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CARMEN PRADO ANDRADE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Carmen Prado Andrade, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

Employment Solutions Management, Inc., a
Georgia Corporation (d/b/a EmployBridge,
LLC); and DOES 1 through 50, inclusive,

Defendant.

) Case No. CIVDS2023816

) Assigned for All Purposes To:

) Judge: David Cohn

) Dept: S26

) **JOINT STIPULATION OF SETTLEMENT
AND RELEASE OF CLASS ACTION**

) Action Filed: October 19, 2020

) FAC Filed: February 1, 2021

) Trial Date: Not Set

1 This Joint Stipulation of Settlement and Release of Class Action (“Agreement”) is made
2 and entered into between Plaintiff Carmen Prado Andrade (“Plaintiff” or “Andrade”), individually
3 and on behalf of the proposed Settlement Class, (defined below), and Defendant Employment
4 Solutions Management, Inc. (“ESMI” or “Defendant”). This Agreement is subject to approval of
5 the Court, pursuant to the California Rules of Court (“CRC”), Rule 3.769(c), (d) and (e), and made
6 for the sole purpose of attempting to consummate settlement of the Action (as defined below) on a
7 class-wide basis subject to the following terms and conditions. As detailed below, in the event the
8 Court does not enter an order granting final approval of the Class Settlement (as defined below)
9 and enter judgment, or the conditions precedent are not met for any reason, this Agreement is void
10 and of no force or effect whatsoever.

11 **1. DEFINITIONS**

12 As used in this Agreement, the following terms shall have the meanings specified below.
13 To the extent terms or phrases used in this Agreement are not specifically defined below, but are
14 defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

15 1.1 **Action.** “Action” shall mean the lawsuit titled Carmen Prado Andrade, et
16 al. v. Employment Solutions Management, Inc., et al., Case No. CIVDS2023816 pending in the
17 San Bernardino County Superior Court, which includes the PAGA Notice sent to the Labor and
18 Workforce Development Agency (“LWDA”).

19 1.2 **Administrator.** See definition of “Settlement Administrator.”

20 1.3 **Claims.** “Claims” shall mean the claims asserted and causes of action
21 alleged in the Action, or that could have been alleged or otherwise raised based on the factual
22 allegations set forth in the operative pleadings in the Action, including claims for failure to pay
23 overtime wages, failure to pay all wages owed upon separation, failure to provide accurate itemized
24 wage statements, violation of California’s Unfair Competition Law (Cal. Bus. & Prof. Code
25 § 17200 *et seq.*), and violation of Private Attorneys General Act (Cal. Lab. Code § 2698 *et seq.*
26 (“PAGA”).

27 1.4 **Class Counsel.** “Class Counsel” shall mean Alexander I. Dychter and S.
28 Adam Spiewak of Dychter Law Offices, APC, 180 Broadway, Suite 1835, San Diego, CA 92101

and Walter L. Haines of United Employees Law Group, PC, 5500 Bolsa Ave., Suite 201, Huntington Beach, CA 92649.

1.5 **Class Counsel's Attorneys' Fees and Expenses.** "Class Counsel's Attorneys' Fees and Expenses" shall mean Class Counsel's attorneys' fees and expenses to be requested and subject to approval by the Court at the time of the Final Approval and Fairness Hearing (as defined below).

1.6 **Class List and Data.** "Class List and Data" or "Class List" shall mean the information for each Settlement Class Member and PAGA Member which Defendant shall compile from its business records and provide to the Administrator for purposes of providing notice of the Settlement to the Settlement Class. The Class List shall be in a readable, ready to use, MS Excel spreadsheet, which will provide for each Settlement Class Member, the following information: (a) full name; (b) last-known mailing address; (c) telephone numbers; (d) Social Security number; (e) dates of employment; (f) number of Weeks Worked during the Class Period; and (g) number of pay periods employed as a PAGA Member during the PAGA Period.

1.7 **Class Period.** "Class Period" shall mean the period from October 19, 2016 through the date the Court enters an Order granting Preliminary Approval of the Settlement.

1.8 **Class Representative.** "Class Representative" shall mean Plaintiff Carmen Prado Andrade.

1.9 **Court.** "Court" shall mean the Superior Court of California, County of San Bernardino.

1.10 **Defendant.** "Defendant" shall mean Employment Solutions Management, Inc. and its officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, any of Employment Solutions Management, Inc.'s former and present parents, subsidiaries, and affiliates, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives.

1.11 **Defense Counsel.** “Defense Counsel” shall mean David G. Hagopian, Garrett V. Jensen and Robyn E. Frick of CDF Labor Law LLP, 18300 Von Karman Avenue, Suite 800, Irvine, California 92612.

1.12 **Effective Date.** “Effective Date” shall be the later of the time when: (i) the date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment following review pursuant to that grant, (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval Order and Judgment in a form substantially identical to the form of the Final Approval Order entered by the Court, and the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; or (iv) if no appeal is filed, the sixty-first (61st) day after the Court enters final approval of the settlement and the Judgment approving this Agreement.

1.13 **Employee’s Taxes and Required Withholding.** “Employee’s Taxes and Required Withholding” shall mean the Settlement Class Member’s share of any and all applicable federal, state or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act (“FICA”), FUTA and/or SUTA on the portion of the Settlement Class Participant’s Individual Settlement Payment that constitutes wages, and will be withheld from and paid out of the Net Settlement Amount.

1.14 **Employer’s Taxes.** “Employer’s Taxes” shall mean and refer to Defendant’s share of corporate, federal, state and/or local payroll taxes that is owed on the portion of the Class Participant’s Individual Settlement Payment that constitutes wages. The Employer’s Taxes shall be separately paid by Defendant in addition to the Gross Settlement Amount.

1.15 **Final Approval and Fairness Hearing.** “Final Approval and Fairness Hearing” shall mean the final hearing held to consider the Class reaction to notice of the Settlement, and to ascertain the fairness, reasonableness, and adequacy of the Class Settlement. At this hearing, the Court will consider Class Counsel’s application for Attorneys’ Fees and Costs, the

1 Class Representative Incentive Award, the Administration Expenses, and approval of the PAGA
2 Payment.

3 1.16 **Final Approval Date.** “Final Approval Date” shall mean the date upon
4 which the Court enters an order granting final approval of the Class Action Settlement and enters
5 Judgment.

6 1.17 **Gross Settlement Amount.** “Gross Settlement Amount” means the
7 agreed upon settlement amount totaling One Hundred and Sixty-Five Thousand Dollars
8 (\$165,000.00), to be paid by Defendant in full settlement of the Released Claims asserted in this
9 case, which includes the Administration Expenses, Employee’s Taxes and Required Withholdings,
10 Class Counsel’s Attorneys’ Fees and Costs, a payment to the LWDA pursuant to PAGA, and an
11 Incentive Award to Plaintiff. The Gross Settlement Amount is non-reversionary. In no event shall
12 Defendant be required to pay more than the Gross Settlement Amount (excluding the employer’s
13 share of payroll taxes on the “wages” portion of the settlement for Settlement Class Members).
14 The Parties agree that Code of Civil Procedure § 384 does not apply to this Settlement and any
15 uncashed checks will be sent to the Controller of the State of California to be held pursuant to the
16 Unclaimed Property Law, California Civil Code § 1500 *et seq.*, for the benefit of those Settlement
17 Class Members who did not cash their checks until such time that they claim their property.

18 1.18 **Incentive Award.** “Incentive Award” shall mean the monetary payment
19 to the Class Representative of an amount up to \$5,000.00, for her efforts in initiating this Action,
20 the risks undertaken on behalf of the Settlement Class, and for the substantial benefits to be
21 received by Participating Settlement Class Members. The Incentive Award payment shall be
22 reported on an IRS 1099 basis, and shall be paid in addition to the Plaintiff’s Individual Settlement
23 Payment she is entitled as a member of the Class under the terms of this Settlement.

24 1.19 **Individual Settlement Payment.** “Individual Settlement Payment” means
25 the proportionate share of the Net Settlement Amount to be distributed to each Participating Class
26 Member based on the number of his or her Weeks Worked during the Class Period in relation to the
27 aggregate number of Weeks Worked by all Participating Settlement Class Members, less any
28 Employee’s Taxes and Required Withholdings.

1.20 **Net Settlement Amount.** “Net Settlement Amount” or “NSA” shall mean the Gross Settlement Amount, minus the Court-approved amounts awarded for the Attorneys’ Fees and Costs, Class Representative Incentive Award, Settlement Administration Fees, and the LWDA Payment.

1.21 **Notice Packet.** “Notice Packet” means the Notice of Class Action Settlement advising Class Members of the Settlement and their options under the Settlement.

1.22 **Opt-Out.** “Opt-Out(s)” shall mean a Class Member’s timely and valid request for exclusion from the Settlement Class portion of the Settlement in accordance with the terms of this Agreement and as set forth in the Class Notice. If a Settlement Class Member validly and timely opts out of the Class portion of the Settlement, to the extent eligible as a PAGA Member, they will still receive a portion of the PAGA penalty payment allocated to the PAGA Members based on the number of pay periods employed during the PAGA Period, and will release the claims alleged under PAGA.

1.23 **PAGA.** PAGA refers to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*

1.24 **PAGA Member(s):** “PAGA Member(s)” means any person employed by Defendant in California as an hourly, non-exempt, operational employee who was eligible to participate in one or more bonus/incentive compensation plans at any time during the PAGA Period.

1.25 **PAGA Payment:** “PAGA Payment” shall mean an allocation of \$20,000.00 to be paid from the Gross Settlement Amount, designated by the Parties as PAGA civil penalties, of which 75% shall be remitted to the Labor and Workforce Development Agency (“LWDA”) for its statutorily-set portion of the PAGA penalties (“LWDA Payment”) and the remaining 25% shall be distributed to the PAGA Members on a proportionate basis based on the number of pay periods employed during the PAGA Period.

1.26 **PAGA Period.** “PAGA Period” means the period from October 19, 2019 through the date the Court enters an Order granting Preliminary Approval of the settlement.

1.27 **PAGA Release.** See Released Claims.

1.28 **Participating Settlement Class Member(s).** “Participating Settlement Class Members” shall mean Settlement Class Members who do not timely and validly opt-out of the Class in the manner set forth in this Agreement, and described in the Court-approved Notice of Class Action Settlement.

1.29 **Parties.** “Parties” shall mean Plaintiff (as defined below) and Defendant.

1.30 **Pay Periods.** “Pay Periods” means the number of pay periods a PAGA Member was employed during the PAGA Period.

1.31 **Plaintiff.** “Plaintiff” shall mean Plaintiff Carmen Prado Andrade.

1.32 **Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Agreement, conditionally certifying the Class, approving the Notice of Class Action Settlement, appointing Plaintiff as the Class Representative, Plaintiff’s Counsel as Class Counsel, and Atticus Administration, LLC as the Administrator, and setting a Final Approval Hearing date.

1.33 **Released Claims.** “Released Claims” shall mean all claims, theories and causes of action alleged in the Action, or that could have been alleged or otherwise raised based on the factual allegations set forth in the operative pleadings in the Action during the Class Period, including claims for failure to pay overtime wages, failure to pay all wages owed upon separation, failure to provide accurate itemized wage statements, violation of California’s Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*), and the PAGA penalties pursuant to Labor Code § 2698 *et seq.* The PAGA Release is for the PAGA penalties that are included in the Released Claims.

1.34 **Released Parties.** “Released Parties” shall mean Employment Solutions Management, Inc., and its officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives and any of Employment Solutions Management, Inc.’s former and present parents, subsidiaries, and affiliates, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives.

1.35 **Response Deadline.** “Response Deadline” shall mean 45 days following

the date on which the Settlement Administrator first mails the Notice Packet to all Settlement Class Members. Settlement Class Members who receive a re-mailed Notice Packet 15 days or less before the Response Deadline shall have 15 days from the date the Notice Packet is re-mailed to postmark an Opt-Out request, or to dispute the information on which their Individual Settlement Payment is calculated.

1.36 **Settlement.** “Settlement” shall mean the settlement between Parties, which is memorialized in this Agreement, including any attached exhibits, and subject to Court approval.

1.37 **Settlement Administrator.** “Settlement Administrator” or “Administrator” shall mean Atticus Administration, LLC, the third-party settlement administrator selected by the Parties and to be approved by the Court, which the Parties have agreed will be responsible for administration of the Settlement and related matters. The Administrator’s fee and expenses are estimated to not exceed \$10,000.00.

1.38 **Settlement Class.** “Settlement Class” shall mean all non-exempt operational employees of Defendant who worked in California at any time from October 19, 2016 through the date the Court enters an Order granting Preliminary Approval of the Settlement who were eligible to participate in one or more bonus/incentive compensation plans.

1.39 **Settlement Class Member.** “Settlement Class Member” means a member of the Settlement Class. If the Class Member is incompetent or deceased, the individual’s legal guardian, executor, heir or successor-in-interest, may submit the proper documentation to the Administrator to claim such Settlement Class Member’s Individual Settlement Payment.

1.40 **Weeks Worked.** “Weeks Worked” means any week during the Class Period in which a Settlement Class Member worked at least one day in that week.

2. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION

2.1 On October 19, 2020, Plaintiff filed the Action entitled *Carmen Prado Andrade v. Employment Solutions Management, Inc. et al.*, Case No. CIVDS2023816 in the Superior Court for the County of San Bernardino on behalf of herself and all others similarly situated and aggrieved, on behalf of the State of California as a private attorney general. The

operative complaint in this Action alleges claims including failure to pay overtime wages, failure to pay all wages owed upon separation, failure to provide accurate itemized wage statements and violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.* On February 1, 2021, Plaintiff filed a First Amended Complaint ("FAC") adding a cause of action for Violation of Private Attorneys General Act (Labor Code § 2698 *et seq.*) for PAGA penalties based on the foregoing theories of liability. For purposes of this Agreement, Plaintiff will file a Second Amended Complaint ("SAC") to re-allege all claims and theories of liability that were alleged in the FAC. The SAC will be filed along with Plaintiff's Motion for Preliminary Approval of the Settlement and Plaintiff will request that it be deemed filed as of the date the Court grants Preliminary Approval of the Settlement. All material allegations in the SAC shall be denied by Defendant without the necessity of Defendant filing an answer to the SAC or any other pleading in the Action. For purposes of this agreement, the Complaint, FAC and proposed SAC in the foregoing action will be referred to as the "Complaint".

2.2 The Parties agreed to explore the possibility of a mediation on a Class-wide and PAGA basis, and in that regard, requested a stay of the litigation and discovery, in favor of attending mediation. Upon agreement to attend mediation, and in order to prepare for a meaningful and informed session, Plaintiff's counsel requested and Defendant's Counsel produced time and payroll records, relevant policies, and information regarding the putative class and the potentially-aggrieved employees.

2.3 With sufficient discovery conducted to evaluate the viability of the claims and theories alleged, and Defendant's potential liability on Class-wide damages (as well as PAGA) and its defenses, on October 11, 2021, the Parties participated in an all-day mediation with Joel Grossman, Esq., an experienced and respected mediator of wage and hour class and PAGA actions. Following a "mediator's proposal," the Parties agreed to settle the Action.

2.4 The Parties and their respective counsel believe this Agreement reflects a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement as a result of arms'-length negotiations, facilitated by an experienced and neutral mediator, taking into account all relevant factors, present and potential.

1 **3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**
2 **CLASS SETTLEMENT**

3 3.1 The investigation and extensive exchange of information in this matter, as
4 well as discussions between counsel have been adequate to give and Class Counsel an
5 understanding of the merits of the Parties' respective positions and to evaluate the worth of the
6 claims of the Settlement Class. The information and data exchanged by the Parties prior to and
7 during mediation and settlement negotiations are sufficient to reliably assess the merits of the
8 Parties' respective positions and to compromise the issues on a fair and equitable basis.

9 3.2 The Parties recognize and acknowledge the expense and delay of
10 continued lengthy proceedings necessary to prosecute the Action against Defendant through trial
11 and through appeals. Class Counsel has taken into account the uncertain outcome of the litigation,
12 the risk of continued litigation in complex actions such as this, as well as difficulties and delays
13 inherent in such litigation, the potential difficulty of obtaining certification of the Action, as well as
14 trying the claims of the Settlement Class. Class Counsel believes that the Settlement set forth in
15 this Agreement confers substantial benefits upon Plaintiff and the Settlement Class Members and
16 that an independent review of this Agreement by the Court in the approval process will confirm this
17 conclusion. Based on their own independent investigation and evaluation, Class Counsel has
18 determined that the Settlement set forth in the Agreement is in the best interests of Plaintiff and the
19 Settlement Class Members.

20 **4. NO ADMISSION OF ANY LIABILITY AND CONDITIONAL**
21 **CERTIFICATION.**

22 4.1 This Agreement represents a compromise and settlement of highly
23 disputed claims. This Agreement does not constitute, is not intended to constitute, and will not be
24 deemed to constitute, an admission of liability by Defendant as to the merits, validity, or accuracy
25 of any of the allegations or claims made against Defendant in the Action or the appropriateness of
26 class or conditional certification. Defendant denies each and all of Plaintiff's allegations in their
27 entirety, and alleges that Plaintiff and all other Settlement Class Members were paid all wages
28 owed, including minimum wages and overtime wages, were properly paid all hours worked,

1 received accurate itemized wage statements, paid all wages owed upon termination throughout their
2 employment with Defendant, and that Defendant did not engage in unfair competition.

3 4.2 Nothing in this Agreement nor any action taken or made in implementation
4 thereof, nor any statements, discussions, or communications, nor any materials prepared,
5 exchanged, issued, or used during the course of the negotiations leading to the Agreement, is
6 intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used, or be
7 admissible in any way in this case or any other judicial, arbitral, administrative, investigative or
8 other forum or proceeding as evidence of any violation of any federal, state, or local law, statute,
9 ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.
10 Notwithstanding the foregoing, the Agreement may be used in any proceeding in the Court that has
11 as its purpose the interpretation, implementation, or enforcement of the Agreement or any orders or
12 judgments of the Court entered into in connection therewith.

13 4.3 The Parties agree that Plaintiff's motion for preliminary approval of the
14 Settlement seeking certification of a class action and Defendant's agreement thereto is for purposes
15 of the Settlement only. Solely for the purpose of this Agreement, including effectuating its terms,
16 the Parties stipulate to conditional certification of the Settlement Class. If, for any reason, the
17 Settlement is not approved, the stipulation for certification will have no force or effect. The Parties
18 agree that certification for purposes of the Settlement is in no way an admission that class
19 certification or conditional certification of a collective action is proper under the standard applied
20 to contested certification motions and that this Agreement will not be admissible in this or any
21 other proceeding as evidence that (i) a class or representative action should be certified as Plaintiff
22 proposed, or (ii) Defendant is liable to Plaintiff or the Settlement Class Members as Plaintiff
23 alleged. Further, neither this Agreement nor the Court's actions with regard to this Agreement will
24 be admissible in any court or other tribunal regarding the propriety of class certification for
25 purposes other than the settlement of this Action. In the event that this Agreement is not approved
26 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Defendant
27 will not be deemed to have waived, limited, or affected in any way any of their objections or
28 defenses in the Action, including, but not limited to, its ability to move to compel arbitration, raise

defenses in opposition to certification, contest the merits of the claims and theories alleged, etc.

5. CLASS SETTLEMENT CONSIDERATION

5.1 Gross Settlement and Net Settlement Amounts and Distribution.

Subject to terms and conditions of this Agreement, and subject to Court approval, the claims of all Settlement Class Members are settled for a Gross Settlement Amount of \$165,000.00, no portion of which will revert to Defendant under any circumstances. The Gross Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate consideration for the Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) Class Counsel's Attorneys' Fees and Expenses, (c) Administration Expenses, (d) the Incentive Award, (e) LWDA Payment, and (f) the Individual Settlement Payments to Participating Settlement Class Members, and any other obligation of Defendant under this Agreement (other than the Employer's Taxes).

5.2 Incentive Award for Class Representative. The Class Representative may petition the Court for an Incentive Award of an amount up to \$5,000.00 in consideration of initiation and prosecution of the Action, efforts taken on behalf of the Class, which included assisting in the investigation of the claims alleged and searching for and providing crucial documents to Class Counsel, for the risk of paying costs in the event this Action had been lost, and for the potential loss of job opportunities because she filed this Action against a former employer. Defendant shall not oppose any request by Plaintiff for an Incentive Award up to such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to any distribution or Individual Settlement Payment to which she may otherwise be entitled as a Settlement Class Member. The Incentive Award shall not be considered wages, and the Settlement Administrator shall issue Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be solely responsible for the payment of any and all taxes with respect to her Incentive Award. Any reduction in the Incentive Payment shall be added to the Net Settlement Amount.

5.3 Payments to Participating Settlement Class Members. Each Participating Settlement Class Member shall be eligible to receive an Individual Settlement

1 Payment based on their tenure, *i.e.*, the number of Weeks Worked during the Class Period, in
2 relation to the number of Weeks Worked by all Participating Class Members. The Individual
3 Settlement Payment will be subject to the Employee Taxes and Required Withholdings. The
4 Parties understand that Plaintiff and Participating Settlement Class Members who receive an
5 Individual Settlement Payment pursuant to this Agreement shall be solely responsible for any and
6 all other individual tax obligations associated the payment.

7 5.4 **Allocation of Individual Settlement Payment.** The Parties agreement
8 that the Individual Settlement Payment shall be allocated (1) 20% to wages and reported on an IRS
9 W-2 basis; (2) 30% to interest to be reported on an IRS form 1099; and (3) 50% to penalties to be
10 reported on an IRS form 1099. Defendant agrees to pay the Employer's Taxes on that portion of
11 Individual Settlement Payment allocated to W-2 wages, which will be computed and paid by the
12 Administrator, but funded separately and in addition to the Gross Settlement Amount.

13 5.5 **No Effect on Employee Benefits.** Neither the Settlement nor any amounts
14 paid under the Settlement will modify any previously credited hours, days, or weeks or service
15 under any employee benefit plan, policy or bonus program sponsored by Defendant (or its
16 affiliates). Such amounts will not form the basis for additional contributions to, benefit under, or
17 any other monetary entitlement under Defendant's sponsored benefit plans, policies or bonus
18 programs, if any. The payments made under the terms of this Settlement shall not be applied
19 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form
20 of compensation for the purposes of any of Defendant's benefit plans, policies or bonus programs,
21 if any. Defendant retains the right to modify the language of its benefits plans, policies and bonus
22 programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement
23 are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as
24 defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit
25 accrual, or any other purpose, and that additional contributions or benefits are not required by this
26 Agreement. Defendant does not consider the Individual Settlement Payments "compensation" for
27 purposes of determining eligibility for, or benefit accrual within, any benefits plan, policy, or bonus
28 program, or any other plan or program sponsored by Defendant (or its affiliates), if any.

1 5.6 **Class Counsel Attorneys' Fees and Expenses.** As part of the motion for
2 final approval of the Settlement, Class Counsel may submit an application for an award of
3 Attorneys' Fees and Expenses with the fee portion not to exceed Fifty Seven Thousand, Seven
4 Hundred Fifty Dollars (\$57,750) of the Gross Settlement Amount and the award of actual
5 documented costs or expenses not to exceed Twelve Thousand Dollars (\$12,000). Defendant
6 agrees not to object to any such fee, cost or expense application up to those amounts. As a
7 condition of this Settlement, Class Counsel has agreed to pursue fees only in the manner reflected
8 by this Section. Any Class Counsel Attorneys' Fee and Expenses awarded by the Court shall be
9 paid from the Gross Settlement Amount. If the Class Counsel voluntarily reduces the request for
10 Attorneys' Fees and Expenses or the Court's award is less than set forth above, the difference shall
11 remain with the Net Settlement Amount.

12 The Attorneys' Fees and Expenses approved by the Court shall encompass: (a) all work
13 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
14 represent the Settlement Class through the date of this Agreement; (b) all work to be performed and
15 costs to be incurred in connection with approval by the Court of the Settlement set forth in this
16 Agreement; (c) all work to be performed and costs and expenses, if any, incurred in connection
17 with administering the Class Settlement through the Effective Date; and (d) may be based on the
18 Catalyst Theory and/or Common Fund Doctrine.

19 5.7 **Payment of Class Counsel Attorneys' Fees and Expenses.** Class
20 Counsel Attorneys' Fees and Expenses as awarded by the Court shall be paid by the Settlement
21 Administrator from the Gross Settlement Amount within ten (10) calendar days of the Effective
22 Date.

23 **6. ADMINISTRATION COSTS AND EXPENSES**

24 6.1 **The Settlement Administrator's Costs and Expenses.** All costs and
25 expenses due to the Settlement Administrator in connection with its administration of the
26 Settlement described in the Agreement, including, but not limited to, formatting and mailing the
27 Notice Packet by first class, U.S. Mail, performing a National Change of Address database search
28 to update Class Member addresses prior to the initial mailing of the Notice Packets, performing

1 skip-traces to locate and update Settlement Class Members' address on the return of undelivered
2 Notice Packets, establishing a toll-free number and post office box for the receipt of Class Member
3 communications; processing Opt-Out requests (and sending those to counsel for Defendant) and
4 objections, calculating, and distributing Individual Settlement Payments, and payments to PAGA
5 Members, tax reporting, weekly status reports, and declarations as needed and requested by the
6 Parties or by the Court, among other tasks as reflected within this Agreement shall be paid by the
7 Settlement Administrator to the Settlement Administrator from the Gross Settlement Amount
8 within ten (10) calendar days of the Effective Date.

9 **7. NOTICE TO CLASS MEMBERS**

10 7.1 **Notice to Class Members.** Notice shall be provided to Settlement Class
11 Members in the following manner: within twenty-one (21) calendar days of Preliminary Approval
12 of the Settlement, Defendant shall electronically transmit the Class List and Data to the Settlement
13 Administrator. This information will not be shared with and/or provided to Class Counsel in any
14 way. The Administrator shall inform the Parties of its receipt of the Class List and Data by way of
15 email no later than two (2) days of receipt from Defendant and shall confirm with all parties the
16 number of Settlement Class Members.

17 Within ten (10) calendar days of receipt of the Class List and Data from Defendant, the
18 Settlement Administrator will mail by first-class U.S. Mail the Notice Packet. The exterior of the
19 mailing envelope shall include the words below the Administrator's address, the following:

20 **IMPORTANT LEGAL DOCUMENT:**
21 **You may get Money from a Class Action**
22 **Settlement; your prompt reply to correct a**
outdated address may be required.

23 The Class Notice will inform Settlement Class Members of the nature of the Action, the
24 allegations made, the claims being settled, and releases to be given, the employment information on
25 which their Individual Settlement Payment will be calculated, of the estimated amount of their
26 Individual Settlement Payment, and of their right to request exclusion, to object, and to dispute the
27 information on which their payments will be paid, and the deadline for doing any of these acts.
28 The Class Notice will also inform Settlement Class Members of the date, time, and place set for the

1 Final Approval and Fairness Hearing, and will advise them that they may appear at the Final
2 Approval and Fairness Hearing without first submitting a written objection.

3 7.2 **Disputing Information.** Settlement Class Members may dispute the
4 information on which their Individual Settlement Payment are calculated by returning a written
5 statement to the Administrator postmarked by the Response Deadline, in the manner described in
6 the Class Notice. The Settlement Class Member must provide information, documents or other
7 evidence supporting his or her position.

8 Upon the timely receipt of a dispute, the Settlement Administrator will notify Defense
9 Counsel in writing (email constitutes a writing for this purpose) of the dispute. Defendant's
10 records will be presumed determinative, absent information, documents or other evidence to rebut
11 Defendant's records, but the Settlement Administrator will evaluate the information submitted by
12 the Class Member and make a decision, as to the validity of such evidence.

13 7.3 **Returned Notice Packet.** In the event that a Notice Packet is returned to
14 the Settlement Administrator with a forwarding address affixed to the front, the Administrator will
15 re-send the Notice Packet to the forwarding address affixed thereto. If a Notice Packet is returned
16 because of an incorrect mailing address, without a forwarding address affixed, the Administrator
17 will promptly, and not longer than three (3) days of receipt of the returned Notice Packet, search for
18 a more current address by way of skip-trace using the Settlement Class Member's social security
19 number, and re-mail the Notice Packet to the Settlement Class Member if an updated address is
20 located. If the Class Member is currently employed by Defendant, the Administrator will inform
21 Defense Counsel who will endeavor to update the Settlement Class Member's mailing address.
22 The Administrator will work with Defendant to find the most current address. The Administrator
23 will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters,
24 Court orders, and fee, as agreed to with the Parties to trace the mailing address of any Settlement
25 Class Member for whom a Notice Packet is returned by the U.S. Postal Service as undeliverable.
26 These reasonable steps shall include, at a minimum, the tracking of all undelivered mail;
27 performing address searches for all mail returned without a forwarding address; and promptly re-
28 mailing to Settlement Class Members for whom new addresses are found. If the Notice Packet is

re-mailed, the Administrator will note for its own records and notify to Counsel for the Parties of the date of each such re-mailing as part of a weekly status report provided to the Parties.

7.4 Opt-Out Requests. The Class Notice will provide that Settlement Class Members who wish to exclude themselves from the Settlement Class and Settlement must mail to the Administrator a written request for exclusion postmarked by the Response Deadline (and pursuant to the terms of the Response Deadline). The date of mailing on the envelope shall be deemed the exclusive means for determining if a request for exclusion was timely received.

(i) To be valid, a request for exclusion must be timely and must comply with the instructions detailed in the Class Notice, including providing (1) the name and address of the Settlement Class Member requesting exclusion; (2) a statement expressing that the Settlement Class Member elects to be excluded from the Settlement; (3) the last 4 digits of their social security number [for identity verification purposes only]; and (4) a signature by the Settlement Class Member. If a question is raised about the authenticity of a signed request for exclusion, the Administrator will have the right to demand additional proof of the Settlement Class Member's identity.

(ii) A Settlement Class Member who submits a valid and timely Opt-Out request will not participate in or be bound by the Released Claims and the Judgment; however, should this individual be a PAGA Member, they will receive a portion of the PAGA penalty payment allocated to the PAGA Members, *i.e.*, 25% of the \$20,000, and will be bound by the PAGA Release. The Administrator will determine the individual PAGA payment by comparing the number of Pay Periods the PAGA Member was employed during the PAGA Period to the total number of Pay Periods all PAGA Members were employed during the PAGA Period. In this instance, any Class Member who submits a valid and timely Opt-Out request and who is also a PAGA Member will only be bound by the PAGA Release.

(iii) A Settlement Class Member who does not complete and mail a timely Opt-Out request in the manner and by the Response Deadline will automatically become a Participating Settlement Class Member, will receive an Individual Settlement Payment, and be bound by all terms and conditions of the Settlement, including the Released Claims if the

1 Settlement is approved by the Court, and by the Judgment, regardless of whether they have
2 objected to the Settlement.

3 7.5 **Report.** No later than five (5) business days after the deadline for
4 submission of Opt-Out / Objection requests, the Administrator will provide Class Counsel and
5 Defendant's Counsel with a complete and accurate count of Participating Settlement Class
6 Members and the non-participating Settlement Class Members in a signed Declaration.

7 7.6 **Objections to Settlement.** The Class Notice will provide instructions and
8 the manner for submitting written objections to the Settlement, and will indicate that only
9 Participating Settlement Class Members may object to the Settlement. If a Settlement Class
10 Member returns both a written objection and an Opt-Out request, the Opt-Out request will be
11 invalidated, and the written objection will be accepted.

12 Written objections must be postmarked and returned to the Administrator no later than the
13 Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for
14 determining if the written objection was timely. Written objections must be signed by the
15 Settlement Class Member and state the **last 4 digits of their social security number [for identity**
16 **verification purposes only]** and should set forth: (1) the full name and address of the objecting
17 Settlement Class Member; (2) the grounds for each objection made; and (3) whether the Settlement
18 Class Member intends to appear at the Final Approval Hearing. Either or both of the Parties may
19 file a response to any objection before the Final Approval Hearing. Any attorney who will
20 represent an individual objecting to this Settlement who has not filed a written objection must file a
21 notice of appearance with the Court and serve Class Counsel and Defendant's Counsel with this
22 notice by the Response Deadline. Any Settlement Class Member who fails to submit a timely
23 written objection or to present an objection at the Final Approval Hearing shall be deemed to have
24 waived any objections and shall be foreclosed from making any objection to the Settlement
25 whether by appeal or otherwise.

26 **8. FUNDING AND DISTRIBUTION**

27 8.1 **Funding of the Gross Settlement Amount and the Employer's Taxes.**

28 The Settlement Administrator will calculate the Employer's Taxes and inform Defendant

of the total amount of the Employer's Taxes due. The Administrator shall also provide Defendant with its bank wire instructions to establish the Qualified Settlement Fund (QSF).

Within three business (3) days of the Effective Date, Defendant shall transmit the Gross Settlement Amount of \$165,000.00 and the Employer's Taxes to the Settlement Administrator to pay: (1) the Class Counsel's Attorneys' Fees and Expenses, as approved by the Court; (2) the Incentive Award, as approved by the Court; (3) the Administrative Expenses, as approved by the Court; (4) the PAGA Payment of \$20,000.00 of which \$15,000.00 (the LWDA Payment) shall be remitted to the LWDA, with the remaining \$5,000.00 to be distributed to the PAGA Members; and (5) the remaining Net Settlement Amount to be distributed entirely to Participating Class Members on a proportionate basis. To the extent Participating Settlement Class Members worked during the PAGA Period, they will receive a proportionate share of the \$5,000 PAGA Penalty payment available to PAGA Members. In no event shall Defendant be obligated to pay more than \$165,000.00 plus the Employer's Taxes in connection with this Settlement.

8.2 **Distribution of the Gross Settlement Amount.** Within 10 calendar days of the Effective Date, the Administrator will pay to Participating Settlement Class Members, their Individual Settlement Payments via first-class regular U.S. Mail. Within 5 calendar days of the Effective Date, the Administrator will pay to Plaintiff, the Court-awarded Class Representative Incentive Payment; to Class Counsel, the Court-awarded Attorneys' Fees and Litigation Expenses Payment; to the LWDA, the Court-approved LWDA Payment; and to the Administrator, the Court-awarded Administration Fees and Expenses.

8.3 **Calculation of the Individual Settlement Amounts.** Participating Class Members will receive a pro-rated share of the NSA based on the total number of Weeks Worked as a Settlement Class Member any time during the Class Period, in relation to the aggregate number of Weeks Worked by all Participating Settlement Class Members, based on the following formula:

$$\text{Individual Settlement Payment} = \text{NSA} \times \frac{\text{Individual's Number of Weeks Worked}}{\text{Aggregate Weeks Worked by all Participating Settlement Class Members}}$$

The estimated amount of the Settlement Class Member's Individual Settlement Payment will be calculated by the Administrator and inserted in the Settlement Class Member's individual

1 Class Notice, together with their aggregate number of Weeks Worked during the Class Period, and
2 the number of pay periods employed during the PAGA Period. If a Settlement Class Member is
3 also a PAGA Member, they will also receive a proportionate share of \$5,000 (25% of the amount
4 allocated to PAGA) in addition to the Individual Settlement Payment as calculated above.
5 Defendant shall have no responsibility for deciding the accuracy of the Individual Settlement
6 Payments or any other payments made pursuant to this Agreement. Furthermore, as the
7 Administrator shall calculate the Employer's Taxes and Required Withholdings, and reporting such
8 amounts to the appropriate governmental authorities, Defendant shall have no responsibility for the
9 determination or payment of Employee's Taxes and Required Withholdings. The Class Notice will
10 inform Settlement Class Members that they will be solely responsible for any and all tax obligation
11 associated with their respective Individual Settlement Payments.

12 8.4 **Time for Payment of Taxes and Required Withholding and Individual**
13 **Settlement Amounts.** The Settlement Administrator shall make every effort to pay the
14 Employee's Taxes and the Required Withholding associated with each Participating Settlement
15 Class Member's Individual Settlement Payment as required by law upon the mailing of the
16 Participating Settlement Class Member's Individual Settlement Payment checks. If the Settlement
17 Administrator is not able to do so within the time period set forth above, it shall so inform Class
18 Counsel and Defense Counsel and provide an approximate date by which Employee's Taxes and
19 Required Withholding shall be paid.

20 8.5 **Non-Cashed Settlement Checks. Participating Settlement Class**
21 **Member shall have one hundred eighty days (180) to cash their checks.** Any funds associated
22 with uncashed checks after one hundred eighty (180) days will be sent to the Controller of the State
23 of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et*
24 *seq.*, for the benefit of those Settlement Class Members whose checks were voided.

25 8.6 **Time for Payment of PAGA Payment to the LWDA.** The Settlement
26 Administrator shall distribute to the LWDA the PAGA Payment approved by the Court no later
27 than ten (10) calendar days after the Effective Date.
28

1 **9. NULLIFICATION OF THIS AGREEMENT**

2 9.1 **Non-Approval of the Agreement.** If (a) the Court should for any reason
3 fail to approve this Agreement in the form agreed to by the Parties, or (b) the Court should for any
4 reason fail to enter a judgment on this Action, or (c) the approval of the Settlement and judgment is
5 reversed, modified or declared or rendered void, then the Settlement and conditional class
6 certification shall be considered null and void, and neither the Settlement, conditional class
7 certification, nor any of the related negotiations or proceedings shall be of any force or effect, and
8 all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement
9 has been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties
10 may attempt in good faith to cure any perceived defects in the Agreement to facilitate approval. In
11 the event the Court awards less than the requested amounts for Administration Fees, Class
12 Counsel's Attorneys' Fees and Expenses, Incentive Award, or the PAGA Payment, the difference
13 shall become part of the Net Settlement Amount.

14 9.2 **Parties' Right to Void Class Settlement.** If five percent (5%) or more of
15 the Settlement Class Members opt out of the Settlement, Defendant may, at its election, rescind the
16 Settlement and all actions taken in its furtherance of it will be thereby null and void. Defendant
17 must exercise this right of rescission, in writing, to Class Counsel, within five (5) business days
18 after the Administrator notifies the Parties of the total number of opt-outs. If the option to rescind
19 is exercised, then Defendant shall be solely responsible for all costs of the administration accrued
20 to that point.

21 Defendant also has the right to withdraw from the Settlement if the Court (1) does not
22 approve the material terms set forth in this Agreement after efforts to satisfy the Court's concerns
23 are made by the Parties, (2) does not conditionally certify the Settlement Class, (3) does not
24 conditionally certify a class releasing the Released Claims, or (4) does not grant final approval of
25 the Settlement, or enter Judgment, and the Parties will be restored to their positions as of the date
26 prior to the Joint Settlement Stipulation being fully executed, and they shall be equally responsible
27 for all costs of Administration accrued to that point.

1 9.3 **Invalidation.** Invalidation of any material portion of the Settlement shall
2 invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that
3 the remaining provisions of the Settlement are to remain in full force and effect.

4 9.4 **Stay Upon Appeal.** In the event of a timely appeal from the approval of
5 the Class Settlement and Judgment, the Judgment shall be stayed, and Defendant shall not be
6 obligated to fund the Gross Settlement Amount or take any other actions required by this
7 Agreement until all appeal rights have been exhausted by operation of law.

8 **10. MOTION FOR COURT APPROVAL**

9 10.1 **Preliminary Approval.** Class Counsel will submit this Agreement to the
10 Court along with a Motion for Order Granting Preliminary Approval of the Settlement. Each Party
11 shall cooperate to present the Settlement to the Court for preliminary approval in a timely fashion.
12 Prior to the filing of the Preliminary Approval Motion, Plaintiff's Counsel will provide the
13 Preliminary Approval Motion to Defendant for review and comment.

14 10.2 **Final Approval.** Following the close of the Response Deadline, and upon
15 a date set by the Court as set forth in the Order Granting Preliminary Approval, Plaintiff shall move
16 the Court for the entry of the final order certifying the Class for settlement purposes only and
17 approving the Settlement as being fair, reasonable and adequate to the Participating Settlement
18 Class Members within the meaning of California Rules of Court, Rule 3.769(c), (d) and (e) and for
19 the entry of a final judgment of the Action consistent with the terms of the Class Settlement and
20 California Rule of Court 3.769(h). Class Counsel and Defense Counsel shall submit to the Court
21 such pleadings and/or evidence as may be required for the Court's consideration in ruling on the
22 motion.

23 **11. RELEASES AND WAIVERS**

24 11.1 **Release of Claims by Plaintiff and the Participating Class Members.**
25 Upon the Effective Date, each Settlement Class Member who has not submitted a timely request to
26 Opt-Out and Plaintiff will be bound by the Judgment entered and will release the Released Parties,
27 and each of them, of and from any and all Released Claims for the Class Period. It is the desire of
28 the Parties and the Settlement Class Members to fully, finally, and forever settle, compromise, and

1 discharge the Released Claims during the Class Period. Each Settlement Class Member, except
2 those who timely Opt-Out, will be bound to the release of Released Claims as a result of the Class
3 Settlement and to the terms of the final judgment and the satisfaction of such judgment.

4 Settlement Class Members who do not opt out will be deemed to have acknowledged and
5 agreed that their claims for wages and/or penalties in the Action are disputed, and that their
6 Individual Settlement Amount constitutes payment of all sums allegedly due to them. Class
7 Members will be deemed to have acknowledged and agreed that California Labor Code Section
8 206.5 is not applicable to the Individual Settlement Amount. That section provides in pertinent
9 part as follows:

10 **“An employer shall not require the execution of a release of a claim or right on**
11 **account of wages due, or to become due, or made as an advance on wages to be earned, unless**
12 **payment of those wages has been made.”**

13 11.2 **Release by the LWDA, Plaintiff, and Aggrieved Employees.** The
14 LWDA, Plaintiff, and the Aggrieved Employees shall be deemed to have released the Released
15 Parties of any and all claims and/or causes of action under PAGA which are based upon the factual
16 allegations set forth in the operative complaint and arising at any time during the PAGA Period.

17 11.3 **Release of Claims by Plaintiff.** Plaintiff, on behalf of herself and her
18 heirs, executors, administrators, and representatives, shall and does forever release, discharge and
19 agree to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
20 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
21 demands, costs, losses, debt and expenses (including attorney fees and costs), known or unknown,
22 at law or in equity, which they may now have or may have after the signing of this Stipulation,
23 arising out of or in any way connected with their employment with or assignment at Defendant
24 including, the Released Claims, claims that were asserted or could have been asserted in the
25 Complaint(s), Action, and any and all transactions, occurrences, or matters between the Parties
26 occurring during the respective Class Period. Without limiting the generality of the foregoing, this
27 release shall include, but not be limited to, any and all claims under the (a) Americans with
28 Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the

1 Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in
2 Employment Act, as amended; (f) the Fair Standards Act, as amended; (g) the Equal Pay Act; (h)
3 the Employee Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget
4 Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l)
5 the Civil Rights Act of 1966; (m) the California Fair Employment and Housing Act; (n) the
6 California Constitution; (o) the California Labor Code; (p) the California Government Code; (q)
7 the California Civil Code; and (r) any and all other federal, state and local statutes, ordinances,
8 regulations, rules and other laws, and any and all claims based on constitutional, statutory, common
9 law or regulatory grounds as well as any other claims based on the theories of wrongful or
10 constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory
11 estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other
12 federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all
13 relief, no matter how denominated, including, but not limited to, overtime, wages, back pay, front
14 pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive
15 damages, damages for pain and suffering, and attorneys' fees and costs, and Plaintiffs hereby
16 forever release, discharge and agree to hold harmless Defendants and the Released Parties from any
17 and all claims for attorney fees and costs arising out of the matters released in this Stipulation.

18 Plaintiff specifically acknowledges that she is aware and familiar with the provisions of
19 Section 1542 of the California Civil Code, or any other similar provision under federal or state law,
20 which provides:

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

24 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights
25 and benefits she may have under Section 1542 as well as any other statutes or common law
26 principles of a similar effect. Plaintiff may hereafter discover facts in addition to or different from
27 those which she now knows or believes to be true with respect to the subject matter of all the
28 claims referenced herein, but stipulates and agrees that, upon the Effective Date, Plaintiff shall and

1 hereby does fully, and forever settle and release any and all claims against the Released Parties,
2 known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or
3 could have been asserted upon any theory of law or equity without regard to the subsequent
4 discovery existence of such different or additional facts.

5 **12. DUTIES OF THE PARTIES**

6 12.1 **Mutual Full Cooperation.** The Parties agree to cooperate fully with one
7 another to accomplish and implement the terms of this Agreement. Such cooperation shall include,
8 but not be limited to, execution of such other documents and the taking of such other actions as
9 may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best
10 efforts, including all effects contemplated by this Agreement and any other efforts that may become
11 necessary by Court order or otherwise, to effectuate the terms of this Agreement. As soon as
12 practicable after execution of this Agreement, Class Counsel, with the cooperation of Defendant
13 and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final
14 approval of this Agreement.

15 12.2 **Duty to Support and Defend the Settlement.** The Parties agree to abide
16 by all of the terms of the Settlement in good faith and to support the Class Settlement fully and to
17 use their best efforts to defend this Settlement from any legal challenge, whether by appeal or
18 collateral attack.

19 **13. MISCELLANEOUS PROVISIONS**

20 13.1 **Different Facts.** The Parties hereto, and each of them, acknowledge that,
21 except for matters expressly represented herein, the facts in relation to the dispute and all claims
22 released by the terms of this Agreement may turn out to be other than or different from the facts
23 now known by each party and/or its counsel, or believed by such Party or counsel to be true, and
24 each Party therefore expressly assumes the risk of the existence of different or presently unknown
25 facts, and agrees that this Agreement shall be in all respects effective and binding despite such
26 difference.

27 13.2 **No Prior Assignments.** The Parties represent, covenant, and warrant that
28 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,

1 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
2 cause of action, or right herein released and discharged except as set forth herein.

3 13.3 **Non-Admission.** Nothing in this Agreement shall be construed as or
4 deemed to be an admission by any Party of any liability, culpability, negligence, or wrongdoing
5 toward any other Party, or any other person, and the Parties specifically disclaim any culpability,
6 negligence, or wrongdoing toward each other or any other person. Each of the Parties has entered
7 into this Agreement with the intention to avoid further disputes and litigation with the attendant
8 inconvenience, expenses, and contingencies. Nothing herein shall constitute any admissions by
9 Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action.
10 Nothing herein shall constitute any admission by Defendant regarding the merits of the Claims in
11 this Action, including but not limited to claims for unpaid wages under California and/or federal
12 law. Nothing herein shall constitute an admission by Defendant that the Action was properly
13 brought as a class or representative action other than for settlement purposes. To the contrary,
14 Defendant has denied and continues to deny each and every material factual allegation and all
15 Claims. To this end, the Settlement of the Action, the negotiation and execution of this Agreement,
16 and all acts performed or documents executed pursuant to or in furtherance of this Agreement or
17 the Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence
18 of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual
19 allegations in the Complaint in the Action; and are not, shall not be deemed to be, and may not be
20 used as, an admission or evidence of any fault or omission on the part of Defendant in any civil,
21 criminal or administrative proceeding in any court, administrative agency or other tribunal.

22 13.4 **Media or Press.** Plaintiff and Defendant, and their respective counsel,
23 agree to limit public comment on this Class Settlement, the Action, and claims in the Action,
24 stating that the matter has been resolved to the satisfaction of the Parties. Neither Plaintiff or
25 Defendant shall initiate public comment and/or discuss with or present to the media or press.

26 13.5 **Non-Retaliation.** Defendant understands and acknowledges that it has a
27 legal obligation not to retaliate against any Settlement Class Member who elects to participate in
28 the Settlement or elects to Opt-Out of the Class. Defendant will refer any inquiries regarding this

1 Settlement to the Administrator or to Class Counsel and will not discourage, directly or indirectly,
2 Class Members from opting out or objecting to the Settlement.

3 To the extent permitted by law, named Plaintiff further acknowledges and agrees that she
4 no longer works for Defendant, that she will not knowingly seek employment with Defendant in
5 the future, that she has not knowingly applied, and will not knowingly apply, for any future
6 employment with Defendant, or its parent, subsidiaries or related entities, that should she obtain
7 employment with Defendant or such entities, she agrees that such employment shall be terminable
8 immediately, with or without cause. The Parties agree that Defendant had legitimate, non-
9 discriminatory and non-retaliatory reasons for ending the employment relationship.

10 13.6 **Construction.** The Parties hereto agree that the terms and conditions of
11 this Agreement are the result of lengthy, intensive, arms-length non-collusive negotiations between
12 the Parties and that this Agreement is not to be construed in favor of or against any party by reason
13 of the extent to which any Party or their counsel participated in the drafting of this Agreement. If
14 any of the dates in the Agreement fall on a weekend, bank or court holiday, the time to act shall be
15 extended to the next business day.

16 13.7 **Governing Law.** This Agreement is intended to and shall be governed by
17 the laws of the State of California, without regard to conflict of law principles, in all respects,
18 including execution, interpretation, performance, and enforcement.

19 13.8 **Notices.** Except for the mailing of the Notice Packet to Settlement Class
20 Members by the Administrator, any and all notices or other communications required or permitted
21 under this Agreement shall be in writing and shall be sufficiently given if delivered in person to the
22 Party or their counsel by U.S. certified mail, postage pre-paid, e-mail, facsimile, or overnight
23 delivery addressed to the address of the Party appearing in this Agreement.

24 13.9 **Captions and Interpretations.** Section titles or captions contained herein
25 are inserted as a matter of convenience and for reference only and in no way define, limit, extend,
26 or describe the scope of this Agreement or any provision thereof.

27 13.10 **Modification.** This Agreement may not be changed, altered, or modified,
28 except in writing signed by the Parties and approved by the Court. This Agreement may not be

1 discharged except by performance in accordance with its terms or by a writing signed by the
2 Parties.

3 13.11 Integration Clause. This Agreement contains the entire agreement
4 between the Parties relating to the Settlement of the Action and the transactions contemplated
5 thereby, and all prior or contemporaneous agreements, understandings, representations, and
6 statements, whether oral or written, and whether by a party or such party's legal counsel, are hereby
7 superseded. No rights under this Agreement may be waived except in writing as provided above.

8 13.12 Successors and Assigns. This Agreement shall be binding upon and inure
9 to the benefit of the Parties and Settlement Class Members (excluding only persons who timely
10 opt-out) and their respective present and former heirs, trustees, executors, administrators,
11 representatives, officers, directors, shareholders, agents, employees, insurers, attorneys,
12 accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent
13 companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and
14 assigns.

15 13.13 Corporate Signatories. Any person executing this Agreement or any
16 such related document on behalf of a corporate signatory or on behalf of a partnership hereby
17 warrants and promises, for the benefit of all Parties hereto, that such person has been duly
18 authorized by such corporation or partnership to execute this Agreement or any such related
19 document.

20 13.14 Execution in Counterparts. This Agreement shall become effective upon
21 its execution by all of the undersigned. The Parties may execute this Agreement in counterparts,
22 and execution of counterparts shall have the same force and effect as if all Parties had signed the
23 same instrument.

24 13.15 Attorneys' Fees, Costs and Expenses. Except as otherwise specifically
25 provided for herein, each Party shall bear their or its own attorneys' fees, costs and expenses,
26 taxable or otherwise, incurred by them in or arising out of the Action and shall not seek
27 reimbursement thereof from any other Party to this Agreement.

28

1 IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on
2 the date below their signatures of their representatives. The date of the Agreement shall be the date
3 of the latest signature.

4 March 22, 2022

CDF LABOR LAW LLP

5 ~~XXXXXXXXXXXX~~
February __, 2022



7 By: _____
8 David G. Hagopian, Counsel for Defendant
9 EMPLOYMENT SOLUTIONS
MANAGEMENT, INC.

10 February 22, 2022

11 By: Alissa Greenwalt
12 Alissa Greenwalt on behalf of Defendant
13 EMPLOYMENT SOLUTIONS
MANAGEMENT, INC.

14 February __, 2022

DYCHTER LAW OFFICES, APC

16 By: _____
17 Alexander I. Dychter
18 Counsel for Plaintiff CARMEN PRADO
ANDRADE

19 February __, 2022

UNITED EMPLOYEES LAW GROUP, PC

20 By: _____
21 Walter L. Haines
22 Counsel for Plaintiff CARMEN PRADO
ANDRADE

23 February __, 2022

24 By: _____
Carmen Prado Andrade, Plaintiff

1 IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on
2 the date below their signatures of their representatives. The date of the Agreement shall be the date
3 of the latest signature.

4 CDF LABOR LAW LLP

5 February __, 2022

6
7 By: _____
8 David G. Hagopian, Counsel for Defendant
9 EMPLOYMENT SOLUTIONS
MANAGEMENT, INC.

10 February __, 2022

11 By: _____
12 _____, on behalf of Defendant
13 EMPLOYMENT SOLUTIONS
MANAGEMENT, INC.

14 February 23, 2022

15 DYCHTER LAW OFFICES, APC

16 By: Alexander I. Dychter
17 Alexander I. Dychter
18 Counsel for Plaintiff CARMEN PRADO
ANDRADE

19 February 23, 2022

20 UNITED EMPLOYEES LAW GROUP, PC

21 By: Walter L. Haines
22 Walter L. Haines
23 Counsel for Plaintiff CARMEN PRADO
ANDRADE

24 Feb 23, 2022

25 February __, 2022

26 carmen prado
27 By: carmen prado (Feb 23, 2022 14:43 PST)
28 Carmen Prado Andrade, Plaintiff