only once per Class Member by the
24 Settlement Administrator. Upon completion of these steps by the Settlement Administrator,
25 Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to
26 provide the Class Notice to the affected member of the Settlement Class. The affected member of
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1 the Settlement Class shall remain a member of the Settlement Class and shall be bound by all the
2 terms of the Stipulation of Settlement and the Court's Order and Final Judgment.

3 c. The Class Notice shall also identify the procedures for opting out of or
4 objecting to the Settlement.

5 d. Class Counsel shall provide to the Court, at least 16 court days before the
6 final fairness hearing, an initial declaration by the Settlement Administrator of due diligence and
7 proof of mailing with regard to the mailing of the Class Notice.

8 SETTLEMENT AWARDS

9 19. Settlement Awards shall remain valid and negotiable for ninety (90) calendar days
10 from the date of their issuance; upon the deadline to cash the Settlement Awards, the checks will
11 automatically be cancelled by the Settlement Administrator if not cashed by the Class Member
12 within that time, and the Class Member's claim will remain released by the Settlement. The
13 Settlement Awards provided to Class Members shall prominently state the expiration date or a
14 statement that the checks will expire in ninety (90) days, or alternatively, such a statement may
15 be made in a letter accompanying the check. Expired Settlement Awards will not be reissued,
16 except for good cause and as mutually agreed by the Parties in writing. Any residue from
17 uncashed Settlement Awards after the expiration date will be paid out as follows: Center for
18 Worker's Rights, as the *cy pres* recipient pursuant to Code of Civil Procedure Section 384, subject
19 to Court approval. Upon completion of its calculation of payments, the Settlement Administrator
20 shall provide Defendant with a report listing the amount of all payments to be made to each Class
21 Member. Defendant, on behalf of the Released Parties, will pay to the Settlement Administrator
22 the Gross Fund Value, after the Settlement becomes effective as defined in Paragraph 14, within
23 fifteen (15) business days following the Effective Date. The Settlement Administrator shall
24 disburse the payment in accordance with Paragraph 14. The Settlement Administrator will be
25 responsible for making appropriate deductions, paying to Class Counsel any Court-approved
26 attorneys' fees and litigation costs, paying to the Class Representative any Court-approved
27 Enhancement Award, paying the LWDA seventy-five percent (75%) of the amount allocated for
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1 PAGA penalties above, meeting any tax reporting obligations, and for issuing the individual
2 Settlement Awards to Class Members.

3 OPTING OUT OF / OBJECTING TO THE SETTLEMENT

4 20. Opting Out of the Settlement. For those Class Members who do not wish to
5 participate in the Settlement of the class claims, such Class Members may exclude themselves (i.e.,
6 opt out) by submitting a timely written request to the Settlement Administrator. The written
7 request ("Request for Exclusion") should state that he/she has received the Class Notice, decided
8 not to participate in the Settlement, and words to the effect that he/she desires to be excluded from
9 the Settlement. The Request for Exclusion must also state the individual's full name, address, date
10 of birth, and the dates he/she worked as a non-exempt employee for Defendant in California. The
11 Request for Exclusion must be signed, dated and mailed by First Class U.S. Mail, or the equivalent,
12 to the Settlement Administrator. All Requests for Exclusion must be postmarked and mailed to
13 the Settlement Administrator no later than 45 calendar days after the Settlement Administrator
14 mails the Notice to the Class Members. Any individual who submits a Request for Exclusion will
15 not be allowed to object to the terms of the Settlement.

16 21. Objecting to the Settlement. Any individual who does not exclude himself/herself
17 from the Settlement can object to the terms of the Settlement before the deadline to object to the
18 Settlement. To object, the individual must file a written objection and a notice of intention to
19 appear at the Final Approval hearing with the Clerk of the Superior Court of the State of California
20 and send copies to the Settlement Administrator. Any written objection must state each specific
21 reason in support of the objection and any legal support for each objection. The individual must
22 state his/her full name, address, date of birth, and the dates he/she worked as a Class Member with
23 Defendant. To be valid and effective, any objections to approval of the Settlement must be filed
24 with the Clerk of the Court and delivered to the Settlement Administrator no later than 45 calendar
25 days after the Settlement Administrator mails the Notice to the Class Members. If the Court rejects
26 the objection, the individual will be bound by the terms of the Settlement.

27 RELEASE BY THE CLASS

22. Aside from those who submit a valid and timely Request for Exclusion from the settlement, Plaintiff and each member of the Settlement Class releases Defendant Motivate, LLC and Motivate International Inc., and any of their respective parents, subsidiaries, affiliates, predecessors or successors, and all agents, employees, officers, directors and attorneys thereof (the “Released Parties”), from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action contingent or accrued for, or which relate to the allegations and claims asserted or which could have been asserted based on the facts and legal theories in the Complaint in the Action, including without limitation to, any and all claims for waiting time penalties, claims based on the alleged failure to pay final wages in a timely manner, claims based on the alleged failure to provide final paychecks at the place of discharge, or claims of unfair competition, under the California Labor Code or Business & Professions Code (including Section 17200); claims for restitution and other equitable relief, liquidated damages, or penalties of any nature whatsoever (including penalties pursuant to the Labor Code Private Attorneys General Act, also known as PAGA); and any claims for any other benefit claimed on account of the allegations asserted or that could have been asserted based on the facts and legal theories in the Complaint (“Released Claims”). This release shall apply to all claims arising at any point between October 23, 2017, and the date of preliminary approval of the class settlement.

Specifically and only with respect to the Released Claims, the Class Members stipulate and agree that, upon the Effective Date, the Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which Section provides:

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.

1 The Class Members may hereafter discover facts in addition to or different from those they
2 now know or believe to be true specifically with respect to the subject matter of the Released
3 Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final
4 Judgment shall have, fully, finally, and forever settled and released any and all of the Released
5 Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent,
6 which now exist, or heretofore have existed, upon any theory of law or equity now existing or
7 coming into existence in the future, including, but not limited to, conduct that is intentional, with
8 or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery
9 or existence of such different or additional facts.

10 The Class Members may not sue or otherwise make a claim against any of the Released
11 Parties for the Released Claims. Class Members are also enjoined from filing any claims before
12 the California Division of Labor Standards Enforcement (DLSE), or from initiating other
13 proceedings, regarding the Released Claims pending final approval of the Settlement; this
14 provision is intended to provide all Class Members the opportunity to participate in the Settlement
15 or to opt out of the Settlement, and to ensure finality of the Settlement and the Released Claims to
16 the fullest extent permitted by law.

17 DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

18 23. Plaintiff shall promptly submit this Stipulation of Settlement to the San Francisco
19 County Superior Court in support of Plaintiff's Motion for Preliminary Approval and
20 determination by the Court as to its fairness, adequacy and reasonableness; Plaintiff agrees to
21 provide Defendant the opportunity to review, and to seriously consider Defendant's comments
22 before filing, Plaintiff's Motion for Preliminary Approval. Promptly upon execution of this
23 Stipulation of Settlement, Plaintiff shall apply to the Court for the entry of an order preliminarily
24 approving the Settlement:

25 a. Scheduling a fairness hearing on the question of whether the proposed
26 Settlement, including payment of attorneys' fees and litigation costs, costs of administration and
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1 the Class Representative's Enhancement Award should be finally approved as fair, reasonable and
2 adequate as to the members of the Settlement Class;

3 b. Certifying a Settlement Class, Plaintiff Darrion Bradley as the Class
4 Representative, and Timothy B. Del Castillo and Kent L. Bradbury of Castle Law: California
5 Employment Counsel, PC as Class Counsel;

6 c. Approving as to form and content the proposed Class Notice;

7 d. Approving the manner and method for Class Members to request exclusion
8 from the Settlement as contained herein and within the Class Notice;

9 e. Directing the mailing of the Class Notice by first class mail to the Class
10 Members; and

11 f. Preliminarily approving the Settlement subject only to the objections of
12 Class Members and final review by the Court; and

13 g. Enjoining Plaintiff and all Class Members from filing or prosecuting any
14 other cases, claims, suits or administrative proceedings (including filing claims with the Division
15 of Labor Standards Enforcement of the California Department of Industrial Relations) regarding
16 the Released Claims unless and until such Class Members have filed valid Requests for Exclusion
17 with the Settlement Administrator.

18 DUTIES OF THE PARTIES FOR FINAL COURT APPROVAL

19 24. Plaintiff agrees to provide Defendant the opportunity to review, and to seriously
20 consider Defendant's comments before filing, Plaintiff's Motion for Final Approval of Class
21 Action Settlement. Class Counsel agrees to submit a proposed final order and judgment:

22 a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable
23 and adequate, and directing consummation of its terms and provisions;

24 b. Approving Class Counsel's application for an award of attorneys' fees and
25 litigation costs;

26 c. Approving the Enhancement Award to the Class Representative; and
27

1 d. Entering judgment in accordance with California Rules of Court, Rule
2 3.769(h), with prejudice, and permanently barring and enjoining all members of the Settlement
3 Class from prosecuting against any Released Parties any individual or class or representative
4 claims released herein, upon satisfaction of all payments and obligations hereunder.

5 PARTIES' AUTHORITY

6 25. The signatories hereto hereby represent that they are fully authorized to enter into
7 this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

8 MUTUAL FULL COOPERATION

9 26. To effectuate the terms of the Settlement, the Parties agree all formal and informal
10 discovery shall be stayed pending Court approval of the Settlement.

11 27. The Parties agree to fully cooperate with each other to accomplish the terms of this
12 Stipulation of Settlement, including, but not limited to, execution of such documents and taking
13 such other action as reasonably may be necessary to implement the terms of this Stipulation of
14 Settlement. The Parties shall use their best efforts, including all efforts contemplated by this
15 Stipulation of Settlement and any other efforts that may become necessary by order of the Court,
16 or otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein. As soon
17 as practicable after execution of this Stipulation of Settlement, Class Counsel shall, with the
18 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
19 Court's final approval of this Stipulation of Settlement.

20 28. The Parties and their respective counsel agree that they will not attempt to
21 encourage or discourage Class Members from filing Requests for Exclusion.

22 NO PRIOR ASSIGNMENTS

23 29. The Parties and their counsel represent, covenant and warrant that they have not
24 directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer or
25 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
26 action or right herein released and discharged except as set forth herein.

27 NO ADMISSION

31. The Parties agree that the San Francisco County Superior Court shall retain jurisdiction to enforce the terms of this Settlement pursuant to California Code of Civil Procedure Section 664.6. In the event one or more of the Parties to this Stipulation of Settlement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Stipulation of Settlement or to declare rights or obligations under this Stipulation of Settlement, the successful party or Parties shall be entitled to recover from the unsuccessful Party or Parties' reasonable attorneys' fees and litigation costs, including expert witness fees incurred in connection with any enforcement actions.

32. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

Timothy B. Del Castillo, Esq.
Kent L. Bradbury, Esq.
CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661

Michael J. Burns, Esq.
Eric E. Hill, Esq.
Claire Y. Chang, Esq.
Seyfarth Shaw LLP

1 560 Mission Street, Suite 3100
2 San Francisco, CA 94105

3 NO PUBLIC COMMENT

4 33. The Class Representative and Class Counsel represent that they have not and will
5 not issue any press, publications, or other media releases about the Settlement (including, but not
6 necessarily limited to advertising or marketing materials or on social media) and agree they have
7 not and will not have any communication with the press, media or anyone else regarding the
8 Settlement, other than to state that the Action was amicably settled and/or refer them to the papers
9 filed with the Court. Plaintiff and Class Counsel also agree not to post any information about the
10 Settlement on social media or their firm's websites. This provision shall not prohibit Class Counsel
11 from communicating with Class Members after preliminary approval is granted for the sole
12 purpose of administering the Settlement. This provision also does not limit Class Counsel from
13 complying with ethical obligations or from posting court-filed documents on their website for
14 viewing by Class Members. Notwithstanding the foregoing, the Class Representative and Class
15 Counsel may, in response to a communication initiated by the media, direct the inquiring media
16 member to the public records of the Action on file with the Court. Class Counsel will take all steps
17 necessary to ensure that the Class Representative is aware of the restriction against any public
18 disclosure of the Settlement.

19 CONSTRUCTION

20 34. The Parties hereto agree that the terms and conditions of this Stipulation of
21 Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and
22 this Stipulation of Settlement shall not be construed in favor of or against any party by reason of
23 the extent to which any party or his, her or its counsel participated in the drafting of this Stipulation
24 of Settlement.

25 CAPTIONS AND INTERPRETATIONS

26 35. Paragraph titles or captions contained herein are inserted as a matter of convenience
27 and for reference, and in no way define, limit, extend or describe the scope of this Stipulation of
28

1 Settlement or any provision of it. Each term of this Stipulation of Settlement is contractual and
2 not merely a recital.

3 4 5 MODIFICATION

6 36. This Stipulation of Settlement may not be changed, altered or modified, except in
7 writing and signed by the Parties hereto and approved by the Court. This Stipulation of Settlement
8 may not be discharged except by performance in accordance with its terms or by a writing signed
9 by the Parties hereto.

10 SEVERABILITY

11 37. Should any provision of this Stipulation of Settlement be determined by any court
12 of competent jurisdiction to be illegal, invalid, unenforceable, or fail to gain approval for any
13 reason, Defendant shall, in its sole discretion, have the option to declare the Settlement void in its
14 entirety upon notice to Class Counsel.

15 INTEGRATION CLAUSE

16 38. This Stipulation of Settlement contains the entire agreement between the Parties
17 relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous
18 agreements, understandings, representations and statements, whether oral or written and whether
19 by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived
20 except in writing.

21 BINDING ON ASSIGNS

22 39. This Stipulation of Settlement shall be binding upon and inure to the benefit of the
23 Parties and the Released Parties hereto, and their respective heirs, trustees, executors,
24 administrators, successors and assigns.

25 CLASS MEMBER SIGNATORIES

26 40. It is agreed that because the members of the Class are so numerous, it is impossible
27 or impractical to have each member of the Class execute this Stipulation of Settlement. The Class
28

Notice, **Exhibit A** hereto, will advise all Class Members of the binding nature of the release, and the release shall have the same force and effect as if this Stipulation of Settlement were executed by each member of the Class.

COUNTERPARTS

41. This Stipulation of Settlement may be executed in counterparts and by facsimile signatures, and when each party has signed and delivered at least one such counterpart, each counterpart, including e-mail and PDF versions, shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and effective as to all Parties.

IN WITNESS WHEREOF, the Parties knowingly and voluntarily execute this Joint Stipulation of Settlement as of the date(s) set forth below:

Plaintiff and Class Representative

Dated: 11/1/2021

DocuSigned by:



120141846500488
DARRION BRADLEY

Defendant

MOTIVATE, LLC

Dated: _____

Grant Barkey
Chief Administrative Officer
Defendant Motivate, LLC

APPROVED AS TO FORM:

Dated: 11/3/2021

Castle Law: California Employment Counsel, PC

By: 

TIMOTHY B. DEL CASTILLO

KENT L. BRADBURY

Attorneys for Plaintiff DARRION BRADLEY

Notice, **Exhibit A** hereto, will advise all Class Members of the binding nature of the release, and the release shall have the same force and effect as if this Stipulation of Settlement were executed by each member of the Class.

COUNTERPARTS

41. This Stipulation of Settlement may be executed in counterparts and by facsimile signatures, and when each party has signed and delivered at least one such counterpart, each counterpart, including e-mail and PDF versions, shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and effective as to all Parties.

IN WITNESS WHEREOF, the Parties knowingly and voluntarily execute this Joint Stipulation of Settlement as of the date(s) set forth below:

Plaintiff and Class Representative

Dated: _____

DARRION BRADLEY

Defendant

MOTIVATE, LLC

10/28/2021

Dated: _____

Grant Barkey
Chief Administrative Officer
Defendant Motivate, LLC

DocuSigned by:
Grant Barkey
65B1F40A76284A5...

APPROVED AS TO FORM:

Dated: _____

Castle Law: California Employment Counsel, PC

By: _____
TIMOTHY B. DEL CASTILLO
KENT L. BRADBURY
Attorneys for Plaintiff DARRION BRADLEY

1 Dated: 11/1/2021

Seyfarth Shaw LLP

2 By: 

3 Eric Hill

4 Attorneys for Defendant Motivate, LLC

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EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DARRION BRADLEY, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

MOTIVATE, LLC; Does 1 through 20, inclusive,

Defendants.

CASE NO. CGC- 20-587511

CLASS ACTION

**NOTICE OF PROPOSED CLASS AND
REPRESENTATIVE ACTION SETTLEMENT, AND
HEARING DATE FOR FINAL COURT APPROVAL
OF SETTLEMENT**

ATTENTION: ALL CURRENT AND FORMER NON-EXEMPT EMPLOYEES OF MOTIVATE LLC AND MOTIVATE INTERNATIONAL, INC. IN THE STATE OF CALIFORNIA WHO EITHER RESIGNED OR WERE TERMINATED BETWEEN OCTOBER 23, 2017 AND _____, 2021 [PRELIMINARY APPROVAL DATE].

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION LITIGATION. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO A SETTLEMENT AWARD OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to the Order Granting Preliminary Approval of Class Action Settlement of the Superior Court of the State of California for San Francisco County entered _____, 2021, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A class action settlement has been reached between the Parties in the above-captioned lawsuit pending in the Superior Court of the State of California for San Francisco County. Plaintiff Darrion Bradley ("Plaintiff") brought a class action lawsuit seeking to represent all non-exempt employees who were employed by Defendant Motivate, LLC ("Defendant" or "Motivate") or Motivate International Inc. in California and either resigned or were terminated between October 23, 2017 and _____ [Preliminary Approval Date] (the "Settlement Class" or the "Class Members"). Plaintiff alleged that he and other employees did not receive their final paycheck within the time requirements under California law.

"Defendant" and "Released Parties" in the Action include (i) Motivate, LLC ("Defendant"); (ii) Motivate International, Inc. (iii) and any of their respective parents, subsidiaries, affiliates, predecessors or successors, and all agents, employees, officers, directors and attorneys thereof.

You have received this notice because Defendant's records indicate you worked for Motivate, LLC or Motivate International, Inc., and you either resigned from employment or were terminated during the Class Period (defined below). This notice is to advise you of how you can participate in the Settlement or be excluded from the Settlement.

I. BACKGROUND OF THE CASE

On October 23, 2020, Plaintiff Darrion Bradley filed a Complaint in the San Francisco County Superior Court on behalf of himself and all other non-exempt employees who resigned their employment or were terminated from employment with Defendant in California entitled *Darrion Bradley v. Motivate, LLC*, San Francisco Superior Court, Case No. CGC- 20-587511 (referred to herein as "the Action"). The Class Period is between October 23, 2017 and _____ [Preliminary Approval Date] (the "Class Period").

Plaintiff's Complaint alleges failure to pay final wages in a timely manner, failure to pay final wages at place of discharge, causes of action for violation of California Business and Professions Code sections 17200, et seq., and penalties pursuant to the Private Attorneys General Act ("PAGA"), on behalf of Class Members. Plaintiff's Complaint seeks recovery of alleged damages, penalties, interest, and attorneys' fees and costs.

Defendant denies all claims, denies that it failed to comply with the law in any respect, denies that Plaintiff and the Class Members are entitled to any recovery, and asserts affirmative defenses in response to Plaintiff's claims. Defendant also asserts that it has already paid waiting time penalties to many employees at or around the time of termination/resignation.

The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process.

The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses; however, the Court has granted preliminary approval of this settlement. Nothing in this the Settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that Defendant has any liability to Plaintiff and the Class Members on those claims. Despite agreeing to and supporting the Settlement, Defendant continues to deny all allegations and claims.

The Parties have entered into a Joint Stipulation of Settlement and Release between Plaintiff and Defendant ("Settlement Agreement"), which has been preliminarily approved by the Court.

If you are part of the Settlement Class, you are entitled to participate in the Settlement and object to it or to exclude yourself ("opt out") from the Settlement. The Settlement Class does not include persons (1) who previously settled, released or received awards for claims covered by the Settlement or (2) who submit valid Requests for Exclusion (as explained below).

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Settlement, Defendant agrees to pay a maximum of \$170,000, which sum shall include all Settlement Awards for Class Members, Class Counsel's attorneys' fees, Class Counsel's litigation expenses and costs, the enhancement award to the Class Representative, \$20,000 allocated to penalties under the PAGA with \$15,000 paid to the California Labor and Workforce Development Agency ("LWDA") and \$5,000 paid to the Settlement Class, and all Settlement administration expenses ("Gross Fund Value"). The entire Gross Fund Value will be fully paid out. Because Class Members are also releasing their claims under PAGA on behalf of the LWDA, the Parties have agreed that the LWDA, which is entitled to share in any recovery of civil penalties, shall receive \$15,000 of these civil penalties and \$5,000 shall be distributed to PAGA Members. PAGA Members are Class Members who were terminated or resigned between August 10, 2019, and the date of preliminary approval.

The Net Fund Value will be calculated by deducting Class Counsel's attorneys' fees, Class Counsel's litigation expenses and costs, the enhancement award to the Class Representative, the fees and expenses of the Settlement Administrator, and \$15,000 payable to the LWDA for alleged PAGA penalties, which will result in a "Net Fund Value" for distribution to all Class Members. As explained further below, the amount of each Class Member's Settlement Award will depend on several factors related to the Class Member's final pay check. Your individual settlement payment includes both your estimated share of the Net Fund Value and, if eligible, your share of the PAGA payment.

Section II.B.below lists your estimated Settlement Award assuming all Class Members participate in the Settlement.

B. Settlement Formula, and Your Settlement Award

Each Class Member will receive an individual Settlement Award, unless they submit a valid and timely Request for Exclusion. All Settlement Awards will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Settlement Awards payable to eligible Class Members will be allocated from the Net Fund Value and paid as follows: 100% will be allocated to alleged unpaid penalties for which IRS Forms 1099-MISC will issue. Receipt of the Settlement Awards will not entitle any Class Member to additional compensation or benefits under any company compensation or benefit plan or agreement in place during the period covered by the Settlement. None of the Parties or attorneys make any representations regarding the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult their own tax advisors concerning the tax consequences of the Settlement.

The amount payable as Settlement Awards to Class Members will be based on (1) each Class Member's termination or resignation date, (2) the date of payment of the final check to the Class Member, (3) whether Defendant paid the Class Member any waiting time penalties, and (4) the amount of any waiting time penalties paid by Defendant. Any Class Member whose employment ended between August 10, 2019 and the date of preliminary approval shall receive a PAGA penalty payment of \$_____. The PAGA payments will be provided to all PAGA Members regardless of whether they opt out of the settlement.

Based on this calculation, your estimated Settlement Share is <<_____>>. The actual Settlement Awards may be more or less than the amount estimated depending on changes in actual Settlement Payments to participating Class Members, changes in the numbers of participating Class Members, and on the distributions approved and allocated by the Court.

Settlement checks shall remain negotiable for 180 days. The funds associated with any uncashed, undeliverable, or expired settlement payments after 180 days shall be distributed to the Center for Worker Rights. Any Settlement Class Member who fails to timely negotiate an individual settlement payment check will remain bound by the terms of the Settlement.

D. Resolution of Disputes

If a Class Member disputes the accuracy of the calculation described above, any documentation supporting such dispute must be postmarked or actually received via facsimile or email by the Settlement Administrator before _____, 2021, which is 30 calendar days from the date this notice was mailed to all Class Members. Defendant's records, and any additional evidence, will be reviewed by the Settlement Administrator in the event of a dispute by an individual Class Member. All disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all disputes will be final and binding.

E. Release of Claims

The Joint Stipulation of Settlement and Release between Plaintiff and Defendant contains a release which releases Defendant Motivate, LLC and Motivate International Inc., and any of their respective parents, subsidiaries, affiliates, predecessors or successors, and all agents, employees, officers, directors and attorneys thereof, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued for, or which relate to the allegations and claims asserted or which could have been asserted based on the facts and legal theories in the Complaint in the Action, including without limitation to, any and all claims for waiting time penalties, the alleged failure to pay final wages in a timely manner, the alleged failure to provide final paychecks at the place of discharge, or claims of unfair competition, under the California Labor Code or Business & Professions Code (including Section 17200); claims for restitution and other equitable relief, liquidated damages, penalties of any nature whatsoever (including penalties pursuant to the Labor Code Private Attorneys General Act, also known as PAGA), and any other benefit claimed on account of the allegations asserted or that could have been asserted based on the facts and legal theories in the Complaint. This release shall apply to all claims arising at any point between October 23, 2017 and the date of preliminary approval of the class settlement. Excluded from the release are claims for alleged discrimination, retaliation, unemployment insurance, disability, workers compensation, and claims outside the Released Claims.

Specifically and only with respect to the Released Claims, the release also states that Class Members stipulate and agree that, upon the Effective Date, the Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which Section provides:

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.

The Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true specifically with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is intentional, with or without malice, or a breach

of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

The Class Members may not sue or otherwise make a claim against any of the Released Parties for the Released Claims. Class Members are also enjoined from filing any claims before the California Division of Labor Standards Enforcement (DLSE), or from initiating other proceedings, regarding the Released Claims pending final approval of the Settlement; this provision is intended to provide all Class Members the opportunity to participate in the Settlement or to opt out of the Settlement, and to ensure finality of the Settlement and the Released Claims to the fullest extent permitted by law.

F. Enhancement Award for the Class Representative

Subject to approval by the Court, the Class Representative will receive an Enhancement Award not to exceed \$10,000. This payment will be made for service as a Class Representative, including active participation in prosecution of the Action, as well as willingness to accept the risk of incurring Class Counsel's costs or paying Defendant's attorneys' fees and costs for an unsuccessful outcome in the Action.

G. Attorneys' Fees and Costs

As part of the final approval of the Settlement, Class Counsel will request attorneys' fees and costs to be set by the Court, not to exceed thirty-five (35%) of the Maximum Settlement Amount which equals \$59,500, and attorneys' costs not to exceed \$5,000, subject to approval by the Court. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Fund Value.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participate in the Class Settlement

To receive a cash payment from the Settlement, you do not have to do anything. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the settlement payment, you will release claims against the Defendant and the Released Parties as detailed in Section II.E. above. If your address has changed, you must notify the Settlement Administrator. The Settlement Administrator's contact information is listed below in Section III.D.

B. Excluding Yourself from the Class Settlement

If you do not wish to participate in the Settlement, you may be excluded (i.e., "opt out") by submitting a timely written request to the Settlement Administrator stating you have received this notice of the Settlement, decided not to participate in the Settlement, and want to be excluded from the Settlement, or words to that effect ("Request for Exclusion"). Your Request for Exclusion must also state your full name, address, date of birth, and the dates you worked for Defendant as a Class Member in California. The Request for Exclusion must be signed, dated and mailed by First Class U.S. Mail, facsimile or email, or the equivalent, to the Settlement Administrator. The Settlement Administrator's contact information is listed below in Section III.D.

The Request for Exclusion must be postmarked or received via facsimile or email no later than _____, 2021. If you submit a Request for Exclusion which is not postmarked or received via facsimile or email by _____, 2021, your Request for Exclusion will be rejected and you will be bound by the Release and all other Settlement terms. If the Request for Exclusion is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Request for Exclusion.

Any person who submits a complete and timely Request for Exclusion shall, upon receipt by the Settlement Administrator, no longer be a Class Member, shall be barred from participating in any portion of the Settlement, shall receive no Settlement Award or benefits from the Net Fund Value, shall not be deemed to have relinquished the Released Claims against the Released Parties (except for the PAGA claims), and, at his or her own expense, may pursue any claims he or she may have against the Released Parties (except for the PAGA claims). However, you cannot opt of the settlement of the PAGA claims if you are a PAGA Member. All PAGA Members will be deemed to have fully, finally, and forever released, settled, compromised, and discharged any and all Released Claims arising under PAGA with respect to all Released Parties irrespective of whether a Class Member submits a Request for Exclusion.

C. Objection to Class Settlement

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before Final Approval. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement and the release of the Released Claims. To object, you must timely submit a written objection to the Settlement Administrator. The Settlement Administrator's contact information is listed below in Section III.D.

Any written objection must state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and the dates you were employed in California by Defendant. To be valid and effective, any objections to approval of the Settlement must be delivered to the Settlement Administrator no later than 45 calendar days after the Settlement Administrator mails the Notice and the Claim Form to the Class Members. **DO NOT TELEPHONE THE COURT.**

If you choose to submit an objection to the terms of this Settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney at your own expense. To do so, you must file an Entry of Appearance with the Clerk of the San Francisco County Superior Court, and deliver copies to the Settlement Administrator and each of the attorneys listed above. Such Entry of Appearance must be filed with the Court and delivered to the above Settlement Administrator no later than 45 days after the Settlement Administrator mails the Notice to Class Members. You will then continue as a Settlement Class Member either *in propria persona* or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney.

The Final Approval Hearing at which the Court will be asked to approve the Settlement will be at _____ a.m./p.m. on _____, in Department ____ of the Superior Court of the State of California for the County of San Francisco, located at 400 McAllister Street, San Francisco, California 94102, or such other later date as the Court may authorize.

D. How to Contact the Settlement Administrator

The Settlement Administrator's contact information is as follows:

Simpluris, Inc.
[Address Line 1]
Address Line 2]
Telephone: 1 (800) XXX-XXXX
Facsimile: 1 (800) XXX-XXXX
Email: XXXXXXXXXXXX

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

Upon Final Approval being granted by the Court, each and every Class Member, who does not opt out of the Settlement, will release Defendant and the Released Parties from the Released Claims as described above. In other words, if you resigned or were terminated from employment with Defendant or Motivate International, Inc. in California during the Class Period, and you do not exclude yourself from the Settlement Class, you will be deemed to have entered into this release and to have released the above-described Released Claims. In addition, you will be barred from ever suing Defendant and/or the Released Parties with respect to the Released Claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue as though the Settlement never occurred and without prejudice to any Party.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final hearing in Superior Court of the State of California for the County of San Francisco, 400 McAllister Street, San Francisco, California 94102, on _____, at _____ a.m./p.m. in Department __, to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for Attorneys' Fees and Costs and the Enhancement Award to be paid to the Class Representative.

The Final Approval Hearing may be continued without further notice to the Class. It is not necessary for you to appear at this hearing, unless you wish to object to the Settlement.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed “Joint Stipulation of Settlement and Release between Plaintiff and Defendant” which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Joint Stipulation of Settlement, may be examined at any time during regular business hours at the Office of the Clerk of the San Francisco County at 400 McAllister Street, San Francisco, California 94102. You may also review the settlement documents at the Settlement Administrator’s website located at _____.

If you want additional information about this lawsuit and its proceedings, you can also contact Class Counsel in this matter:

Timothy B. Del Castillo, Esq.
Kent L. Bradbury, Esq.
CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661
Telephone: (916) 245-0122
Email: tdc@castleemploymentlaw.com
kb@castleemploymentlaw.com

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

BY ORDER OF THE SUPERIOR COURT

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