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behalf of himself and all others similarly situated
and aggrieved

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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**

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

Action Filed: September 25, 2020
Trial Date: None Set

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiff
3 OCTAVIO LOPEZ (“Plaintiff”) individually and on behalf of the Settlement Class, on the one
4 hand; and defendant UPM, INC. (“UPM”), and defendant LYON STAFFING SOLUTIONS,
5 INC. (“Lyon,” and collectively with UPM, “Defendants”), on the other hand, in the lawsuit
6 entitled *Lopez v. UPM, Inc., et al.* filed in Los Angeles County Superior Court, Case No.
7 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, Diego Aviles, and Sara
18 Ehsani- Nia of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously
19 with the term “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 in two installments as further
10 set forth below. The Gross Settlement Amount shall be the amount from which all payments for
11 the Individual Settlement Payments to Participating Class Members, the Court-approved amounts
12 for attorneys’ fees and reimbursement of litigation costs and expenses to Class Counsel,
13 Settlement Administration Costs, the Service Award, the PAGA Payment, and the LWDA
14 Payment shall be paid. The Gross Settlement Amount expressly excludes Employer Taxes,
15 which shall be paid by Defendants separate and apart from the Gross Settlement Amount along
16 with Defendants’ second installment payment.

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

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

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

26 **N. “LWDA Payment”** means the payment to the State of California Labor and
27 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total

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

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

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

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

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

19 **R. “PAGA Period”** means the period from September 24, 2019 through January 4,
20 2022.

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

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

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

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

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

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

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

25 **AA. “Settlement Administration Costs”** means all costs incurred by the Settlement
26 Administrator in administration of the Settlement, including, but not limited to, translating the
27 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
28 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,

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

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

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

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

28 **2. BACKGROUND**

1 **A.** On September 24, 2020, Plaintiff filed with the LWDA and served on Defendants
2 a notice under Labor Code section 2699.3 stating he intended to serve as a proxy of the LWDA
3 to recover civil penalties for Aggrieved Employees for various Labor Code violations (“PAGA
4 Notice”).

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

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

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

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

1 **F.** Class Counsel has conducted significant investigation of the law and facts relating
2 to the claims asserted in the Action and PAGA Notice, and have concluded that that the
3 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
4 Class, taking into account the sharply contested issues involved, the expense and time necessary
5 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
6 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
7 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
8 to be received by Settlement Class Members.

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

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

21 **3. JURISDICTION**

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

27 **4. STIPULATION OF CLASS CERTIFICATION**

1 The Parties stipulate to the certification of the Settlement Class under this Agreement for
2 purposes of settlement only. The Parties agree that certification for purposes of this Settlement
3 Agreement is not an admission that class certification is proper under Section 382 of the Code of
4 Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in
5 whole or in part, this conditional agreement to class certification will be inadmissible and will
6 have no effect in this matter or in any claims brought on the same or similar allegations, and the
7 Parties shall revert to the respective positions they held prior to entering into the Settlement
8 Agreement.

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

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

20 **6. STATEMENT OF NO ADMISSION**

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

1 way any of its objections or defenses in the Action and PAGA Notice. In such an event, the
2 Parties shall be restored to their respective positions in the Action prior to the entry of this
3 Settlement.

4 **7. RELEASE OF CLAIMS**

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

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

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

1 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
2 Employees (and, to the extent permitted by law and the State of California) arising outside of the
3 PAGA Period. The Class Released Claims and PAGA Released Claims shall be referred to
4 herein as the "Released Claims."

5 **B. General Release.**

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

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

27 This General Release expressly excludes any claims of Plaintiff against the Released
28 Parties under the Fair Employment and Housing Act ("FEHA"), the California Family Rights

1 Act ("CFRA"), wrongful termination in violation of public policy, intentional infliction of
2 emotional distress, and negligent infliction of emotional distress, which shall not be affected by
3 this Agreement.

4 **8. SETTLEMENT ADMINISTRATOR**

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

16 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION**
17 **PROCESS**

18 **A. Notice to the Settlement Class Members**

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

1 List with the newly-found addresses, if any. Within seven (7) calendar days of receiving the
2 Class List from Defendants, the Settlement Administrator shall mail the Class Notice in English
3 and Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most
4 current mailing address information available. The Settlement Administrator shall maintain the
5 Class List and digital copies of all the Settlement Administrator's records evidencing the giving
6 of notice to any Settlement Class Member, for at least four (4) years from the Final Approval
7 Date.

8 (2) The Class Notice will set forth:

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

1 accuracy of the number of Workweeks as set forth on
2 his or her Class Notice ("Workweek Dispute"). If a
3 Settlement Class Member fails to timely dispute the
4 number of Workweeks attributed to him or her in
5 conformity with the instructions in the Class Notice,
6 then he or she shall be deemed to have waived any
7 objection to its accuracy and any claim to any
8 additional settlement payment based on different data.

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

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

24 **B. Objections.**

25 Only Participating Class Members may object to the Settlement. Participating Class
26 Members who object shall be referred to as Objector(s). In order for any Settlement Class
27 Member to object to this Settlement in writing, or any term of it, he or she must do so by mailing
28 a written objection to the Settlement Administrator at the address or phone number provided on

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

18 **C. Requesting Exclusion.**

19 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
20 Settlement by mailing a written request to be excluded from the Settlement ("Request for
21 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
22 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
23 Member's Social Security Number; (3) the Class Member's signature; and (4) the following
24 statement: "Please exclude me from the Settlement Class in the *Lopez v. UPM, Inc., et al.* matter"
25 or a statement of similar meaning. The Settlement Administrator shall immediately provide
26 copies of all Requests for Exclusion to Class Counsel and Defendants' Counsel and shall report
27 the Requests for Exclusions that it receives, to the Court, in its declaration to be provided in
28 advance of the Final Approval Hearing. Any Settlement Class Member who requests exclusion

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

13 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

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

22 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA**
23 **PAYMENTS**

24 Individual Settlement Payments will be calculated and distributed to Participating Class
25 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
26 Members' respective number of Workweeks during the Class Period. Individual PAGA
27 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
28 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 $(\text{Settlement Class Member's Workweeks} \div \text{Class Workweeks}) \times \text{Net Settlement Amount}$.

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 $(\text{Participating Class Member's Workweeks} \div \text{Participating Class Workweeks}) \times \text{Net Settlement}$
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 = $(\text{Aggrieved Employee's Workweeks} \div \text{PAGA Workweeks}) \times \$5,000.00$ (the
27 PAGA Payment).

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

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

4 **11. DISTRIBUTION OF PAYMENTS**

5 **A. Distribution of Individual Settlement Payments.**

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

20 **B. Funding of Settlement.**

21 Defendants shall make their payment of the Gross Settlement Amount (as the same may
22 be escalated pursuant to Paragraph 16 of this Agreement) and Employer Taxes to the Settlement
23 Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-
24 bearing qualified settlement account ("QSA") with an FDIC insured banking institution, for
25 distribution in accordance with this Agreement and the Court's Orders and subject to the
26 conditions described herein. Specifically, Defendants shall make their payment in two
27 installments. As for the first payment, Defendants shall have seven (7) days from the Final
28 Approval date to make a payment of one-half (1/2) of the Gross Settlement Amount

1 (\$270,000.00). As for the second payment, Defendant shall have six months from the Final
2 Approval Date to pay the remaining \$270,000.00 along with the Employer Taxes necessary to
3 effectuate the Settlement.

4 **C. Time for Distribution.**

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

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

18 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
19 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
20 16 of this Agreement, amounts to One Hundred Ninety-Two Thousand, Five Hundred Dollars
21 and Zero Cents (\$192,500.00). Class Counsel shall further apply for, and Defendants shall not
22 oppose, an application or motion by Class Counsel for reimbursement of actual costs associated
23 with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount
24 up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees
25 and costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees
26 and costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the Action.
27 The "future" aspect of the amounts stated herein includes, without limitation, all time and
28 expenses expended by Class Counsel (including any appeals therein). There will be no additional

1 charge of any kind to either the Settlement Class Members or request for additional consideration
2 from Defendants for such work unless Defendants materially breach this Agreement, including
3 any term regarding funding, and further efforts are necessary from Class Counsel to remedy said
4 breach, including moving the Court to enforce the Agreement. Should the Court approve
5 attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts
6 provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

7 **12. SERVICE AWARD TO PLAINTIFF**

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

14 **13. TAXATION AND ALLOCATION**

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

24 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
25 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
26 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
27 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
28

1 set forth in this Section may be modified in a manner to bring Defendants into compliance with
2 any such changes.

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

6 d. Neither Counsel for Plaintiff nor Defendants intend anything contained in this
7 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
8 be relied upon as such within the meaning of United States Treasury Department Circular 230
9 (31 C.F.R. Part 10, as amended) or otherwise.

10 **14. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

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

17 **15. COURT APPROVAL**

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

27 **16. INCREASE IN WORKWEEKS**

28

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

17. NOTICE OF JUDGMENT

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

18. WITHDRAWAL FROM SETTLEMENT BASED ON REQUESTS FOR EXCLUSION

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

19. MISCELLANEOUS PROVISIONS

A. Interpretation of the Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and

1 enforced under the laws of the State of California, both in its procedural and substantive aspects,
2 without regard to its conflict of law provisions. Any claim arising out of or relating to the
3 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
4 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendants
5 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
6 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
7 and each of them, participated in the negotiation and drafting of this Agreement and had available
8 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
9 Defendants may claim that any ambiguity in this Agreement should be construed against the
10 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
11 approved by the Court.

12 **B. Further Cooperation.**

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

16 **C. Counterparts.**

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

20 **D. Authority.**

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

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

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

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

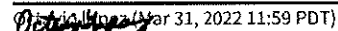
To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

G. Severability.

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

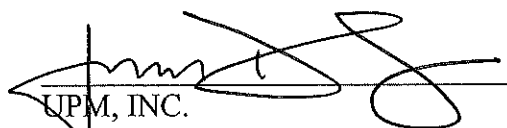
IT IS SO AGREED:

Dated: Mar 31, 2022, 2022

 (Mar 31, 2022 11:59 PDT)

OCTAVIO LOPEZ
Plaintiff and Class Representative

Dated: April 6, 2022


UPM, INC.
Defendant

By: Jason Dowling
Its: President

Dated: _____, 2022

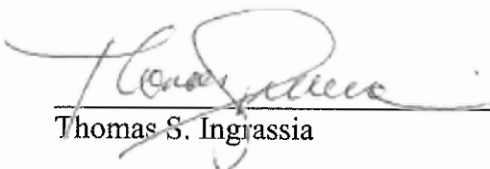
LYON STAFFING SOLUTIONS, INC.
Defendant

AGREED AS TO FORM:

Dated: April 8, 2022

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

1
2 Dated: April 6, 2022



Thomas S. Ingrassia

Counsel for Defendant UPM, INC.

3
4
5
6
7 Dated: _____, 2022

Michael B. Adreani

Marina N. Vitek

**Counsel for Defendant LYON STAFFING
SOLUTIONS, INC.**

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

3 **G. Severability.**

4 In the event that one or more of the provisions contained in this Agreement shall for any
5 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
6 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
7 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
8 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.
9

10 **IT IS SO AGREED:**

11 Dated: _____, 2022

OCTAVIO LOPEZ
Plaintiff and Class Representative

14 Dated: _____, 2022

UPM, INC.
Defendant
By:
Its:

17 Dated: April 8th, 2022

LYON STAFFING SOLUTIONS, INC.
Defendant

21 **AGREED AS TO FORM:**

23 Dated: _____, 2022

DAVID D. BIBIYAN
Counsel for Plaintiff OCTAVIO LOPEZ

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Dated: _____, 2022

Thomas S. Ingrassia

Counsel for Defendant UPM, INC.

Dated: April 8, 2022

Michael B. Adreani

Michael B. Adreani

Marina N. Vitek

**Counsel for Defendant LYON STAFFING
SOLUTIONS, INC.**