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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

OCTAVIO LOPEZ, on behalf of himself and
all others similarly situated,

Plaintiffs,

v.

UPM, INC., a California corporation; LYON
STAFFING SOLUTIONS, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 20STCV36695

[Assigned to the Hon. Amy D. Hogue in
Dept. 7]

**CLASS AND REPRESENTATIVE
ACTION**

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

Action Filed: September 25, 2020

Trial Date: None Set

1 This First Amended Joint Stipulation re: Class Action and Representative Action
2 Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between
3 plaintiff OCTAVIO LOPEZ (“Plaintiff”) individually and on behalf of the Settlement Class, on
4 the one hand; and defendant UPM, INC. (“UPM”), and defendant LYON STAFFING
5 SOLUTIONS, INC. (“Lyon,” and collectively with UPM, “Defendants”), on the other hand, in
6 the lawsuit entitled *Lopez v. UPM, Inc., et al.* filed in Los Angeles County Superior Court, Case
7 No. 20STCV36695 (the “Action”). Plaintiff and Defendants shall be, at times, be collectively
8 referred to as the “Parties.” This Agreement is intended by the Parties to fully, finally, and
9 forever resolve the claims as set forth herein, based upon and subject to the terms and conditions
10 of this Agreement.

11 **1. DEFINITIONS**

12 **A. “Action”** means *Lopez v. UPM, Inc., et al.* filed in the Superior Court of
13 California for the County of Los Angeles, Case No. 20STCV36695.

14 **B. “Aggrieved Employees”** means Class Members directly employed by UPM, or
15 placed to work with UPM by Lyon or any other staffing provider, during the PAGA Period, as a
16 non-exempt, hourly-paid employee in California.

17 **C. “Class Counsel”** means: David D. Bibiyan, Jeffrey Klein, and Diego Aviles, of
18 Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
19 “Plaintiff’s Counsel.”

20 **D. “Class Period”** means the period from June 7, 2018 through January 4, 2022.

21 **E. “Court”** means the Superior Court of the State of California for the County of
22 Los Angeles.

23 **F. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
24 granting final approval of this Settlement (“Final Approval”) if no objections by or on behalf of
25 Settlement Class Members have been filed; (2) the time to appeal has expired if any objections
26 have been filed or withdrawn; or (3) the final resolution of any appeal that has been filed.

27 **G. “Defendants”** refers to UPM and Lyon collectively.

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1 **H. “Employer Taxes”** means employer-funded taxes and contributions imposed on
2 the wage portions of the Individual Settlement Payments under the Federal Insurance
3 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
4 and contributions required of employers, such as for unemployment insurance.

5 **I. “General Release”** means the broader release of claims by Plaintiff, which is in
6 addition to Plaintiff’s limited release of claims as a Participating Class Member.

7 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Five
8 Hundred Forty Thousand Dollars and Zero Cents (\$540,000.00),¹ for which Defendants shall be
9 jointly and severally liable, and which shall be paid by Defendants as further set forth below.
10 The Gross Settlement Amount shall be the amount from which all payments for the Individual
11 Settlement Payments to Participating Class Members, the Court-approved amounts for attorneys’
12 fees and reimbursement of litigation costs and expenses to Class Counsel, Settlement
13 Administration Costs, the Service Award, the PAGA Payment, and the LWDA Payment shall be
14 paid. The Gross Settlement Amount expressly excludes Employer Taxes, which shall be paid by
15 Defendants separate and apart from the Gross Settlement Amount.

16 **K. “Individual PAGA Payment”** means a payment made to an Aggrieved
17 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
18 Individual Settlement Share if he or she is also a Participating Class Member.

19 **L. “Individual Settlement Payment”** means a payment to a Participating Class
20 Member of his or her net share of the Net Settlement Amount.

21 **M. “Individual Settlement Share”** means the gross amount of the Net Settlement
22 Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks
23 that he or she worked as a Settlement Class Member during the Class Period if he or she does not
24 submit a timely and valid Request for Exclusion.

25 **N. “LWDA Payment”** means the payment to the State of California Labor and
26 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
27 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
28

¹ As the same may be increased in accordance with Paragraph 16, below.

1 Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and Zero Cents
2 (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand Dollars and
3 Zero Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Five Thousand
4 Dollars and Zero Cents (\$5,000.00) will be paid to Aggrieved Employees on a *pro rata* basis
5 based on the Workweeks worked in the PAGA Period (*i.e.*, the PAGA Payment).

6 **O. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
7 that is available for distribution to the Participating Class Members after deductions for the Court-
8 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
9 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
10 Payment, and the PAGA Payment.

11 **P. “Operative Complaint” or “Complaint”** means the First Amended Complaint
12 that was filed with the Court on March 3, 2021.

13 **Q. “PAGA Payment** is the is the 25% portion of the Twenty Thousand Dollars and
14 Zero Cents (\$20,000.00) that is allocated toward PAGA penalties (Five Thousand Dollars and
15 Zero Cents (\$5,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on
16 the Workweeks worked in the PAGA Period, which would be in addition to their Individual
17 Settlement Share so long as they are Participating Class Members.

18 **R. “PAGA Period”** means the period from September 24, 2019 through January 4,
19 2022.

20 **S. “Participating Class Members”** means all Settlement Class Members who do
21 not submit a timely and valid Request for Exclusion.

22 **T. “Participating Individual Settlement Share”** means the gross amount of the Net
23 Settlement Amount that a Participating Class Member is eligible to receive based on the number
24 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
25 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
26 may be entitled if he or she is also an Aggrieved Employee.

27 **U. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
28 Plaintiff Octavio Lopez.

1 **V. “Preliminary Approval Date”** means the date on which the Court enters an
2 Order granting preliminary approval of the Settlement.

3 **W. “Released Parties”** shall mean Defendants and each of their past, present, and
4 future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-
5 sponsored employee benefit plans of any nature and their successors and predecessors in interest,
6 including all of their officers, directors, shareholders, employees, agents, principals, heirs,
7 representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,
8 trustees, and agents.

9 **X. “Response Deadline”** means the deadline for Settlement Class Members to mail
10 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
11 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
12 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
13 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
14 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
15 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
16 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
17 Workweek Dispute was submitted by the Response Deadline.

18 **Y. “Request for Exclusion”** means a written request to be excluded from the
19 Settlement Class pursuant to Section 9.C below.

20 **Z. “Service Award”** means a monetary amount to be paid to Plaintiff of up to Seven
21 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) which, subject to Court approval,
22 will be paid out of the Gross Settlement Amount.

23 **AA. “Settlement Administration Costs”** means all costs incurred by the Settlement
24 Administrator in administration of the Settlement, including, but not limited to, translating the
25 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
26 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
27 Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated
28 taxes and withholdings, providing declarations, generating Individual Settlement Payment

1 checks and related tax reporting forms, doing administrative work related to unclaimed checks,
2 transmitting payment to Class Counsel for the Court-approved amounts for attorneys' fees and
3 reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, and to the
4 LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related
5 information, and any other actions of the Settlement Administrator as set forth in this Agreement,
6 all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated
7 not to exceed \$14,950.00. If the actual amount of the Settlement Administration Costs is less
8 than \$14,950.00, the difference between \$14,950.00 and the actual Settlement Administration
9 Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
10 \$14,950.00 then such excess will be paid solely from the Gross Settlement Amount and
11 Defendants will not be responsible for paying any additional funds in order to pay these
12 additional costs.

13 **BB. "Settlement Administrator"** means the Third-Party Administrator mutually
14 agreed upon by the Parties that will be responsible for the administration of the Settlement
15 including, without limitation, translating the Class Notice in Spanish, the distribution of the
16 Individual Settlement Payments to be made by Defendants from the Gross Settlement Amount
17 and related matters under this Agreement.

18 **CC. "Settlement Class" or "Settlement Class Members"** means all current and
19 former non-exempt, hourly-paid employees who worked in California for defendant UPM, or
20 those placed to work there by Lyon or any other staffing company, at any time during the Class
21 Period.

22 **DD. "Workweeks"** means the number of workweeks that a Settlement Class Member
23 was employed by Defendants in a non-exempt, hourly position during the Class Period either
24 directly for UPM or placed to work at UPM by Lyon or any other staffing company, in California,
25 based on hire dates, re-hire dates, and termination dates.

26 **2. BACKGROUND**

27 **A.** On September 24, 2020, Plaintiff filed with the LWDA and served on Defendants
28 a notice under Labor Code section 2699.3 stating he intended to serve as a proxy of the LWDA

1 to recover civil penalties for Aggrieved Employees for various Labor Code violations (“PAGA
2 Notice”).

3 **B.** On September 25, 2020, Plaintiff filed a putative wage-and-hour class action
4 alleging that, during the Class Period, Defendants, as it pertains to Class Members: (1) failed to
5 pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or
6 compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof;
7 (5) failed to timely pay all wages due at the time of termination or resignation; (6) failed to
8 provide accurate wage statements; (7) failed to reimburse employees for business expenses; and
9 (8) engaged in unfair competition.

10 **C.** On March 3, 2021, after sixty-five (65) days had passed without any action by the
11 LWDA with respect to the alleged labor violations, Plaintiff filed a First Amended Complaint in
12 order to seek PAGA civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1
13 and 2699.

14 **D.** Shortly thereafter, the Parties agreed to exchange informal discovery and attend
15 an early mediation, in which Plaintiff was provided with, among other things: (1) a sampling of
16 time and payroll records for Class Members; (2) data points that include the number of Class
17 Members and Workweeks worked in the Class Period, the number of Aggrieved Employees and
18 pay periods in the PAGA Period, the number of Class Members eligible for waiting time
19 penalties, the number of Class Members eligible for wage statement violations, and the number
20 of pay periods in the relevant statutory period for wage statement violations; (3) employment
21 records for Plaintiff; and (4) all of Defendants’ written policies applicable to Class Members (or
22 lack thereof).

23 **E.** On October 20, 2021, the Parties attended mediation with Paul Grossman,
24 Esquire, a well-regarded mediator experienced in mediating complex labor and employment
25 matters. With the aid of the mediator’s evaluation, the Parties reached the Settlement to resolve
26 the Action.

27 **F.** Class Counsel has conducted significant investigation of the law and facts relating
28 to the claims asserted in the Action and PAGA Notice, and have concluded that that the

1 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
2 Class, taking into account the sharply contested issues involved, the expense and time necessary
3 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
4 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
5 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
6 to be received by Settlement Class Members.

7 **G.** Defendants have concluded that, because of the substantial expense of defending
8 against the Action, the length of time necessary to resolve the issues presented herein, the
9 inconvenience involved, and the concomitant disruption to its business operations, it is in their
10 best interest to accept the terms of this Agreement. Defendants deny each of the allegations and
11 claims asserted against it in the Action and the PAGA Notice. However, Defendants nevertheless
12 desire to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
13 continuing litigation and for the purpose of putting to rest the controversies engendered by the
14 Action.

15 **H.** This Agreement is intended to and does effectuate the full, final, and complete
16 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
17 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
18 and Aggrieved Employees.

19 **3. JURISDICTION**

20 The Court has jurisdiction over the Parties and the subject matter of the Action. The
21 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
22 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
23 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
24 pursuant to California Rule of Court, rule 3.769, subdivision (h).

25 **4. STIPULATION OF CLASS CERTIFICATION**

26 The Parties stipulate to the certification of the Settlement Class under this Agreement for
27 purposes of settlement only. The Parties agree that certification for purposes of this Settlement
28 Agreement is not an admission that class certification is proper under Section 382 of the Code of

1 Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in
2 whole or in part, this conditional agreement to class certification will be inadmissible and will
3 have no effect in this matter or in any claims brought on the same or similar allegations, and the
4 Parties shall revert to the respective positions they held prior to entering into the Settlement
5 Agreement.

6 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

7 After full execution of this Agreement, Plaintiff will move for an order granting
8 preliminary approval of the Settlement, approving and directing the mailing of the proposed
9 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally
10 certifying the Settlement Class for settlement purposes only, and approving the deadlines
11 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
12 Objections. If and when the Court preliminarily approves the Settlement, and after
13 administration of the Class Notice in a manner consistent with the Court’s Preliminary Approval
14 Order, Plaintiff will move for an order finally approving the Settlement and seek entry of a
15 Judgment in line with this Settlement. The Parties may both respond to any Objections lodged
16 to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

17 **6. STATEMENT OF NO ADMISSION**

18 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
19 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
20 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
21 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
22 in the event that this Agreement is not approved by the Court, or any appellate court, is
23 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
24 limited or affected in any way any claims, rights or remedies, or defenses in the Action and the
25 PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any
26 way any of its objections or defenses in the Action and PAGA Notice. In such an event, the
27 Parties shall be restored to their respective positions in the Action prior to the entry of this
28 Settlement.

1 **7. RELEASE OF CLAIMS**

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

3 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
4 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
5 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff and
6 all Participating Class Members release all claims against the Released Parties asserted in the
7 Operative Complaint filed in the Action, or any and all claims that may be asserted against the
8 Released Parties based on the factual allegations in the Operative Complaint, as follows: For the
9 duration of the Class Period, the release includes for Participating Class Members: (1) all claims
10 for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims
11 for failure to provide meal periods or compensation in lieu thereof; (4) all claims for failure to
12 provide rest periods or compensation in lieu thereof; (5) failure to timely pay all wages due at the
13 time of termination or resignation; (6) failure to provide accurate wage statements; (7) failure to
14 reimburse employees for business expenses; and (8) all claims asserted through California
15 Business & Professions Code section 17200, *et seq.* arising out of the Labor Code violations
16 referenced in the Complaint (the "Class Released Claims").

17 For Aggrieved Employees, and, to the extent permitted by law and the State of California,
18 the release includes, for the duration of the PAGA Period, all claims asserted in the PAGA Notice
19 and alleged in the Operative Complaint, for PAGA civil penalties pursuant to Labor Code
20 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with alleged violations of Labor
21 Code sections 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246, 432, 510,
22 512, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 2802, and 2810.5, and all associated statutory
23 provisions (the "PAGA Released Claims"). The release expressly excludes all other claims,
24 including claims for vested benefits, wrongful termination, unemployment insurance, disability,
25 social security, workers' compensation, and any other claims outside of the Class Released
26 Claims of Participating Class Members arising during the Class Period and the PAGA Released
27 Claims of Aggrieved Employees (and, to the extent permitted by law and the State of California)

1 arising outside of the PAGA Period. The Class Released Claims and PAGA Released Claims
2 shall be referred to herein as the “Released Claims.”

3 **B. General Release.**

4 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
5 of Judgment, and payment by Defendants to the Settlement Administrator selected of the full
6 Gross Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in
7 addition to the Released Claims, Plaintiff makes the additional following General Release:
8 Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of
9 action of every nature and description whatsoever, known or unknown, asserted or that might
10 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
11 law or regulation arising out of, relating to, or in connection with any act or omission of the
12 Released Parties through the date of full execution of this Agreement in connection with
13 Plaintiff’s employment with Defendants or the termination thereof, except for any and all claims
14 that may not be released as a matter of law through this Agreement. To the extent of the General
15 Release provided herein, Plaintiff stipulates and agrees that, upon entry of an Order granting
16 Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the
17 Settlement Administrator selected of the full Gross Settlement Amount and Employers’ Taxes
18 necessary to effectuate the Settlement, he shall have expressly waived and relinquished, to the
19 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
20 California Civil Code, or any other similar provision under federal or state law, which provides:

21 A general release does not extend to claims which the creditor
22 does not know or suspect to exist in his or her favor at the time of
23 executing the release, which if known by him or her must have
24 materially affected his or her settlement with the debtor or
25 released party.

26 This General Release expressly excludes any claims of Plaintiff against the Released
27 Parties under the Fair Employment and Housing Act (“FEHA”), the California Family Rights
28 Act (“CFRA”), wrongful termination in violation of public policy, intentional infliction of

emotional distress, and negligent infliction of emotional distress, which shall not be affected by this Agreement.

8. SETTLEMENT ADMINISTRATOR

A. Plaintiff and Defendants, through their respective counsel, have selected Phoenix Settlement Administrators to administer the Settlement, which includes but is not limited to translating the Class Notice to Spanish, distributing and responding to inquiries about the Class Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement Administrator, currently estimated to be \$14,950.00 will be paid from the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is less than \$14,950.00, the difference between \$14,950.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$14,950.00, then such excess will be paid solely from the Gross Settlement Amount and Defendants will not be responsible for paying any additional funds in order to pay these additional costs.

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

A. Notice to the Settlement Class Members

(1) Within seven (7) calendar days after the Preliminary Approval Date, Defendants' Counsel shall provide the Settlement Administrator with information with respect to each Settlement Class Member, including his or her: (1) full name; (2) last known address(es) currently in Defendants' possession, custody, or control; (3) last known telephone number(s) currently in Defendants' possession, custody, or control; (4) last known Social Security Number(s) in Defendants' possession, custody, or control; and (5) the dates of employment (*i.e.*, hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member ("Class List"), which shall be made available to Class Counsel upon request. The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly-found addresses, if any. Within seven (7) calendar days of receiving the

1 Class List from Defendants, the Settlement Administrator shall mail the Class Notice in English
2 and Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most
3 current mailing address information available. The Settlement Administrator shall maintain the
4 Class List and digital copies of all the Settlement Administrator's records evidencing the giving
5 of notice to any Settlement Class Member, for at least four (4) years from the Final Approval
6 Date.

7 (2) The Class Notice will set forth:

- 8 (a) the Settlement Class Member's estimated Individual
9 Settlement Payment and Individual PAGA Payment,
10 and the basis for each;
- 11 (b) the information required by California Rule of Court,
12 rule 3.766, subdivision (d);
- 13 (c) the material terms of the Settlement;
- 14 (d) the proposed Settlement Administration Costs;
- 15 (e) the definition of the Settlement Class;
- 16 (f) a statement that the Court has preliminarily approved
17 the Settlement;
- 18 (g) how the Settlement Class Member can obtain
19 additional information, including contact information
20 for Class Counsel;
- 21 (h) information regarding opt-out and objection
22 procedures;
- 23 (i) the date and location of the Final Approval Hearing;
24 and
- 25 (j) that the Settlement Class Member must notify the
26 Settlement Administrator no later than the Response
27 Deadline if the Settlement Class Member disputes the
28 accuracy of the number of Workweeks as set forth on

his or her Class Notice (“Workweek Dispute”). If a Settlement Class Member fails to timely dispute the number of Workweeks attributed to him or her in conformity with the instructions in the Class Notice, then he or she shall be deemed to have waived any objection to its accuracy and any claim to any additional settlement payment based on different data.

(3) If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new address, it will promptly re-mail the Class Notice to the Settlement Class Member. Further, any Class Notices that are returned to the Settlement Administrator with a forwarding address before the Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto.

(4) No later than seven (7) calendar days from the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the completion of the notice process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices, as well as the identities, number of, and copies of all Requests for Exclusion and Objections received by the Settlement Administrator.

B. Objections.

Only Participating Class Members may object to the Settlement. Participating Class Members who object shall be referred to as Objector(s). In order for any Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must do so by mailing

1 a written objection to the Settlement Administrator at the address or phone number provided on
2 the Class Notice no later than the Response Deadline. The Settlement Administrator shall email
3 a copy of the Objection forthwith to Class Counsel and Defendants' counsel and attach copies of
4 all Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in
5 support of Plaintiff's Motion for Final Approval. The Objection should set forth in writing: (1)
6 the Objector's full name; (2) the Objector's address; (3) the last four digits of the Objector's
7 Social Security Number; (4) the Objector's signature; (5) a statement of whether the Objector
8 plans to appear at the Final Approval Hearing; and (6) the reason(s) for the Objection, along with
9 whatever legal authority, if any, the Objector asserts in support of the Objection. If a Settlement
10 Class Member objects to the Settlement, the Settlement Class Member will remain a member of
11 the Settlement Class and if the Court approves this Agreement, the Settlement Class Member
12 will be bound by the terms of the Settlement in the same way and to the same extent as a
13 Settlement Class Member who does not object. The date of mailing of the Class Notice to the
14 objecting Settlement Class Member shall be conclusively determined according to the records of
15 the Settlement Administrator. Settlement Class Members need not object in writing to be heard
16 at the Final Approval Hearing; they may object or comment in person at the hearing at their own
17 expense. Class Counsel and Defendant's Counsel may respond to any objection lodged with the
18 Court prior to or at the Final Approval Hearing, or any other date set by the Court.

19 **C. Requesting Exclusion.**

20 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
21 Settlement by mailing a written request to be excluded from the Settlement ("Request for
22 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
23 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
24 Member's Social Security Number; (3) the Class Member's signature; and (4) any statement
25 standing for the proposition that the Class Member does not wish to participate in the Settlement.
26 The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to
27 Class Counsel and Defendants' Counsel and shall report the Requests for Exclusions that it
28 receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing.

Any Settlement Class Member who requests exclusion using this procedure will not be entitled to receive any payment from the Settlement and will not be bound by the Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion and an Objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be overruled. Settlement Class Members who worked during the PAGA Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members' Workweek Data.

Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA PAYMENTS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective

1 number of Workweeks during the PAGA Period. Specific calculations of the Individual
2 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
3 follows:

4 **A.** The Settlement Administrator will determine the total number of Workweeks
5 worked by each Settlement Class Member during the Class Period (“Class Member’s
6 Workweeks”), as well as the aggregate number of Workweeks worked by all Settlement Class
7 Members during the Class Period (“Class Workweeks”). Additionally, the Settlement
8 Administrator will determine the total number of Workweeks worked by each Aggrieved
9 Employee during the PAGA Period (“Aggrieved Employee’s Workweeks”), as well as the
10 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
11 (“PAGA Workweeks”).

12 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the
13 Settlement Administrator will use the following formula: Individual Settlement Share =
14 (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

15 **C.** To determine each Participating Class Member’s Participating Individual
16 Settlement Share, the Settlement Administrator will determine the aggregate number of
17 Workweeks worked by all Participating Class Members during the Class Period (“Participating
18 Class Workweeks”) and use the following formula: Individual Settlement Share =
19 (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net Settlement
20 Amount.

21 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
22 to Participating Class Members by way of check and is referred to as “Individual Settlement
23 Payment(s).”

24 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
25 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
26 PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$5,000.00 (the
27 PAGA Payment).

28 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid

to Participating Class Members and/or Aggrieved Employees by way of check. When a Participating Class Member is also an Aggrieved Employee, one check may be issued that aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

11. DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments.

Participating Class Members will receive an Individual Settlement Payment and Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, California 94104, the *cy pres* recipient, for use in Los Angeles County. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel along with a proposed amended judgment that is consistent with the provisions of Code of Civil Procedure section 384.

B. Funding of Settlement.

Defendants shall, within thirty (30) calendar days of the Final Approval Date, make their payment of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 16 of this Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”) with an FDIC insured banking institution, for distribution in accordance with this Agreement and the Court’s Orders and subject to the conditions described herein. =

C. Time for Distribution.

Within seven (7) days of the Settlement Administrator’s receipt of the Gross Settlement

1 Amount and Employer Taxes, the Settlement Administrator shall issue payments from the QSA
2 for: (1) the Service Award to Plaintiff as specified in this Agreement and approved by the Court;
3 (2) the Attorneys' Fees and Cost Award to be paid to Class Counsel, as specified in this
4 Agreement and approved by the Court; (3) the Settlement Administrator Costs, as specified in
5 this Agreement and approved the Court; (4) the LWDA Payment, as specified in this Agreement
6 and approved by the Court; and (5) Individual PAGA Payments as specified in this Agreement
7 and approved by the Court. The balance remaining shall constitute the Net Settlement Amount
8 from which Individual Settlement Payments shall be made to Participating Class Members, less
9 applicable taxes and withholdings. All interest accrued shall be for the benefit of the Class
10 Members and distributed on a *pro rata* basis to Participating Class Members based on the number
11 of Workweeks worked by them in the Class Period.

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

13 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
14 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
15 16 of this Agreement, amounts to One Hundred Eighty-Nine Thousand Dollars and Zero Cents
16 (\$189,000.00). Class Counsel shall further apply for, and Defendants shall not oppose, an
17 application or motion by Class Counsel for reimbursement of actual costs associated with Class
18 Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to
19 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees and
20 costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and
21 costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the Action.
22 The "future" aspect of the amounts stated herein includes, without limitation, all time and
23 expenses expended by Class Counsel (including any appeals therein). There will be no additional
24 charge of any kind to either the Settlement Class Members or request for additional consideration
25 from Defendants for such work unless Defendants materially breach this Agreement, including
26 any term regarding funding, and further efforts are necessary from Class Counsel to remedy said
27 breach, including moving the Court to enforce the Agreement. Should the Court approve
28

attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

12. SERVICE AWARD TO PLAINTIFF

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

13. TAXATION AND ALLOCATION

a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties agree that the employees' share of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share will be withheld from the Individual Settlement Share in order to yield the Individual Settlement Payment. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treasury Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

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

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

d. Neither Counsel for Plaintiff nor Defendants intend anything contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

14. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION

The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA and twenty-five percent (25%) (\$5,000.00) will be distributed to Aggrieved Employees on a *pro rata* basis based upon their respective Workweeks worked as Aggrieved Employees during the PAGA Period.

15. COURT APPROVAL

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

16. INCREASE IN WORKWEEKS

Defendants represent that there are no more than 32,251 Workweeks worked during the Class Period by Class Members. In the event the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 3,225 Workweeks, Defendant shall increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of workweeks worked by the Class Members above ten percent (10%), meaning Defendant will increase the Gross Settlement Amount by the percentage amount above ten

1 percent (10%) (e.g., if the number of Workweeks is 11% higher than 32,251 (35,799
2 Workweeks), the Gross Settlement Amount will increase by one percent (1%)).

3 **17. NOTICE OF JUDGMENT**

4 In addition to any duties set out herein, the Settlement Administrator shall provide
5 notice of the Final Judgment entered in the Action by posting the same on its website for a
6 period of no less than four (4) years.

7 **18. WITHDRAWAL FROM SETTLEMENT BASED ON REQUESTS FOR**
8 **EXCLUSION**

9 Defendants shall retain the right to nullify the Agreement in the event that more than
10 7.5% of Class Members submit timely and valid Requests for Exclusion. Defendants must
11 provide written notice to Class Counsel of their withdrawal within ten (10) calendar days of
12 receiving sufficient information to determine that the opt out rate exceeds 7.5%. If
13 Defendants exercise this right, they shall be solely responsible for the costs incurred for
14 settlement administration up to the date of nullification.

15 **19. MISCELLANEOUS PROVISIONS**

16 **A. Interpretation of the Agreement.**

17 This Agreement constitutes the entire agreement between the Parties with respect to its
18 subject matter. Except as expressly provided herein, this Agreement has not been executed in
19 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
20 written representations or terms shall modify, vary or contradict its terms. In entering into this
21 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
22 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
23 enforced under the laws of the State of California, both in its procedural and substantive aspects,
24 without regard to its conflict of law provisions. Any claim arising out of or relating to the
25 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
26 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendants
27 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
28 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,

1 and each of them, participated in the negotiation and drafting of this Agreement and had available
2 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
3 Defendants may claim that any ambiguity in this Agreement should be construed against the
4 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
5 approved by the Court.

6 **B. Further Cooperation.**

7 The Parties and their respective attorneys shall proceed diligently to prepare and execute
8 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
9 necessary to consummate the Settlement as expeditiously as possible.

10 **C. Counterparts.**

11 The Agreement may be executed in one or more actual or non-original counterparts, all
12 of which will be considered one and the same instrument and all of which will be considered
13 duplicate originals.

14 **D. Authority.**

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

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

18 Plaintiff, Participating Class Members, Aggrieved Employees, the State of California
19 Class Counsel, and Defendants are direct beneficiaries of this Agreement, but there are no third-
20 party beneficiaries.

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

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

24 **G. Severability.**

25 In the event that one or more of the provisions contained in this Agreement shall for any
26 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
27 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
28

Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

Dated: Nov 16, 2022, 2022

Octavio Lopez
OCTAVIO LOPEZ
Plaintiff and Class Representative

Dated: _____, 2022

UPM, INC.
Defendant
By:
Its:

Dated: _____, 2022

LYON STAFFING SOLUTIONS, INC.
Defendant

AGREED AS TO FORM:

Dated: 11/22, 2022

Vedang J. Patel
DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiff OCTAVIO LOPEZ

Dated: _____, 2022

Thomas S. Ingrassia
Counsel for Defendant UPM, INC.

1 Dated: _____, 2022

2 _____
3 Michael B. Adreani
4 **Counsel for Defendant LYON STAFFING**
5 **SOLUTIONS, INC.**
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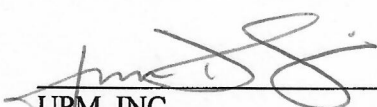
1 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
2 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

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4 **IT IS SO AGREED:**

5 Dated: _____, 2022

OCTAVIO LOPEZ
Plaintiff and Class Representative

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8 Dated: November 22, 2022


UPM, INC.
Defendant

By: Jason Dowling
Its: President

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11 Dated: _____, 2022

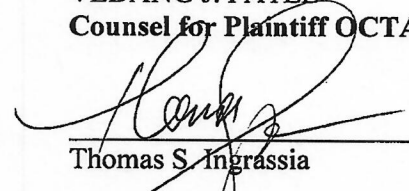
LYON STAFFING SOLUTIONS, INC.
Defendant

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15 **AGREED AS TO FORM:**

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17 Dated: _____, 2022

DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiff OCTAVIO LOPEZ

18
19
20 Dated: Nov 17, 2022


Thomas S. Ingrassia

Counsel for Defendant UPM, INC.