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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

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

Plaintiff,

vs.

U.S. POLE COMPANY, INC., a California
corporation; and DOES 1 through 100,
inclusive

Defendant.

Case No. 20STCV36092

Honorable Stuart M. Rice
Department 1

CLASS ACTION

**DECLARATION OF TARA ZABEHI IN
SUPPORT OF PLAINTIFF’S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

[Plaintiff’s Motion for Preliminary Approval of
Class Action and PAGA Settlement;
Declaration of Proposed Class Representative
(Jose Cabrera); and [Proposed] Order filed
concurrently herewith]

Date: November 26, 2024
Time: 10:30 a.m.
Department: 1

Complaint Filed: September 22, 2020
FAC Filed: January 11, 2021
Trial Date: None Set

DECLARATION OF TARA ZABEHI

I, Tara Zabehe, hereby declare as follows:

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

LITIGATION AND REPRESENTATIVE AND CLASS ACTION EXPERIENCE

2. For over a decade, Lawyers *for* Justice, PC has almost exclusively focused on the prosecution of consumer and employment representatives and class actions, involving wage-and-hour claims, race discrimination, unfair business practices, or consumer fraud. Currently, Lawyers *for* Justice, PC is the attorney of record in dozens of employment-related putative class actions and representative actions in both state and federal courts in the State of California. Lawyers *for* Justice, PC has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements. During a relatively short time, in association with other law firms, Lawyers *for* Justice, PC has recovered millions of dollars on behalf of thousands of individuals in California.

3. Edwin Aiwazian is a Managing Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. He has extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, he has previously served as a pro bono mediator for the Los Angeles County Superior Court. In October of 2000, he obtained a Litigation Paralegal Certificate from the UCLA Extension Program. During the summer of 2000, he studied Legal Writing at Harvard University. From approximately September 2002 to approximately December 2002, he served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the United States Court of Appeals for the Ninth Circuit. From approximately June 2002 to approximately August 2002, he served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second

1 Appellate District. In December of 2004, he obtained a license to practice law from the California
2 State Bar. For over a decade, through his work at Lawyers *for* Justice, PC, he has almost
3 exclusively focused on the prosecution of consumer and employment class actions. While
4 employed by Lawyers *for* Justice PC, he has argued over one hundred (100) motions, taken or
5 defended over one hundred fifty (150) depositions, prepared dozens of expert witnesses for
6 deposition or trial, and attended over one hundred seventy-five (175) mediations. Together with
7 other attorneys at the firm, and in some cases in conjunction with co-counsel, he has successfully
8 litigated cases involving the executive, administrative, and other overtime exemptions to the State
9 of California and federal overtime compensation requirements. Under his supervision, Lawyers
10 *for* Justice, PC has successfully obtained class certification by contested motion practice in
11 approximately fifteen (15) cases in the last decade and litigated over 1,000 class action or
12 representative action cases.

13 4. Arby Aiwezian is a Member and Shareholder of Lawyers *for* Justice, PC. He
14 received his Bachelor of Arts degree from University of California, Los Angeles and graduated
15 magna cum laude. He earned a Juris Doctor degree, cum laude, from Southwestern Law School.
16 From approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the
17 Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District.
18 From approximately August 2008 to approximately December 2008, he served as a Judicial Extern
19 to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth Circuit.
20 He was admitted to practice law in California in 2010. He is admitted to practice before all courts
21 of the State of California and all United States District Courts in the State of California. He has
22 worked on many wage-and-hour class action and representative action cases, taking the lead in
23 taking and defending depositions, arguing motions, and attending mediations. He has played an
24 integral role in preparing matters for class certification, including and not limited to, successful
25 certification of a class in *Upson v. Sur La Table* (Los Angeles County Superior Court Case No.
26 BC424012), *Montazemi v. Regus Management* (Los Angeles County Superior Court Case No.
27 BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County Superior Court Case No.
28 RG13680477). Under his supervision, dozens of class action or representative cases have resulted

1 in settlements that have been granted court approval, including and not limited to, those listed in
2 paragraph 6 herein. He has handled over one hundred and fifty (150) mediations and worked on
3 over two hundred and fifty (250) class action or representative action cases which have resulted
4 in settlement.

5 5. Joanna Ghosh is a Managing Member of Lawyers *for* Justice, PC. She received a
6 Bachelor of Arts degree from California State University, Los Angeles in 2006, a Master of
7 Science degree from the London School of Economics in 2007, and a Juris Doctor degree from
8 Georgetown University Law Center in 2010. She is admitted to practice in California (since 2010)
9 and in New York (since 2013), and she is admitted to practice in all U.S. District Courts in
10 California, the U.S. Bankruptcy Court for the Central District of California, and the U.S. Supreme
11 Court. She has taken and defended dozens of depositions and successfully handled motion practice
12 in class action cases regarding discovery (including and not limited to, regarding class contact
13 information), class certification (both contested class certification and stipulated class
14 certification), arbitration agreements, coordination, and intervention. She has successfully
15 handled briefing and oral argument on appeal and obtained notable decisions regarding the Private
16 Attorneys General Act and employer efforts to compel arbitration, e.g., *Betancourt v. Prudential*
17 *Overall Supply*, 9 Cal.App.5th 439 (Cal. Ct. App., Mar. 7, 2017), cert. denied (Cal., May 24, 2017),
18 cert. denied (U.S., Dec. 11, 2017) and *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019). She has
19 significant experience with class actions, including and not limited to working on cases to obtain
20 class certification through contested motion practice and working on cases in the post-certification
21 stage (e.g., post-certification discovery, appeal, statistical sampling and pilot study, and trial
22 preparation in conjunction with co-counsel in a case involving a certified class consisting of
23 approximately 2,600 individuals). She also has extensive experience with class action and/or
24 representative action settlements, and she has handled this process in over three hundred (300)
25 cases. Under her, Edwin Aiwazian and Arby Aiwazian, Lawyers *for* Justice, PC has handled the
26 class certification and court approval process for hundreds of class action and/or representative
27 action matters that have successfully resolved. She is a member of the California Employment
28 Lawyers Association.

6. I am an attorney duly licensed to practice before all courts of the State of California and I am an attorney at Lawyers *for* Justice, PC. In May of 2016, I graduated from Pepperdine University School of Law with a Juris Doctorate degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Certificate in Dispute Resolution program. In June of 2013, I obtained a Bachelor of Arts degree in History and graduated with college honors from University of California, Los Angeles. From approximately August 2014 to approximately November 2014, I served as a Judicial Extern to the Honorable James Kaddo of the Los Angeles Superior Court. In 2017, I obtained a license to practice law from the California State Bar. Since 2017, I have worked at Lawyers *for* Justice, PC and my practice has almost exclusively focused on the prosecution of employment class actions and representative actions. At Lawyers *for* Justice, PC, I have worked on many wage-and-hour class action and representative action cases, taking the lead in taking and defending depositions, arguing motions, attending mediations, and preparing for trial. I have played an integral role in preparing matters for class certification, including and not limited to, successful certification of a class in *Davis v. Superior Med Surgical, Inc.* (San Bernardino County Superior Court Case No. CIVDS1505744), *Tellez v. Harvest Container Co., Inc.* (Tulare County Superior Court Case No. VCU64528), *Vilitchai v. Ametek Programmable Power, Inc., et al.* (San Diego County Superior Court Case No. 37-2015-00025968-CU-OE-CTL), and *Sanchez, et al. v. Auto-Chlor System of Washington, Inc.* (Los Angeles County Superior Court Case No. BC707670). I have worked on over two hundred fifty (250) class action or representative action cases which have resulted in settlement.

EXAMPLES OF RESULTS IN REPRESENTATIVE AND CLASS ACTION CASES

7. What follows are just a few examples of the type of results Lawyers *for* Justice, PC (“LFJ”) has achieved on behalf of its clients:

a) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a major property management company involving allegations of misclassification of various “manager” positions. On September 20, 2010, the court granted

1 final approval of the class action settlement. The Los Angeles County Superior Court Case
2 Number is BC400414.

3 b) LFJ, in association with co-counsel therein, represented the plaintiffs in a
4 wage-and-hour class action against a national retailer of household items involving allegations of
5 misclassification of the “Assistant Store Manager” position. On October 28, 2010, the court
6 granted final approval of the class action settlement. The Los Angeles County Superior Court
7 Case Number is BC413498.

8 c) LFJ, in association with co-counsel therein, represented the plaintiffs in a
9 wage-and-hour class action against a national property management company involving
10 allegations of misclassification of the “Property Manager” position. On May 23, 2012, the court
11 granted final approval of the class action settlement. The Los Angeles County Superior Court
12 Case Number is BC430918.

13 d) LFJ, in association with co-counsel therein, represented the plaintiffs in a
14 wage-and-hour class action against a national retailer involving allegations of misclassification of
15 the “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
16 certification. On August 26, 2013, the court granted final approval of the class action settlement.
17 The Los Angeles County Superior Court Case Number is BC424012.

18 e) LFJ, in association with co-counsel therein, represented the plaintiff in a
19 wage-and-hour class and PAGA representative action against a bank, involving allegations of
20 misclassification of the “Assistant Branch Manager” position. On August 27, 2013, the court
21 granted final approval of the class and PAGA representative action settlement. The Kern County
22 Superior Court Case Number is S-1500-CV-273194-LHB.

23 f) LFJ, in association with co-counsel therein, represented the plaintiff in a
24 wage-and-hour class and PAGA representative action against a national wholesale distributor of
25 plumbing and builder supplies, involving allegations of misclassification of multiple salaried
26 “manager” positions. On May 22, 2014, the court granted final approval of the class and PAGA
27 representative action settlement. The Sacramento County Superior Court Case Number is 34-
28 2012-00136285.

1 g) LFJ, in association with co-counsel therein, represented the plaintiff in a
2 wage-and-hour class action against a multinational corporation that provides global workplace
3 solutions, involving allegations of misclassification of the “Operations Manager” position. On
4 September 16, 2014, the court granted plaintiff’s motion for class certification. The Los Angeles
5 County Superior Court Case Number is BC478769.

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

11 i) LFJ, in association with co-counsel therein, represented the plaintiff in a
12 wage-and-hour class and PAGA representative action involving allegations of misclassification of
13 the salaried residential “Property Manager” position. On September 17, 2015, the court granted
14 plaintiff’s motion for class certification. On October 20, 2017, the court granted final approval of
15 the class and PAGA representative action settlement. The Los Angeles County Superior Court
16 Case Number is BC474784.

17 j) LFJ, in association with co-counsel therein, represented the plaintiffs in a
18 wage-and-hour class and PAGA representative action against a national retailer of upscale
19 hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court
20 granted final approval of the class and PAGA representative action settlement. The Los Angeles
21 County Superior Court Case Numbers are BC516795 and JCCP4794, and the Judicial Council
22 Coordination Proceeding Number is 4794.

23 k) LFJ, in association with co-counsel therein, represented the plaintiffs in a
24 wage-and-hour class action against a national retailer of apparel and fashion accessories, on behalf
25 of non-exempt employees. On August 5, 2016, the court granted final approval of the class action
26 settlement. The Los Angeles County Superior Court Case Number is BC488069.

27 l) LFJ, in association with co-counsel therein, represented the plaintiffs in a
28 wage-and-hour class action against a national retailer of apparel, accessories, and home products,

1 involving allegations of misclassification of the “Department Manager” position. On August 12,
2 2016, the court granted the plaintiffs’ motion for class certification in part and certified a class. On
3 August 6, 2019, the court granted final approval of the class action settlement. The Alameda
4 County Superior Court Case Number is RG13680477.

5 m) LFJ represented the plaintiff in a PAGA representative action against a real
6 estate and property management company, on behalf of non-exempt employees. On November 4,
7 2016, the court granted approval of the PAGA representative action settlement. The Orange
8 County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

9 n) LFJ, in association with co-counsel therein, represented the plaintiffs in a
10 wage-and-hour class and PAGA representative action against a full-service bank, on behalf of non-
11 exempt employees. On November 18, 2016, the court granted final approval of the class and
12 PAGA representative action settlement. The San Francisco County Superior Court Case Number
13 is CJC-13-004839 and the Judicial Council Coordination Proceeding Number is 4839.

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

18 p) LFJ, on behalf of the plaintiff and respondent in a PAGA representative
19 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the
20 employer’s motion to compel arbitration, which resulted in a published opinion by the California
21 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply* (Cal.
22 App. 4th Dist., Mar. 7, 2017) 9 Cal.App.5th 439, review denied, cert. denied (U.S. Supreme Court
23 Docket No. 17-254). The Riverside County Superior Court Case Numbers are RIC1503952 and
24 RICJCCP5046, and the Judicial Council Coordination Proceeding Number is 5046.

25 q) LFJ, in association with co-counsel therein, represented the plaintiffs in a
26 wage-and-hour class and PAGA representative action against a consumer packaging company, on
27 behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the class
28

1 and PAGA representative action settlement. The Los Angeles County Superior Court Case
2 Number is BC590429.

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

8 s) LFJ, in association with co-counsel therein, represented the plaintiffs in a
9 wage-and-hour class and PAGA representative action against a lumber and hardware company on
10 behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the class
11 and PAGA representative action settlement. The Orange County Superior Court Case Number is
12 30-2014-00747750-CU-OE-CXC.

13 t) LFJ represented the plaintiff in a wage-and-hour class and PAGA
14 representative action against a property management company, on behalf of non-exempt
15 employees. On June 14, 2017, the court granted final approval of the class and PAGA
16 representative action settlement. The Los Angeles County Superior Court Case Number is
17 BC586234.

18 u) LFJ represented the plaintiff in a wage-and-hour class and PAGA
19 representative action against a food company on behalf of non-exempt employees. On June 30,
20 2017, the court granted final approval of the class and PAGA representative action settlement. The
21 Sacramento County Superior Court Case Number is 34-2015-00175871.

22 v) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
23 representative action against a chocolate company on behalf of non-exempt employees. On July
24 19, 2017, the court granted final approval of the class and PAGA representative action settlement.
25 The Alameda County Superior Court Case Number is RG15764300.

26 w) LFJ firm represented the plaintiff in a PAGA representative action, against
27 the parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
28

1 October 18, 2017, the court granted approval of the PAGA representative action settlement. The
2 Los Angeles County Superior Court Case Number is BC569664.

3 x) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
4 representative action against a manufacturer of plastic containers on behalf of non-exempt
5 employees. On October 31, 2017, the court granted final approval of the class and PAGA
6 representative action settlement. The Los Angeles County Superior Court Case Number is
7 BC577233.

8 y) LFJ, in association with co-counsel therein, represented the plaintiffs in a
9 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
10 employees. On December 11, 2017, the court granted final approval of the class and PAGA
11 representative action settlement. The Los Angeles County Superior Court Case Number is
12 BC569646.

13 z) LFJ, in association with co-counsel therein, represented the plaintiffs in a
14 wage-and-hour class and PAGA representative action against a property management company
15 on behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court granted final
16 approval of the class and PAGA representative action settlement. The Los Angeles County
17 Superior Court Case Number is JCCP4819 and the Judicial Council Coordination Proceeding
18 Number is 4819.

19 aa) LFJ, in association with co-counsel therein, represented the plaintiffs in a
20 wage-and-hour class and PAGA representative action against a global provider of flexible office
21 space solutions. On February 15, 2018, the court granted final approval of the class and PAGA
22 representative action settlement. The Los Angeles County Superior Court Case Number is
23 BC498401.

24 bb) LFJ, in association with co-counsel therein, represents the plaintiff in a
25 wage-and-hour class action against a container manufacturer, on behalf of non-exempt employees.
26 On October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare
27 County Superior Court Case Number is VCU264528.
28

1 cc) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
2 representative action against a behavioral health service provider on behalf of non-exempt
3 employees. On November 13, 2018, the court granted final approval of the class and PAGA
4 representative action settlement. The Alameda County Superior Court Case Number is
5 RG16811450.

6 dd) LFJ, in association with co-counsel therein, represented the plaintiff in a
7 PAGA representative action against a global provider of products and services to the energy
8 industry, on behalf of hourly-paid and non-exempt employees. On November 19, 2018, the court
9 granted approval of the PAGA representative action settlement. The Kern County Superior Court
10 Case Number is S-1500-CV-280215-SDC.

11 ee) LFJ, in association with co-counsel therein, represents the plaintiff in a
12 wage-and-hour class action against a parking company on behalf of non-exempt employees. On
13 September 3, 2019, the court granted the plaintiff's motion for class certification and certified a
14 class. The Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial
15 Council Coordination Proceeding Number is 4886.

16 ff) LFJ, in association with co-counsel therein, represents the plaintiffs in a
17 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
18 employees. On September 27, 2019, the court granted the plaintiffs' motion for class certification
19 in part and certified a class. The Alameda County Superior Court Case Number is RG15757606
20 and the Judicial Council Coordination Proceeding Number is 4921.

21 gg) LFJ, in association with co-counsel therein, represented the plaintiffs in a
22 wage-and-hour class and PAGA representative action against a national retailer of apparel and
23 fashion accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted
24 the plaintiffs' motion for class certification in part and certified a class. On May 14, 2021, the
25 court granted final approval of the class and PAGA representative action settlement. The
26 Sacramento County Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

27 hh) LFJ, in association with co-counsel therein, represents the plaintiff in a
28 wage-and-hour class and PAGA representative action against a medical equipment supplier on

1 behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion
2 for class certification and certified a class. The San Bernardino County Superior Court Case
3 Number is CIVDS1505744.

4 ii) LFJ, in association with co-counsel therein, on behalf of the plaintiff and
5 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
6 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
7 notable decision from the California Supreme Court clarifying the law regarding PAGA claims,
8 *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175. On February 21, 2020, the court granted approval
9 of the PAGA representative action settlement. The San Diego County Superior Court Case
10 Number is 37-2016-00005578-CU-OE-CTL.

11 jj) LFJ, in association with co-counsel therein, represents the plaintiff in a
12 wage-and-hour class and PAGA representative action against a medical equipment supplier on
13 behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion
14 for class certification and certified a class. The San Bernardino County Superior Court Case
15 Number is CIVDS1505744.

16 kk) LFJ, in association with co-counsel therein, represented the plaintiff in a
17 wage-and-hour class and PAGA representative action against a large national drug testing
18 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
19 plaintiff's motion for class certification and certified a class. On October 28, 2022, the court
20 granted final approval of the class and PAGA representative action settlement. The San Diego
21 County Superior Court Case Number is 37-2018-00019611-CU-OE-CTL.

22 ll) LFJ, in association with co-counsel therein, represents the plaintiffs in a
23 wage-and-hour class and PAGA representative action against a national retailer of sportswear,
24 footwear, and camping equipment on behalf of non-exempt employees. On March 16, 2020, the
25 court granted in part the plaintiff's motion for class certification and certified a class. The
26 Riverside County Superior Court Case Numbers are RIC1507504 and RICJCCP4930, and the
27 Judicial Council Coordination Proceeding Number is 4930.
28

mm) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against manufacturer and supplier of power products and services on behalf of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion for class certification and certified a class. On August 27, 2021, the court granted final approval of the class action settlement. The San Diego County Superior Court Case Number is 37-2015-00025968-CU-OE-CTL.

nn) LFJ represents the plaintiff in a wage-and-hour class action against a nutritional products manufacturer on behalf of non-exempt production line employees. On December 13, 2021, the court granted the plaintiff's motion for class certification in part and certified a class. The Solano County Superior Court Case Number is FCS051001.

oo) LFJ represents the plaintiffs in a wage-and-hour class action against a manufacturer and distributor of commercial dish and glass cleaning machines and supplies for the restaurant and hospitality industries, on behalf of hourly-paid or non-exempt employees. On July 13, 2023, the court granted the plaintiffs' motion for class certification and certified a class. The Los Angeles County Superior Court Case Number is BC707670.

pp) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a plastic packaging company on behalf of non-exempt employees. On June 8, 2020, the court granted in part the plaintiffs' motion for class certification and certified a class. On November 8, 2021, the court granted approval of the partial settlement of the action. On April 22, 2024, the court granted approval of the PAGA settlement and entered an order dismissing the action. The San Bernardino County Superior Court Case Number is CIVDS1507361.

qq) LFJ represents the plaintiffs in a wage-and-hour class action against a chain of restaurants on behalf of non-exempt employees. On July 22, 2024, the court granted in part the plaintiffs' motion for class certification and certified a class. The San Francisco Superior Court Case Number is CGC-20-582809.

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THE SETTLEMENT REACHED IN THE ACTION

8. Marked and attached hereto as “**EXHIBIT 1**” is the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, on the one hand, and Defendant U.S. Pole Company, Inc. (“Defendant”), on the other hand (together, the “Parties”). The Parties and their counsel have approved the proposed Notice of Class Action Settlement (“Class Notice”), which is attached to the Settlement Agreement as “**Exhibit A**” and respectfully request that the Court approve it as well. Additionally, marked and attached hereto as “**EXHIBIT 2**” is redline comparison the Settlement Agreement and the [Model] Class Action Settlement Agreement and Class Notice provided by the Court.

9. Based on information provided by Defendant, as of February 15, 2024, the Class is estimated to consist of approximately 389 individuals.

10. The effectiveness of Lawyers for Justice, PC (“Class Counsel”) in prosecuting this matter has translated into tangible monetary benefits in the following respects: (1) Class Members, the State of California, and Aggrieved Employees recover over a reasonably short period of time as opposed to waiting additional years for the same, or possibly worse, result; (2) a guaranteed result that compares favorably with other complex wage-and-hour class and/or representative action settlements of similar type given the strengths and weaknesses of the case; and (3) significant savings in attorneys’ fees and/or costs that would have only increased significantly had the case progressed through certification, trial, and/or appeals.

11. Class Counsel has litigated the case for over two (2) years and was actively preparing the matter for class certification and trial. Counsel for the Parties have engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Mark S. Rudy, Esq. (the “Mediator”), a well-respected mediator experienced in mediating complex labor and employment matters. In the course of mediation and settlement discussions, counsel for the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, Defendant’s financial condition, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and

rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things. During all settlement discussions, both sides conducted their negotiations at arm's length in an adversarial position. Arriving at a settlement that was acceptable to both sides was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial. After conducting extensive investigations, informal discovery, exchange of information, and settlement negotiations, and with the aid of the Mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation. The Settlement is a fair, reasonable, and adequate resolution of the Released Class Claims of Plaintiff and Participating Class Members and of the Released PAGA Claims of the State of California and Aggrieved Employees, against the Released Parties.

12. Prior to reaching the Settlement, Class Counsel investigated the veracity, strength, and scope of the claims, and was preparing for class certification and trial. Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data obtained from Defendant, Plaintiff, and other sources. The large volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records (including, and not limited to, Leave Requests, Vacation Requests, Overtime Requests, Meal Break Waiver Form, Wage Increase form, Pay statements and Arbitration agreement), a random sampling of Class Members' time and wage records, Defendant's operations and employment practices, forms, procedures, and policies (including, and not limited to, Job description, 401k notice and HIPAA Rights notice), among other information and documents. Class Counsel had the opportunity to interview Plaintiff and other Class Members to gather facts and to identify potential witnesses. Counsel for the Parties met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation. Class Counsel also drafted Plaintiff's mediation brief

1 and prepared for and attended court proceedings, settlement negotiations, and the mediation,
2 among other tasks.

3 13. Counsel for the Parties have also invested time researching and investigating the
4 applicable law, which is often evolving as it relates to certification, representative PAGA claims,
5 off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims
6 and damages, and Defendant's defenses thereto, as well as facts discovered. Based on Class
7 Counsel's analysis, the result achieved in this litigation is fair, adequate, and reasonable.

8 14. The Settlement provides for a Gross Settlement Amount of Five Hundred Thousand
9 Dollars and Zero Cents (\$500,000.00). The Net Settlement Amount is the Gross Settlement
10 Amount, less the following payments in the amounts approved by the Court: Class Counsel Fees
11 Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment,
12 Administration Costs and PAGA Penalties. Assuming that the amounts allocated under the
13 Settlement toward these payments are awarded by the Court, the Net Settlement Amount that will
14 be available for distribution to Participating Class Members is currently estimated to be
15 \$225,500.00. Additionally, 75% of the PAGA Amount (i.e., the LWDA PAGA Payment), which
16 is \$37,500.00 out of \$50,000.00, will be distributed to the LWDA and 25% of the PAGA Amount,
17 which is \$12,500.00 out of \$50,000.00, will be distributed to Aggrieved Employees. The Net
18 Settlement Amount will be fully distributed to Participating Class Members and the PAGA
19 Penalties will be fully distributed to the LWDA and Aggrieved Employees, in accordance with the
20 terms of the Settlement, and there is no reversion to Defendant.

21 15. The Parties have agreed to retain Phoenix Settlement Administrators
22 ("Administrator" or "Phoenix") to handle the notice and settlement administration process. The
23 Parties respectfully request that the Court appoint Phoenix to handle these procedures and serve
24 as the Administrator. Defendant will provide the Administrator with a list of Class Members that
25 Defendant will diligently and in good faith compile from its records, which will include each Class
26 Member's full name, last-known mailing address, Social Security number, and hire and
27 termination dates reflecting the number of Workweeks during the Class Period and number of
28 PAGA Pay Periods during the PAGA Period ("Class Data"). The Administrator will calculate each

1 Class Member's estimated share of the Net Settlement Amount ("Individual Settlement Share")
2 and estimated share of the 25% of the PAGA Penalties ("Individual PAGA Payment"). The
3 Administrator will also receive Requests for Exclusions, objections, and challenges regarding
4 Workweeks and/or PAGA Pay Periods; provide necessary reports and declarations; post
5 information of interest to Class Members; calculate, subtract, and transmit necessary taxes and
6 withholdings; prepare and submit informational and other tax filings and documents; issue and
7 transmit all payments provided for by the Settlement, including and not limited to, mailing
8 payments to Participating Class Members and Aggrieved Employees; and perform any other usual
9 and customary duties for administering a class action settlement. Administration Costs are
10 currently estimated not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00) and will
11 be paid out of the Gross Settlement Amount, subject to approval of the Court.

12 16. Based on investigation and information discovered, Class Counsel believes that
13 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations
14 that Defendant, with respect to Plaintiff and the Class Members, *inter alia*, failed to properly pay
15 overtime and minimum wages, failed to provide compliant meal and rest periods and to pay
16 associated premium pay, failed to timely pay wages during employment and upon termination of
17 employment, failed to provide compliant wage statements, failed to maintain requisite payroll
18 records, and failed to reimburse necessary business expenses, and thereby engaged in unfair
19 business practices in violation of California Business and Professions Code section 17200, *et seq.*
20 and conduct giving rise to civil penalties recoverable under the Private Attorneys General Act of
21 2004 (California Labor Code sections 2698, *et seq.*). Plaintiff also asserted that he and Class
22 Members were expected to perform similar job duties and were subject to the same or similar
23 operations and employment policies, practices, and procedures. Additionally, Plaintiff asserted
24 that Defendant's recordkeeping practices with respect to Plaintiff and Class Members were
25 substantially the same during the time period at issue. As a result of said alleged uniform practices,
26 Plaintiff claims that he and putative class members were not paid all of the compensation that was
27 owed to them by Defendant. Thus, in Class Counsel's view, it is clear that the outcome of this
28 litigation would be determined by Defendant's uniform operations and employment practices,

1 policies, and procedures that Plaintiff alleges applied across Defendant's hourly-paid or non-
2 exempt employees in California during the relevant time period.

3 17. Class Counsel is aware of the defenses and position of Defendant but believes that
4 Plaintiff could potentially obtain class certification despite many obstacles. Class Counsel has
5 also taken into account the uncertainty and risk of the outcome of further litigation, and the
6 difficulties and delays inherent in such litigation, including those involved in class certification
7 and/or representative adjudication. Class Counsel further recognizes the burdens of proof
8 necessary to establish liability for the claims asserted in the lawsuit, Defendant's defenses, and the
9 difficulties in establishing entitlement to monetary recovery. Class Counsel has also considered
10 the settlement discussions, as well as the evaluations of the mediator, who is experienced and well-
11 regarded in complex labor and employment matters.

12 18. Defendant, on the other hand, denied and continues to deny any liability and
13 wrongdoing of any kind associated with the allegations in the lawsuit, and further denies that the
14 lawsuit is appropriate for class treatment or representative adjudication for any purpose other than
15 the Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides have
16 also had the opportunity to conduct investigations and gather documents and information relating
17 to Plaintiff's and Class Members' employment with Defendant, and Defendant's operations and
18 employment policies, practices, and procedures. Counsel for the Parties also reviewed and
19 analyzed a large volume of documents and data, including but not limited to a random sampling
20 of Class Members' time and pay information, to determine the potential value and strength of the
21 claims. The available information enabled Class Counsel to assess and value the class and PAGA
22 claims and prepare violation, damages, and penalties analyses and models. Accordingly, counsel
23 for the Parties have conducted adequate investigation and discovery to be sufficiently informed of
24 the nature and extent of the class and PAGA claims, and to enable both sides to fully evaluate the
25 Settlement for its fairness, adequacy, and reasonableness. The Settlement takes into account the
26 strengths and weaknesses of each side's position and the uncertainty of how the case might have
27 concluded at certification, trial, and/or appeals.

28 19. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees

1 in an amount of up to thirty-five percent (35%) of the Total Settlement Amount
2 (i.e., \$175,000.00) and expenses and costs in an amount not to exceed Thirty Thousand Dollars
3 and Zero Cents (\$30,000.00), which will be paid out of the Gross Settlement Amount, subject to
4 approval by the Court. It should be noted that Class Counsel has borne all of the risks and costs
5 of litigation and will not receive any compensation until recovery is obtained.

6 20. The Settlement Agreement provides for payment of up to Seven Thousand Five
7 Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff as a Class Representative Service
8 Payment, to be paid out of the Gross Settlement Amount subject to approval by the Court. Plaintiff
9 spent considerable time and effort to produce relevant documents and past employment records
10 and to provide the facts and evidence necessary to attempt to prove the allegations. Plaintiff was
11 available whenever Class Counsel needed him, and actively tried to obtain and provide
12 information that would facilitate the prosecution of this matter. Accordingly, it is appropriate and
13 just for Plaintiff to receive a Class Representative Service Payment, in addition to an Individual
14 Settlement Payment and Individual PAGA Payment, for his services in the matter on behalf of the
15 Class, State of California, and Aggrieved Employees.

16 21. On November 2, 2020, Plaintiff provided written notice to the California Labor and
17 Workforce Development Agency (“LWDA”) by online submission and to Defendant by Certified
18 Mail, of the specific provisions of the California Labor Code that Defendant is alleged to have
19 violated (“PAGA Notice”). A true and correct copy of the notice is attached hereto as “**EXHIBIT**
20 **3.**”

21 **RELATION TO PROPOSED CY PRES RECIPIENT**

22 22. The Parties selected Court Appointed Special Advocates (“CASA”), a nonprofit
23 organization consistent with Code of Civil Procedure Section 384, subd. (b) (the “Cy Pres
24 Recipient”).

25 23. Neither myself, Lawyers for Justice, PC, or any of its attorneys is involved in the
26 governance or management of Court Appointed Special Advocates, nor do I or they have any
27 interest—financial or otherwise—with Court Appointed Special Advocates which creates a
28 conflict of interest or could create the appearance of a conflict of interest.

1 24. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is
2 in the best interests of Plaintiff, the Class, Aggrieved Employees, and the State of California. Class
3 Counsel further submits that the Settlement is within an acceptable range of recovery for this type
4 of litigation given the strengths and weaknesses of the case, the inherent costs and risks of further
5 litigation, and the costs and risks associated with class certification, representative adjudication,
6 trial, and/or appeals.

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

9 Executed on this 12th day of August 2024, at Glendale, California.

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12 Tara Zabehe
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EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Jose Cabrera (“Plaintiff”) and Defendant U.S. Pole Company, Inc. (“Defendant”) in the lawsuit entitled *Jose Cabrera v. U.S. Pole Company, Inc.*, Los Angeles Superior Court Case No. 20STCV36092 (the “Action”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Jose Cabrera v. U.S. Pole Company, Inc.*, initiated on September 22, 2020 and pending in the Superior Court of the State of California, County of Los Angeles, Case No. 20STCV36092.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Costs” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Parties and approved by the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all current and former hourly-paid or non-exempt employees of Defendant in the State of California employed at any time during the PAGA Period.
- 1.5. “Class” or “Class Member(s)” mean all current and former hourly-paid or non-exempt employees of Defendant in the State of California who performed work at any time during the Class Period.
- 1.6. “Class Counsel” means Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Selena Matavosian of Lawyers *for* Justice, PC and all the lawyers of this firm acting on behalf of Plaintiff and the Class.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reasonable attorneys’ fees and reimbursement of expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s full name, last-known mailing address, Social Security number, and hire and termination dates reflecting the number of Workweeks during the Class Period and number of PAGA Pay Periods during the PAGA Period. The Class Data will be provided to the Settlement Administrator who will use the start and termination dates for each class member to calculate the Workweek.
- 1.9. “Class Member Address Search” means the Administrator’s investigation and search for Class Members’ current mailing addresses using all reasonably available sources, methods

and means including, but not limited to, the National Change of Address database and direct contact by the Administrator with Class Members.

- 1.10. “Class Notice” means the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as “**Exhibit A**” and incorporated by reference into this Agreement.
- 1.11. “Class Period” means the period from September 22, 2016 to the date of Preliminary Approval.
- 1.12. “Class Representative” or “Plaintiff” mean Jose Cabrera.
- 1.13. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.14. “Class Settlement” means the settlement and resolution of the Released Class Claims.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “Defendant” means U.S. Pole Company, Inc.
- 1.17. “Defense Counsel” means Vickie Grasu and Angeli Aragon of O’Hagan Meyer.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Class Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Class Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means entry of the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the hearing at which the Court will consider and determine whether the Settlement should be granted Final Approval.
- 1.21. “Gross Settlement Amount” means Five Hundred Thousand Dollars and Zero Cents (\$500,000.000) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 3.1 below. The Gross Settlement Amount will be used to pay Individual Settlement Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and Administration Costs.
- 1.22. “Individual PAGA Payment” means the Aggrieved Employees’ pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods credited during the PAGA Period, as provided in Paragraph 3.2.6 below.

- 1.23. "Individual Settlement Payment" means the net payment of each Participating Class Member's Individual Settlement Share, after reduction for the employee's share of taxes and withholdings with respect to the portion of the Individual Settlement Share allocated as wages, as provided in Paragraph 3.2.5 below.
- 1.24. "Individual Settlement Share" means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Settlement Agreement, to be calculated in accordance with Paragraph 3.2.5 below.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency.
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs. The remainder is to be paid to Participating Class Members as Individual Settlement Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Class Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "Operative Complaint" means the First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et seq. filed on January 11, 2021.
- 1.31. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.32. "PAGA Notice" means Plaintiffs November 2, 2020 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.33. "PAGA Pay Periods" means the number of weeks each Aggrieved Employee was employed by Defendant as an hourly-paid or non-exempt employee in California during the PAGA Period, which information will be provided to the Administrator by Defendant. PAGA Pay Periods are calculated by the Administrator, based on each Aggrieved Employees' employment for five (5) or more calendar days during a pay period based on hire and termination dates, as follows: if an Aggrieved Employee's hire date was within the PAGA Period and was on Monday, he or she will be credited for that PAGA Pay Period (i.e., he or she worked five (5) or more calendar days during this pay period), if an Aggrieved Employee's termination date was within the PAGA Period and was on a Friday, he or she will be credited for that PAGA Pay Period (i.e., he or she worked five (5) or more calendar days during this pay period). If an Aggrieved Employee's hire and/or termination date falls outside of the PAGA Period, the start and/or end dates of the PAGA Period (i.e., November 2, 2019 and/or the date of Preliminary Approval) shall be deemed the start

and/or end dates for that Aggrieved Employee.

- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties, in the amount of \$50,000.00, to be paid from the Gross Settlement Amount, allocated as 25% to the Aggrieved Employees (\$12,500.00) and 75% to the LWDA (\$37,500.00) in settlement of PAGA claims.
- 1.35. "PAGA Period" means the period from November 2, 2019 to the date of Preliminary Approval.
- 1.36. "PAGA Settlement" means the settlement and resolution of the Released PAGA Claims.
- 1.37. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class Settlement.
- 1.38. "Plaintiff" means Jose Cabrera, the named plaintiff in the Action.
- 1.39. "Preliminary Approval" means the entry of the Preliminary Approval Order.
- 1.40. "Preliminary Approval Order" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.41. "Released Class Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.42. "Released PAGA Claims" means the claims being released as described in Paragraph 5.4 below.
- 1.43. "Released Parties" means Defendant and its divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, clients, customers, suppliers, and vendors.
- 1.44. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member, in accordance with the requirements set forth in Paragraph 7.5 below.
- 1.45. "Response Deadline" means sixty (60) calendar days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) email or mail Requests for Exclusion from the Class Settlement, or (b) email or mail his or her Objection to the Class Settlement. Class Members to whom Class Notices are re-mailed after having been returned as undeliverable to the Administrator, the Response Deadline shall be extended by an additional fourteen (14) days from the original Response Deadline.
- 1.46. "Workweeks" means the number of weeks each Class Member was employed by Defendant as an hourly-paid or non-exempt employee in California during the Class Period, which information will be provided to the Administrator by Defendant. Workweeks

are calculated by the Settlement Administrator, based on each Class Members' employment for three (3) or more calendar days during a workweek based on hire and termination dates, as follows: if a Class Member's hire date was within the Class Period and was on Monday, Tuesday, or Wednesday, he or she will be credited for that Workweek (i.e., he or she worked three (3) or more calendar days during this workweek); if a Class Member's termination date was within the Class Period and was on a Wednesday, Thursday, or Friday, he or she will be credited for that Workweek (i.e., he or she worked three (3) or more calendar days during this workweek). If a Class Member's hire and/or termination date falls outside of the Class Period, the start and/or end dates of the Class Period (i.e., September 22, 2016 and/or the date of Preliminary Approval or the cut off date pursuant to Paragraph 8) shall be deemed the start and/or end dates for that Class Member

2. RECITALS.

- 2.1. On September 22, 2020, Plaintiff commenced the class action lawsuit entitled *Jose Cabrera v. U.S. Pole Company, Inc.* in the Superior Court of California for the County of Los Angeles, Case No. 20STCV36092, by filing the Class Action Complaint for Damages, which alleged ten causes of action against Defendant for: (1) failure to pay overtime wages pursuant to California Labor Code sections 510 and 1198 and the IWC Wage Orders; (2) failure to provide meal periods and associated premiums pursuant to California Labor Code sections 226.7 and 512(a) and the IWC Wage Orders; (3) failure to provide rest periods and associated premiums pursuant to California Labor Code sections 226.7 and the IWC Wage Orders; (4) failure to pay all minimum wages owed pursuant to California Labor Code sections 1194, 1197, and 1197.1 and the IWC Wage Orders; (5) failure to pay all wages owed at termination pursuant to California Labor Code sections 201 and 202 and the IWC Wage Orders; (6) failure to timely pay wages during employment pursuant to California Labor Code section 204 and the IWC Wage Orders; (7) failure to furnish compliant wage statements pursuant to California Labor Code section 226(a) and the IWC Wage Orders; (8) failure to keep complete or accurate payroll records pursuant to California Labor Code section 1174(d) and the IWC Wage Orders; (9) failure to reimburse all necessary business expenses pursuant to California Labor Code sections 2800 and 2802 and the IWC Wage Orders; and (10) violations of California Business & Professions Code sections 17200, *et seq.*
- 2.2. On November 2, 2020, Plaintiff provided written notice to the LWDA and to Defendant of the specific provisions of the California Labor Code that Defendant allegedly violated (i.e., PAGA Notice). Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice. On January 11, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (i.e., "Operative Complaint"), adding a cause of action against Defendant for civil penalties under California Labor Code § 2698, *et seq.*
- 2.3. On August 23, 2021, the Court entered an Order dismissing Plaintiff's class claims in the Operative Complaint, and Plaintiff's individual claims. On May 28, 2024, the Parties entered into a joint stipulation, thereby stipulating to add Plaintiff's individual claims and class claims into the Operative Complaint.

- 2.4 Defendant has denied the allegations in the Action, and denies all material allegations set forth in the Operative Complaint, and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Action, Released Class Claims, and Released PAGA Claims.
- 2.5. On March 14, 2023, the Parties participated in an all-day mediation presided over by Mark S. Rudy, Esq. Although the parties did not reach a resolution during the mediation, the Mediator presented a “Mediator’s Proposal” at the conclusion of mediation, which both parties accepted, and which led to this Agreement to settle the Action.
- 2.6. Prior to mediation, Plaintiff obtained, through formal and informal discovery, a random sampling of Class Members’ time and pay records, as well as information and documents concerning the claims set forth in the Action, including but not limited to, Defendant’s employee handbook and relevant wage and hour policies, datapoints, including and not limited to, information regarding the number of Class Members and Aggrieved Employees, the number of workweeks worked by the Class Members and Aggrieved Employees, and the average rate of pay of the Class Members. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.7. The Court has not yet granted class certification.
- 2.8. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$500,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Settlement Shares. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) (in addition to any Individual Settlement Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member).

Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount to be distributed to Participating Class Members. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35%, which is currently estimated to be One Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00) if the Gross Settlement Amount remains \$500,000.00, and a Class Counsel Litigation Expenses Payment of not more than Thirty Thousand Dollars and Zero Cents (\$30,000.00). Defendant will not oppose requests for these payments. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. These amounts will cover any and all work performed and any and all costs incurred by Class Counsel in connection with the Action, including without limitation all work performed to date, and all work to be performed and all costs to be incurred in connection with obtaining the Court's approval of the Settlement, as well as any objections raised, and any appeals necessitated by those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. With respect to the Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment, the Administrator may purchase annuities to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel. Any additional expenses for the use of attorney fee deferral vehicles shall be paid separately by Class Counsel and shall not be included in the Administration Costs. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requests, the Administrator will allocate the remainder to the Net Settlement Amount to be distributed to Participating Class Members. The administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

3.2.3. To the Administrator: The Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments under the Settlement, which is currently estimated not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00). To the extent actual Administration Costs are greater than the estimated amount stated herein, such excess amount will be disclosed to the Court and deducted from the Gross Settlement Amount, subject to approval by the Court. Any portion of the estimated, designated, and/or awarded Administration Costs which are not in fact

required to fulfill payment to the Administrator to undertake the required settlement administration duties will become part of the Net Settlement Amount to be distributed to Participating Class Members.

- 3.2.4. PAGA Penalties: Subject to approval by the Court, the Parties agree that the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Gross Settlement Amount will be allocated toward penalties under PAGA (“PAGA Penalties”), of which seventy-five percent (75%), or \$37,500.00, will be paid to the LWDA (i.e., the LWDA PAGA Payment) and twenty-five percent (25%) or, \$12,500.00, will be distributed to Aggrieved Employees on a *pro rata* basis, based on PAGA Pay Periods during the PAGA Period (i.e., Individual PAGA Payment).
- 3.2.5. Individual Settlement Share Calculations: Individual Settlement Shares will be calculated and apportioned from the Net Settlement Amount based on the Class Members’ Workweeks, as follows:
- a. After Preliminary Approval of the Settlement, the Administrator will divide the Net Settlement Amount by the total number of Workweeks credited by all Class Members to yield the “Estimated Workweek Value,” and multiply each Class Member’s individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.
 - b. After Final Approval of the Settlement, the Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members to yield the “Final Workweek Value,” and multiply each Participating Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.
- 3.2.6. Individual PAGA Payment Calculations: Individual PAGA Payments will be calculated and apportioned from the 25% share of the PAGA Penalties based on the Aggrieved Employees’ Workweeks, as follows: The Administrator will divide the 25% portion of the PAGA Penalties attributed to Aggrieved Employees, i.e. \$12,500.00, by the Workweeks worked by all Aggrieved Employees during the PAGA Period resulting in the PAGA Workweek Value and then multiplying the PAGA Workweek Value by the number of PAGA Workweeks credited to each individual Aggrieved Employee during the PAGA Period.
- 3.2.7. Tax Allocation of Individual Settlement Payments and Individual PAGA Payments. Twenty percent (20%) of each Participating Class Member’s Individual Settlement Payment will be allocated to settlement of wage claims (the “Wage Portion”). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty percent (80%) of each Participating Class Member’s Individual Settlement Payment will be allocated to settlement of claims for penalties and interest (the “Non-Wage Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Settlement Payment. Any payment for an Individual PAGA Payment will

be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary. The Administrator will have the option to pay the Individual Settlement Payment and Individual PAGA Payment by way of a single check.

- 3.2.8. Effect of Non-Participating Class Members on Calculation of Individual Settlement Payments. Non-Participating Class Members will not receive any Individual Settlement Payments. The Administrator will retain amounts equal to their Individual Settlement Payments in the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Workweeks. Based on a review of its records, during the period from September 22, 2016 to March 14, 2023, Defendant estimates there were 303 Class Members who collectively worked a total of 44,353 Workweeks, and during the period from November 2, 2019 to March 14, 2023, there were 189 Aggrieved Employees who worked a total of 20,339 PAGA Pay Periods.
- 4.2. Class Data. Not later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Notwithstanding this provision, Class Counsel shall also receive redacted Class Data that shall only disclose an identification number attributed to each Class Member and their associated Workweeks during the Class Period and each Aggrieved Employee and their associated PAGA Pay Periods during the PAGA Period. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator in two (2) installment payments: (a) \$250,000.00 to be paid within thirty (30) calendar days after Final Approval ("First Installment"), and (b) \$250,000.00 to be paid out six (6) months after the First Installment ("Second Installment").
- 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) calendar days after Defendant funds the Second Installment, and therefore the entirety of the Gross Settlement Amount, the Administrator will mail checks for all Individual Settlement Payments, Class Representative Service Payment, all Individual PAGA Payments, LWDA PAGA Payment, Administration Costs, Class Counsel Fees Payment, and Class Counsel Litigation

Expenses Payment.

- 4.4.1. The Administrator will issue checks for the Individual Settlement Payments and/or Individual PAGA Payments and send them to the Class Members and/or Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than one hundred eighty (180) calendar days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Settlement Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
 - 4.4.3. For any Class Member whose Individual Settlement Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Court Appointed Special Advocates ("CASA"), a nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) (the "Cy Pres Recipient"). The Parties, Class Counsel, and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.
 - 4.4.4. The payment of Individual Settlement Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
5. **RELEASES OF CLAIMS.** Upon the Effective Date and full funding of the Gross Settlement Amount (including all employer payroll taxes owed on the Wage Portion of the Individual Settlement Payments), Plaintiff, all Participating Class Members (i.e., Class Members who do not submit a valid and timely Request for Exclusion), and Aggrieved Employees will release claims against all Released Parties as follows:
- 5.2 **General Release of Claims by Plaintiff.** Upon the Effective Date and full funding of the

Gross Settlement Amount, Plaintiff will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of and from all claims arising from her employment with Defendant, separation of employment from Defendant, whether known or unknown, arising under any federal or local law, or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act, California Corporations Code, California Business and Professions Code, California Fair Employment and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for termination, lost wages, benefits, other employment compensation, emotional distress, medical expenses, other economic and non-economic damages, attorney fees, and costs, arising on or before the date on which the Settlement is executed. With respect to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and all rights and benefits available under California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands and agrees that claims or facts in addition to or different from those which are not known or believed by her to exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all claims she now has against the Released Parties, whether known or unknown, suspected or unsuspected. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

- 5.3. Released Class Claims by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on facts alleged in the Operative Complaint, including, any and all claims, actions, and causes of action, arising during the Class Period, including, but not limited to, claims for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2803 and Industrial Welfare Commission Wage Orders Nos. 1-2001, 4-2001, 7-2001, 9-2001, and 16-2001 for failing to pay overtime wages, failure to provide meal periods and/or pay meal premiums, failure to authorize/permit rest periods and/or pay rest premiums, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse necessary business expenses, and unfair or unlawful business practices pursuant to California Business and Professions Code § 17200, *et seq.* based on the aforementioned ("Released Class Claims"). Except as set forth in Section 5.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing

Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.4. Released PAGA Claims by Aggrieved Employees and the State of California: The State of California with respect to all Aggrieved Employees, including Non-Participating Class Members who are Aggrieved Employees, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties recoverable under the Private Attorneys General Act, California Labor Code section 2698, *et seq.*, that were alleged, or reasonably could have been alleged, in the Operative Complaint and PAGA Notice, arising during the PAGA Period, including but not limited to, claims for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2803 and Industrial Welfare Commission Wage Orders Nos. 1-2001, 4-2001, 7-2001, 9-2001, and 16-2001 for failing to pay overtime wages, failure to provide meal periods and/or pay meal premiums, failure to authorize/permit rest periods and/or pay rest premiums, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse necessary business expenses, and unfair or unlawful business practices pursuant to California Business and Professions Code § 17200, *et seq.* based on the aforementioned ("Released PAGA Claims").

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for preliminary approvals.

- 6.1. Defendant's Declaration in Support of Preliminary Approval. Within fourteen (14) calendar days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Cy Pres Recipient. In their declarations, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the settlement. Within fourteen (14) calendar days of the full execution of this Agreement, Defendant shall provide a declaration which explains Defendant's need for the payment plan in order to fund the settlement without substantial financial hardship, including detailed facts about the precise nature and extent of Defendant's inability to fund the contemplated settlement without the proposed payment plan.
- 6.2. Plaintiff's Responsibilities. Within thirty (30) calendar days of the full execution of this Agreement, Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to service; competency; operative procedures for protecting the security of Class Data; amounts of insurance

coverage for any data breach, declaration of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and/or the proposed Cy Pres Recipient; and the nature and extent of any financial relationship with Plaintiff, Class Counsel, or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator, and/or the proposed Cy Pres Recipient; (vi) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents, including the PAGA Notice (Labor Code section 2699.3, subd. (a)), complaints (Labor Code section 2699, subd. (1)(1)), and this Agreement (Labor Code section 2699, subd. (1)(2)); (vii) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than ninety (90) calendar days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval Order to the Administrator.
- 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1. Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators ("Phoenix") to serve as the Administrator and verified that, as a condition of appointment, Phoenix, agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Costs. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2. Employer Identification Number. The Administrator shall have and use its own or establish a separate Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4. Notice to Class Members.

7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as “**Exhibit A**”. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Settlement Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the number of Workweeks PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Members’ addresses using the National Change of Address database.

7.4.3. Not later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4. The deadlines for Class Members’ written objections to the Class Settlement, disputes regarding Workweeks and/or PAGA Pay Periods, and Requests for Exclusion from the Class Settlement will be extended an additional fourteen (14) calendar days from the original Response Deadline provided in the Class Notice for all Class Members whose Class Notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, Defendant, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5. Requests for Exclusion from the Class Settlement (Opt-Outs).

- 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by email or mail, a signed written Request for Exclusion not later than the Response Deadline. A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Class Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely emailed or postmarked by the Response Deadline. Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.
- 7.5.2. The Administrator may not reject a Request for Exclusion from the Class Settlement as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3. Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement are deemed to be Participating Class Members under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' release of Released Class Claims under Paragraph 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Class Settlement.
- 7.5.4. Class Members who submit a valid and timely Request for Exclusion from the Class Settlement are Non-Participating Class Members and shall not receive Individual Settlement Payments or have the right to object to the Class Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are also Aggrieved Employees are deemed to release the Released PAGA Claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual PAGA Payment.
- 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and/or PAGA Pay Periods (if any) allocated to the Class Member and/or Aggrieved Employee in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise

susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7. Objections to Class Settlement.

7.7.1. Only Participating Class Members may object to the Class Settlement and/or this Agreement, including contesting the fairness of the Class Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2. Participating Class Members may send written objections to the Administrator, by email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline.

7.7.3. Non-Participating Class Members have no right to object to the Class Settlement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will post information of interest to Class Members including the date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, and the Final Approval and the Judgment on a portion of its website. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls and emails.

7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) calendar days after the expiration of the Response Deadline (or any applicable extended Response Deadline), the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the full names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion from the Class Settlement ("Exclusion List"); (b) the full names and other identifying information of Class Members who have submitted invalid or untimely Requests for Exclusion from the Class Settlement; (c) copies of all Requests for Exclusion from the Class Settlement submitted (whether valid or invalid).

7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion from the Class Settlement (whether valid or invalid) received, objections to the Class Settlement received, challenges to Workweeks and/or PAGA Pay Periods

received and/or resolved, and checks mailed for Individual Settlement Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- 7.8.4. Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges to the number of Workweeks and/or PAGA Pay Periods credited to them. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5. Administrator’s Declaration. Not later than fourteen (14) calendar days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from the Class Settlement it received (both valid or invalid), the number of written objections to the Class Settlement and attach the Exclusion List as well as all objections received. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in the Court.
- 7.8.6. Final Report by the Administrator. Within ten (10) calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) calendar days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE**. Based on its records, Defendant estimates that: (1) during the period from September 22, 2016 to March 14, 2023, there were 303 Class Members and 44,353 total Workweeks, and (2) during the period from November 2, 2019 to March 14, 2023, there were 184 Aggrieved Employees who worked 20,339 PAGA Pay Periods. Should the qualifying Workweeks increase beyond ten percent (10%) worked by the Class Members during the period from September 22, 2016 to preliminary approval (i.e., more than 4,445 Workweeks), Defendant shall have the option to either: (a) 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 increases by 11% to 49,222 Workweeks, the Gross Settlement Amount will increase by one percent (1%)); or (b) cut off the Class Period as of the date the 49,222 Workweek threshold is reached.
9. **DEFENDANT’S RIGHT TO WITHDRAW**. If the number of valid Requests for Exclusion from

the Class Settlement identified in the Exclusion List exceeds ten percent (10%) of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the settlement. The Parties agree that, if Defendant withdraws, the settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Administration Costs incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw, in writing, not later than fourteen (14) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL. Not later than sixteen (16) court days before the calendared Final Approval Hearing, Class Counsel will file in Court, a motion for final approval of the Settlement that includes a request for approval of the Settlement, a proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Class Counsel shall provide drafts of these documents to Defense Counsel not later than three (3) calendar days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections to the Class Settlement. Each Party retains the right to respond to any objection to the Class Settlement raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Costs shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4. Waiver of Right to Appeal. Provided the Final Approval Order and Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment as set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Class Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally

resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Costs reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

12.1. No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint or Action have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Operative Complaint or Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval, or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Operative Complaint or Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed with the Court, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members, or to undertake required submissions of information and/or documents to the LWDA pursuant to PAGA.

- 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Class Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court. Notwithstanding the foregoing, the

Parties agree that any dates contained or contemplated in this Agreement may be modified by agreement of counsel for the Parties in writing without approval by the Court if the Parties agree and cause exists for such modification.

- 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) calendar days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff and Class Counsel:

Edwin Aiwarzian, Esq.

To Defendant:

Vickie Grasu

Arby Aiwarzian, Esq.
Joanna Ghosh, Esq.
Selena Matavosian, Esq.
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

Angeli Aragon
O'HAGAN MEYER.
21650 Oxnard Street, Suite 530
Woodland Hills, California 91367

12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 the date to bring a case to trial under CCP section 583.310 shall be extended for the entire period of this settlement process.

IT IS SO AGREED.

PLAINTIFF JOSE CABRERA

Dated: 06/28/2024

Electronically Signed: 2024-06-28 17:54:20 UTC - 172.56.168.178
Nintex AssureSign® b6c6bfe-bca0-4b22-b1f4-b1850162e417

Jose Cabrera, Plaintiff

DEFENDANT U.S. POLE COMPANY, INC.

Dated: _____

Full Name: _____

Title: _____

On behalf of U.S. Pole Company, Inc.

Arby Aiwarzian, Esq.
Joanna Ghosh, Esq.
Selena Matavosian, Esq.
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

Angeli Aragon
O'HAGAN MEYER.
21650 Oxnard Street, Suite 530
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IT IS SO AGREED.

PLAINTIFF JOSE CABRERA

Dated: _____

Jose Cabrera, Plaintiff

DEFENDANT U.S. POLE COMPANY, INC.

Dated: 30 May 24

Full Name: George Preston
Title: CEO

On behalf of U.S. Pole Company, Inc.

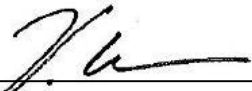
APPROVED AS TO FORM ONLY:

Dated: July 9, 2024

By: 
Joanna Ghosh, Esq.
Selena Matavosian, Esq.
LAWYERS for JUSTICE, PC

Attorneys for Plaintiff Jose Cabrera and Proposed Class Counsel

Dated: May 31, 2024

By: 
Vickie Grasu, Esq.
Angeli Aragon, Esq.
O'HAGAN MEYER

Attorneys for Defendant U.S. Pole Company, Inc.

EXHIBIT 2

**~~[MODEL]~~ CLASS ACTION AND PAGA SETTLEMENT -
AGREEMENT ~~AND CLASS NOTICE~~**

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between ~~plaintiff~~ Plaintiff Jose Cabrera (“Plaintiff”) and ~~defendant XYZ~~ (“XYZ”)-Defendant U.S. Pole Company, Inc. (“Defendant”) in the lawsuit entitled *Jose Cabrera v. U.S. Pole Company, Inc.*, Los Angeles Superior Court Case No. 20STCV36092 (the “Action”). The Agreement refers to Plaintiff and ~~XYZ Defendant~~ collectively as “Parties,” or individually as “Party.”–

~~1.~~

1. DEFINITIONS.-

~~1.1.-~~

“Action” means the Plaintiff’s lawsuit alleging wage and hour violations against ~~XYZ~~

1.1. ~~Defendant~~ captioned Jose Cabrera v. U.S. Pole Company, Inc., initiated on September 22, 2020 and pending in the Superior Court of the State of California, County of Los Angeles.—, Case No. 20STCV36092.

~~1.2.-~~

1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties -have agreed to appoint to administer the Settlement.—

~~1.3.-~~

1.3. “Administration ~~Expenses Payment~~ Costs” means the amount the Administrator will be paid –from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Parties and approved by the Court in - connection with Preliminary Approval of the Settlement.—

~~1.4.-~~

1.4. “Aggrieved Employee” means ~~[e.g., a person employed by XYZ in all current and former hourly-paid or non-exempt employees of Defendant in the State of California and classified as a~~ who worked for XYZ employed at any time during the PAGA Period].–.

~~1.5.-~~

1.5. “Class” ~~means [define class e.g., all persons employed by XYZ in or~~ “Class Member(s)” mean all current and former hourly-paid or non-exempt employees of Defendant in the State of California and classified as ~~who worked for XYZ]~~ who performed work at any time during the Class Period].–.

~~1.6. “Class Counsel” means~~ _____.

~~1.7.-~~

1.6. “Class Counsel” means Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Selena Matavosian of Lawyers for Justice, PC and all the lawyers of this firm acting on behalf of Plaintiff and the Class.

“Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean -

~~1.6.1.7.~~ the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees –and

reimbursement of expenses, respectively, incurred to prosecute the Action.—

~~1.8.~~

“Class Data” means Class Member identifying information in XYZ’s Defendant’s possession - including the Class Member’s full name, last-known mailing address, Social Security - number, ~~and~~ and hire and termination dates reflecting the number of Workweeks during the Class Period Workweeks and number of PAGA Pay Periods.—

~~1.7.1.8.~~ 1.9. “Class Member” or “Settlement Class Member” means a during the PAGA Period. The Class Data will be provided to the Settlement Administrator who will use the start and termination dates for each class member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a ~~Non-Participating Class Member who qualifies as an Aggrieved Employee).~~ to calculate the Workweek.

~~1.10.~~

~~1.8.1.9.~~ “Class Member Address Search” means the Administrator’s investigation and search for Class Members’ current ~~Class Member~~ mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, ~~skip~~ traces, and direct contact by the Administrator with Class Members.—

~~1.11.~~

~~1.9.1.10.~~ “Class Notice” means the ~~COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL,~~ to be Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members in English ~~[with a~~ and Spanish ~~translation, if applicable]~~ in the form, without material variation, attached as “Exhibit A” and incorporated by reference into this Agreement.—

~~1.12.~~

~~1.11.~~ “Class Period” means the period from _____ to _____.
~~1.13.~~ September 22, 2016 to the date of Preliminary Approval.

~~1.10.1.12.~~ “Class Representative” ~~means the named or~~ “Plaintiff in the operative complaint in” mean Jose Cabrera.
the Action seeking Court approval to serve as a Class Representative.—

~~1.14.~~

“Class Representative Service Payment” means the payment to the Class -

~~1.13.~~ Representative for initiating the Action and providing services in support of the Action. ~~1.15.~~

~~1.14.~~ “Class Settlement” means the settlement and resolution of the Released Class Claims.

~~1.11.1.15.~~ “Court” means the Superior Court of California, County of Los Angeles.—

~~1.16.~~ “XYZ” means named Defendant _____.

~~1.17.~~

~~1.16.~~ “Defendant” means U.S. Pole Company, Inc.

~~1.12.1.17.~~ “Defense Counsel” means _____ Vickie Grasu and Angeli Aragon of O’Hagan Meyer.

~~1.18.~~

“Effective Date” means the date by when both of the following have occurred: –

~~1.13.~~1.18. (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. —The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Class Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Class Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.—

~~1.19.~~

~~1.14.~~1.19. “Final Approval” means entry of the Court’s order granting final approval of the Settlement.—

~~1.20.~~

~~1.15.~~1.20. “Final Approval Hearing” means the Court’s—hearing on—the Motion—for—Final Approval—of—at which the Court will consider and determine whether the Settlement.— should be granted Final Approval.

~~1.21.~~ “Final Judgment” means the Judgment Entered by the Court upon Granting Final—
Approval of the Settlement.—

~~1.22.~~

~~1.16.~~1.21. “Gross Settlement Amount” means \$—————Five Hundred Thousand Dollars and Zero Cents (\$500,000.000) which is the total amount —XYZDefendant agrees to pay under the Settlement except as provided in Paragraph 93.1 below. —The— Gross Settlement Amount will be used to pay Individual ClassSettlement Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administrator’s Expenses. Administration Costs.

~~1.23.~~ “Individual Class—

1.22. “Individual PAGA Payment” means the Aggrieved Employees’ pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods credited during the PAGA Period, as provided in Paragraph 3.2.6 below.

1.23. “Individual Settlement Payment” means the net payment of each Participating Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the portion of the Individual Settlement Share allocated as wages, as provided in Paragraph 3.2.5 below.

~~1.23.~~1.24. “Individual Settlement Share” means the pro rata share of the Net Settlement Amount calculated according to the number of Workweeks—that a Class Member may be eligible to receive under the Settlement Agreement, to be calculated in accordance with Paragraph 3.2.5 below.
worked during the Class Period.—

~~1.24.~~ “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of—
25% of the PAGA Penalties calculated according to the number of Workweeks worked—
during the PAGA Period.—

~~1.25.~~

~~1.24.~~1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.—

~~1.26.~~

~~1.25.~~1.26. “LWDA” means the California Labor and Workforce Development Agency,—the agency entitled, under Labor Code section 2699, subd. (i).—.

~~1.27.~~

~~1.26.1.27.~~ “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).—

~~1.28.~~

“Net Settlement Amount” means the Gross Settlement Amount, less the following -payments in the amounts approved by the Court: -Individual PAGA Payments, the - LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees - Payment, Class Counsel Litigation Expenses Payment, and the Administration ~~Expenses- Payment.-Costs.~~ The remainder is to be paid to Participating Class Members as Individual -

~~1.27.1.28.~~ ClassSettlement Payments.—

~~1.29.~~

~~1.28.1.29.~~ “Non-Participating Class Member” means any Class Member who opts out of the Class Settlement by sending the Administrator a valid and timely Request for Exclusion.—

~~1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee- worked for XYZ for at least one day during the PAGA Period.—~~

~~1.31. “PAGA Period” means the period from _____ to _____.~~ⁱⁱⁱ—

~~1.32.—~~

1.30. “Operative Complaint” means the First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et seq. filed on January 11, 2021.

~~1.29.1.31.~~ “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).—~~1.33. “PAGA Notice” means Plaintiff’s _____ letter to XYZ and the - LWDA [and~~

~~1.30.1.32.~~ “PAGA Notice” means Plaintiff’s _____November 2, 2020 letter to XYZDefendant and the _____ LWDA} providing notice pursuant to Labor Code section 2699.3, subd.(a).—

~~1.34.—~~

1.33. “PAGA Pay Periods” means the number of weeks each Aggrieved Employee was employed by Defendant as an hourly-paid or non-exempt employee in California during the PAGA Period, which information will be provided to the Administrator by Defendant. PAGA Pay Periods are calculated by the Administrator, based on each Aggrieved Employees’ employment for five (5) or more calendar days during a pay period based on hire and termination dates, as follows: if an Aggrieved Employee’s hire date was within the PAGA Period and was on Monday, he or she will be credited for that PAGA Pay Period (i.e., he or she worked five (5) or more calendar days during this pay period); if an Aggrieved Employee’s termination date was within the PAGA Period and was on a Friday, he or she will be credited for that PAGA Pay Period (i.e., he or she worked five (5) or more calendar days during this pay period). If an Aggrieved Employee’s hire and/or termination date falls outside of the PAGA Period, the start and/or end dates of the PAGA Period (i.e., November 2, 2019 and/or the date of Preliminary Approval) shall be deemed the start and/or end dates for that Aggrieved Employee.

“PAGA Penalties” means the total amount of PAGA civil penalties, in the amount of \$50,000.00, to be paid -

from the Gross Settlement Amount, allocated as 25% to the Aggrieved Employees -

()(\$12,500.00) and ~~the~~ 75% to the LWDA

()(\$37,500.00) in settlement of PAGA -

claims.—

~~1.34. 1.35.-~~

1.35. "PAGA Period" means the period from November 2, 2019 to the date of Preliminary Approval.

1.36. "PAGA Settlement" means the settlement and resolution of the Released PAGA Claims.

~~1.31.1.37.~~ "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class Settlement.-

~~1.36.-~~

~~1.32.1.38.~~ "Plaintiff" means _____, Jose Cabrera, the named plaintiff in the Action.-

~~1.37.-~~

~~1.33.1.39.~~ "Preliminary Approval" means the Court's Order Granting entry of the Preliminary Approval ~~of the Settlement.- Order.~~

~~1.38.-~~

~~1.34.1.40.~~ "Preliminary Approval Order" means the proposed Court's Order Granting Preliminary ~~Approval and~~ Approval of PAGA the Settlement.-

~~1.39.-~~

~~1.35.1.41.~~ "Released Class Claims" means the claims being released as described in Paragraph 6.25.3 below.-

~~1.40.-~~

~~1.36.1.42.~~ "Released PAGA Claims" means the claims being released as described in Paragraph 6.25.4 below.-

~~1.41.-~~

"Released Parties" means: XYZ Defendant and ~~each of its former and present directors,~~ officers, shareholders, owners, [members], attorneys, insurers, divisions, affiliates, predecessors, successors, -

~~1.37.1.43.~~ shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns ~~-, subrogees, executors, partners, parents, subsidiaries~~ [affiliates].-, joint employers, insurers, clients, customers, suppliers, and vendors.

~~1.42.-~~

"Request for Exclusion" means a Class Member's submission of a written request -

~~1.38.1.44.~~ to be excluded from the Class Settlement signed by the Class Member.-, in accordance with the requirements set forth in Paragraph 7.5 below.

~~1.43.-~~

"Response Deadline" means ~~[e.g., sixty (60)]~~ calendar days after the Administrator mails the Class Notice -

~~1.39.1.45.~~ to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) ~~fax,~~ email, or mail Requests for Exclusion from the Class Settlement, or (b) ~~fax,~~ email, or mail his or her Objection to the Class Settlement. Class Members to whom Notice Packets Class Notices are ~~resent~~ re-mailed after having been returned as undeliverable to the Administrator-

~~shall have an additional 14 calendar days beyond,~~ the Response Deadline ~~has expired.-~~ shall be extended by an additional fourteen (14) days from the original Response Deadline.

~~1.44. "Settlement" means the disposition of the Action effected by this Agreement and the~~

Judgment.—

~~1.45. “Workweek” means any week during which a Class Member worked for XYZ for at least one day, during the Class Period.”—~~

~~2.~~

~~1.46. “Workweeks” means the number of weeks each Class Member was employed by Defendant as an hourly-paid or non-exempt employee in California during the Class Period, which information will be provided to the Administrator by Defendant. Workweeks are calculated by the Settlement Administrator, based on each Class Members’ employment for three (3) or more calendar days during a workweek based on hire and termination dates, as follows: if a Class Member’s hire date was within the Class Period and was on Monday, Tuesday, or Wednesday, he or she will be credited for that Workweek (i.e., he or she worked three (3) or more calendar days during this workweek); if a Class Member’s termination date was within the Class Period and was on a Wednesday, Thursday, or Friday, he or she will be credited for that Workweek (i.e., he or she worked three (3) or more calendar days during this workweek). If a Class Member’s hire and/or termination date falls outside of the Class Period, the start and/or end dates of the Class Period (i.e., September 22, 2016 and/or the date of Preliminary Approval or the cut off date pursuant to Paragraph 8) shall be deemed the start and/or end dates for that Class Member~~

2. RECITALS.-

~~2.1. On _____, Plaintiff commenced this Action by filing a Complaint—
alleging causes of action against XYZ for _____. [The Complaint is the
operative complaint in the Action (the “Operative Complaint.”)]~~
f

2.1. On September 22, 2020, Plaintiff commenced the class action lawsuit entitled *Jose Cabrera v. U.S. Pole Company, Inc.* in the Superior Court of California for the County of Los Angeles, Case No. 20STCV36092, by filing the Class Action Complaint for Damages, which alleged ten causes of action against Defendant for: (1) failure to pay overtime wages pursuant to California Labor Code sections 510 and 1198 and the IWC Wage Orders; (2) failure to provide meal periods and associated premiums pursuant to California Labor Code sections 226.7 and 512(a) and the IWC Wage Orders; (3) failure to provide rest periods and associated premiums pursuant to California Labor Code sections 226.7 and the IWC Wage Orders; (4) failure to pay all minimum wages owed pursuant to California Labor Code sections 1194, 1197, and 1197.1 and the IWC Wage Orders; (5) failure to pay all wages owed at termination pursuant to California Labor Code sections 201 and 202 and the IWC Wage Orders; (6) failure to timely pay wages during employment pursuant to California Labor Code section 204 and the IWC Wage Orders; (7) failure to furnish compliant wage statements pursuant to California Labor Code section 226(a) and the IWC Wage Orders; (8) failure to keep complete or accurate payroll records pursuant to California Labor Code section 1174(d) and the IWC Wage Orders; (9) failure to reimburse all necessary business expenses pursuant to California Labor Code sections 2800 and 2802 and the IWC Wage Orders; and (10) violations of California Business & Professions Code sections 17200, *et seq.*

~~2.2. On _____, November 2, 2020, Plaintiff filed a [e.g., First Amended
Complaint] alleging causes—
of action against XYZ for _____. The—
[e.g., First Amended] Complaint is the operative complaint in the Action (the “Operative
Complaint.”)]—XYZ denies the allegations in the Operative Complaint, denies any—
failure to comply with the laws identified in in the Operative Complaint and denies any—
and all liability for the causes of action alleged.—~~

2.2.provided written notice to the LWDA and to Defendant of the specific provisions of the California Labor Code

that Defendant allegedly violated (i.e., PAGA Notice). Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff _____ gave _____ timely _____ written notice to ~~XYZ~~ Defendant and the LWDA by sending the PAGA Notice. —On January 11, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (i.e., “Operative Complaint”), adding a cause of action against Defendant for civil penalties under California Labor Code § 2698, et seq.

~~2.3. On _____, [the Parties-~~

2.3. On August 23, 2021, the Court entered an Order dismissing Plaintiff’s class claims in the Operative Complaint, and Plaintiff’s individual claims. On May 28, 2024, the Parties entered into a joint stipulation, thereby stipulating to add Plaintiff’s individual claims and class claims into the Operative Complaint.

2.4 Defendant has denied the allegations in the Action, and denies all material allegations set forth in the Operative Complaint, and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Action, Released Class Claims, and Released PAGA Claims. _____

2.5. On March 14, 2023, the Parties participated in an all-day mediation presided over by _____ Mark S. Rudy, Esq. Although the parties did not reach a resolution during the mediation, the Mediator presented a “Mediator’s Proposal” at the conclusion of mediation, which both parties _____ accepted, _____ and _____ which _____ led to this Agreement to settle the Action—(describe alternative means of negotiation). _____

~~2.4.-~~

2.6. Prior to ☐ mediation—☐ negotiating the Settlement, Plaintiff obtained, through

☐ formal —☐ and informal discovery,

_____.a random sampling of Class Members’ time and pay records, as well as information and documents concerning the claims set forth in the Action, including but not limited to, Defendant’s employee handbook and relevant wage and hour policies, datapoints, including and not limited to, information regarding the number of Class Members and Aggrieved Employees, the number of workweeks worked by the Class Members and Aggrieved Employees, and the average rate of pay of the Class Members. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth -

in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot- Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).—

2.5-7. The Court ☐ has _____ ☐ has not yet granted class certification.

2.8. ~~2.6.~~ The Parties, Class Counsel, and Defense Counsel represent that they are not aware -of any other pending

matter or action asserting claims that will be extinguished or affected by the Settlement.—

3.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 98 below, -

~~XYZ~~Defendant promises to pay \$~~_____~~\$500,000.00 and no more as the Gross Settlement Amount {and to separately pay any and all employer payroll taxes owed on the Wage Portions of -the Individual Class Payments.} ~~XYZ~~Settlement Shares. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.14.3 of this Agreement.* The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. -None of the Gross Settlement Amount will -revert to ~~XYZ~~. Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and -

deduct the following payments from the Gross Settlement Amount, in the amounts - specified by the Court in the Final Approval:—

3.2.1. — To Plaintiff: -Class Representative Service Payment to the Class -

Representative of not more than \$~~_____~~Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) (in addition to any Individual Class Payment {and any Individual PAGA Settlement Payment} and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). ~~XYZ~~Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed -this amount.- As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service PaymentsPayment no later than {sixteen (16) court} days prior to the Final Approval Hearing. —If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount- to be distributed to Participating Class Members. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. —Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.—

3.2.2. —

To Class Counsel: -A Class Counsel Fees Payment of not more than ~~—%, 35%,~~ which is currently estimated to be \$~~_____~~One Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00) if the Gross Settlement Amount remains \$500,000.00, and a Class Counsel Litigation -

Expenses Payment of not more than \$~~_____~~. ~~XYZ~~Thirty Thousand Dollars and Zero Cents (\$30,000.00). Defendant will not oppose -

requests for these payments~~provided that do not exceed these amounts.~~ Plaintiff - and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class - Litigation Expenses Payment no later than {sixteen (16) court} days prior to the Final -

3.2.2. Approval Hearing. These amounts will cover any and all work performed and any and all costs incurred by Class Counsel in connection with the Action, including without limitation all work performed to date, and all work to be performed and all costs to be incurred in connection with obtaining the Court's approval of the Settlement, as well as any objections raised, and any appeals necessitated by those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. With respect to the Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment, the Administrator may purchase annuities to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel. Any additional expenses for the use of attorney fee deferral vehicles shall be paid separately by Class Counsel and shall not be included in the Administration Costs. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to be distributed to Participating Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. Members. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS -1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds XYZDefendant harmless, and indemnifies XYZDefendant, from any dispute or controversy regarding any division or sharing of any of these Payments. payments.

~~3.2.3.~~

To the Administrator: An Administrator Expenses PaymentThe Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments under the Settlement, which is currently estimated not to exceed - \$_____ except for a showing of good cause and as approved by the Court. Twelve Thousand Dollars and Zero Cents (\$12,000.00). To the extent the actual Administration Expenses are less or the Costs are greater than the estimated amount stated herein, such excess amount will be disclosed to the Court and deducted from the Gross Settlement Amount, subject to approval by the Court approves. Any portion of the estimated, designated, and/or awarded Administration Costs which are not in fact required to fulfill payment less than \$_____, to the Administrator will retain the remainder in to undertake the required settlement administration duties will become part of the Net Settlement Amount.

~~3.2.3. 3.2.4. To Each to be distributed to Participating Class Member: An Individual Class Payment calculated by (a) dividingMembers.~~

3.2.4. PAGA Penalties: Subject to approval by the Court, the Parties agree that the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Gross Settlement Amount will be allocated toward penalties under PAGA ("PAGA Penalties"), of which seventy-five percent (75%), or \$37,500.00, will be paid to the LWDA (i.e., the LWDA PAGA Payment) and twenty-five percent (25%) or, \$12,500.00, will be distributed to Aggrieved Employees on a pro rata basis, based on PAGA Pay Periods during the PAGA Period (i.e., Individual PAGA Payment).

3.2.5. Individual Settlement Share Calculations: Individual Settlement Shares will be calculated and apportioned from the Net Settlement Amount based on the Class Members' Workweeks, as follows:

- a. After Preliminary Approval of the Settlement, the Administrator will divide the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) Workweeks credited by all Class Members to yield the “Estimated Workweek Value,” and multiply each Class Member’s individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.
- b. After Final Approval of the Settlement, the Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members to yield the “Final Workweek Value,” and multiply each Participating Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.

3.2.3.3.2.6. Individual PAGA Payment Calculations: Individual PAGA Payments will be calculated and apportioned from the 25% share of the PAGA Penalties based on the Aggrieved Employees’ Workweeks, as follows: The Administrator will divide the 25% portion of the PAGA Penalties attributed to Aggrieved Employees, i.e. \$12,500.00, by the Workweeks worked by all Aggrieved Employees during the PAGA Period resulting in the PAGA Workweek Value and then multiplying the result by each Participating Class Member’s Workweeks. PAGA Workweek Value by the number of PAGA Workweeks credited to each individual Aggrieved Employee during the PAGA Period.

3.2.4.1.

Tax Allocation of Individual Class Settlement Payments. % _____ and Individual PAGA Payments. Twenty percent (20%) of each Participating Class Member’s Individual Class Settlement Payment will be allocated to - settlement of wage claims (the “Wage Portion”). -The Wage Portions are - subject to tax withholding and will be reported on an IRS W-2 Form. -The-

3.2.4.3.2.7. % _____ Eighty percent (80%) of each Participating Class Member’s Individual Class Settlement Payment will be allocated to settlement of claims for [e.g., penalties and interest and penalties] (the “Non-Wage Portion”). -The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. -Participating Class Members assume full responsibility and liability for any employee taxes owed -on their Individual Class Payment. Settlement Payment. Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary. The Administrator will have the option to pay the Individual Settlement Payment and Individual PAGA Payment by way of a single check.

3.2.4.2.

Effect of Non-Participating Class Members on Calculation of - Individual Class Settlement Payments.- Non-Participating Class Members will not receive -

3.2.5.3.2.8. any Individual Class Settlement Payments. -The Administrator will retain amounts equal - to their Individual Class Settlement Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.-

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$ _____ to be paid from the Gross Settlement Amount, with 75%-

~~(\$) allocated to the LWDA PAGA Payment and 25% (\$) allocated to the Individual PAGA Payments.—~~

~~3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$_____ by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.~~

~~3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.—~~

4.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. ~~Class~~ Workweeks and Aggrieved Employee Pay Periods. Based on a review of - its records ~~to date, XYZ, during the period from September 22, 2016 to March 14, 2023, Defendant~~ estimates there ~~are~~ were 303 Class Members who collectively worked a total of 44,353 Workweeks, and of during the period from November 2, 2019 to March 14, 2023, there were 189 Aggrieved Employees who worked a total of 20,339 PAGA Pay Periods.-

4.2. Class Data. -Not later than ~~[e.g., 15]~~fourteen (14) calendar days after the Court grants Preliminary -

Approval of the Settlement, XYZDefendant will simultaneously deliver the Class Data to the - Administrator, in the form of a Microsoft Excel spreadsheet. -To protect Class Members' - privacy rights, the Administrator must maintain the Class Data in confidence, use the - Class Data only for purposes of this Settlement and for no other purpose, and restrict - access to the Class Data to Administrator employees who need access to the Class Data - to effect and perform under this Agreement. XYZNotwithstanding this provision, Class Counsel shall also receive redacted Class Data that shall only disclose an identification number attributed to each Class Member and their associated Workweeks during the Class Period and each Aggrieved Employee and their associated PAGA Pay Periods during the PAGA Period. Defendant has a continuing duty to immediately -notify Class Counsel if it discovers that the Class Data omitted class member identifying -information and to provide corrected or updated Class Data as soon as reasonably -

feasible. —Without any extension of the deadline by which ~~XYZ~~Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.—

4.3.- Funding of Gross Settlement Amount. ~~XYZ~~Defendant shall fully fund the Gross Settlement -Amount, and also fund the amounts necessary to fully pay ~~XYZ's~~Defendant's share of payroll taxes -by transmitting the

funds to the Administrator ~~no later than [14] days after the Effective Date.~~ in two (2) installment payments:
(a) ~~\$250,000.00 to be paid within thirty (30) calendar days after Final Approval ("First Installment"), and~~
(b) ~~\$250,000.00 to be paid out six (6) months after the First Installment ("Second Installment").~~

4.4. ~~Payments from the Gross Settlement Amount.~~ Within ~~fourteen (14)~~ calendar days after
XYZDefendant funds the Second Installment, and therefore the entirety of the Gross

Settlement Amount, the Administrator will mail checks for all Individual Class-
Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
Litigation Expenses Payment, and the Settlement Payments, Class Representative Service Payment.
Disbursement of the, all Individual PAGA Payments, LWDA PAGA Payment, Administration Costs, Class
Counsel Fees Payment, the and Class Counsel Litigation
Expenses Payment and the Class Representative Service Payment shall not precede
disbursement of Individual Class Payments and Individual PAGA Payments.

~~4.4.1.~~

The Administrator will issue checks for the Individual ClassSettlement Payments -
and/or Individual PAGA Payments and send them to the Class Members and/or
Aggrieved Employees via First -

Class U.S. Mail, postage prepaid. -The face of each check shall prominently state -
the date (not less than one hundred eighty (180) calendar days after the date of
mailing) when the check will be -

voided. -The Administrator will cancel all checks not cashed by the void date. -The -
Administrator will send checks for Individual Settlement Payments to all -
Participating Class Members (including those for whom Class Notice was returned -
undelivered). -The Administrator will send checks for Individual PAGA Payments -

4.4.1. to all Aggrieved Employees including Non-Participating Class Members who
qualify as Aggrieved Employees (including those for whom Class Notice was
returned undelivered). -The Administrator may send Participating Class Members a -single check
combining the Individual ClassSettlement Payment and the Individual PAGA
Payment.- Before mailing any checks, the Settlement-Administrator must update the -recipients'
mailing addresses using the National Change of Address Database.—

~~4.4.2.~~

The Administrator must conduct a Class Member Address Search for all -
other Class Members whose checks are ~~returned~~returned undelivered without USPS -
forwarding address. -Within ~~[7]~~seven (7) calendar days of receiving a -returned check
the -

Administrator must re-mail checks to the USPS forwarding address provided or to -

4.4.2. an address ascertained through the Class Member Address Search. —The
Administrator need not take further steps to deliver checks to Class Members whose -re-mailed checks
are returned as undelivered. —The Administrator shall promptly
send a replacement check to any Class Member whose original check was lost or
misplaced, requested by the Class Member prior to the void date.—

~~4.4.3.~~

For any Class Member whose Individual ClassSettlement Payment check or -
Individual PAGA Payment check is uncashed and cancelled after the void date, the -

Administrator shall transmit the funds represented by such checks ~~to the California~~

- 4.4.3. ~~Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).] [or to a Court-approved Appointed Special Advocates ("CASA"), a nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("the "Cy Pres Recipient")~~ _____]."). The Parties, Class Counsel, and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.—

~~4.4.4.—~~

The payment of Individual Class Settlement Payments and Individual PAGA -

Payments shall not obligate XYZ Defendant to confer any additional benefits or make any -

- 4.4.4. additional payments to Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses) -
beyond those specified in this Agreement.—

~~6.~~

RELEASES OF CLAIMS. Upon the Effective ~~on the date when XYZ fully funds~~ Date and full funding
of the entire Gross

Settlement Amount and funds (including all employer payroll taxes owed on the Wage Portion of the

5. Individual Class Settlement Payments,], Plaintiff, all Participating Class Members, (i.e., Class Members who do not submit a valid and Class Counsel timely Request for Exclusion), and Aggrieved Employees will release claims against all Released Parties as follows:—

~~6.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences [that occurred during the Class Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, [or ascertained during the Action and released under 6.2, below]. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.—~~

~~6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.—~~

~~For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:—~~

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

6.2 Release

5.2 General Release of Claims by Plaintiff. Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of and from all claims arising from her employment with Defendant, separation of employment from Defendant, whether known or unknown, arising under any federal or local law, or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act, California Corporations Code, California Business and Professions Code, California Fair Employment and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for termination, lost wages, benefits, other employment compensation, emotional distress, medical expenses, other economic and non-economic damages, attorney fees, and costs, arising on or before the date on which the Settlement is executed. With respect to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and all rights and benefits available under California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands and agrees that claims or facts in addition to or different from those which are not known or believed by her to exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all claims she now has against the Released Parties, whether known or unknown, suspected or unsuspected. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

5.3. Released Class Claims by Participating Class Members ~~Who Are Not Aggrieved~~ Employees:

: All Participating Class Members, on behalf of themselves and their respective former - and present representatives, agents, attorneys, heirs, administrators, successors, and -

assigns, release Released Parties from (i)—all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated/alleged in the Operative Complaint [and ascertained in the course of the Action] [, including, e.g., “(a) any and all -claims involving any alleged-, actions, and causes of action, arising during the Class Period, including, but not limited to, claims for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2803 and Industrial Welfare Commission Wage Orders Nos. 1-2001, 4-2001, 7-2001, 9-2001, and 16-2001 for failing to pay overtime wages, failure to provide meal periods and/or pay meal premiums, failure to authorize/permit rest periods and/or pay rest premiums, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage; etc.]- statements, failure to keep requisite payroll

records, failure to reimburse necessary business expenses, and unfair or unlawful business practices pursuant to California Business and Professions Code § 17200, *et seq.* based on the aforementioned (“Released Class Claims”). Except as set forth in Section 6.35.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.—

6.3 Release by

5.4. Released PAGA Claims by Aggrieved Employees and the State of California: The State of California with respect to all Aggrieved Employees, including Non-Participating Class Members Who Are Aggrieved Employees:—

~~All Non-Participating Class Members~~ who are Aggrieved Employees, are deemed to release, on behalf of themselves and their respective former and present representatives, -agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for ~~PAGA~~civil penalties recoverable under the Private Attorneys General Act, California Labor Code section 2698, et seq., that were alleged, or reasonably could have been alleged, ~~based on the PAGA Period facts stated in the Operative Complaint[,] [and] the PAGA Notice [and ascertained in the course of the Action]]~~including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.” alleged, in the Operative Complaint and PAGA Notice, arising during the PAGA Period, including but not limited to, claims for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2803 and Industrial Welfare Commission Wage Orders Nos. 1-2001, 4-2001, 7-2001, 9-2001, and 16-2001 for failing to pay overtime wages, failure to provide meal periods and/or pay meal premiums, failure to authorize/permit rest periods and/or pay rest premiums, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse necessary business expenses, and unfair or unlawful business practices pursuant to California Business and Professions Code § 17200, *et seq.* based on the aforementioned (“Released PAGA Claims”).

7.

MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies

6. with the Court’s current checklist for Preliminary Approvals. ~~preliminary approvals.~~

7

6.1-XYZ’s. Defendant’s Declaration in Support of Preliminary Approval. -Within ~~fourteen~~ (14) calendar days of -

the full execution of this Agreement, ~~XYZ~~Defendant will prepare and deliver to Class Counsel a -

signed ~~Declaration~~declaration from ~~XYZ~~Defendant and Defense Counsel disclosing all facts relevant to any -

actual or potential conflicts of interest with the ~~Administrator and~~ Cy Pres Recipient. -In - their ~~Declarations~~declarations, Defense Counsel and ~~XYZ~~Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the ~~Settlement.~~ affected by the settlement. Within fourteen (14) calendar days of the full execution of this Agreement, Defendant shall provide a declaration which explains Defendant’s need for the payment plan in order to fund the settlement without substantial financial hardship, including detailed facts about the precise nature and extent of Defendant’s inability to fund the contemplated settlement without the proposed payment plan.

6.2- Plaintiff's Responsibilities. Within thirty (30) calendar days of the full execution of this Agreement, Plaintiff will prepare and deliver to Defense Counsel -all documents necessary for obtaining Preliminary Approval, including:- (i) a draft of the - notice, and memorandum in support, of the Motion for Preliminary Approval that - includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of - the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed -Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft - proposed Class Notice; (iv) a signed declaration from the Administrator attaching its - "not to exceed" bid for administering the Settlement and attesting to its willingness to - serve service; competency; operative procedures for protecting the security of Class Data; - amounts of insurance coverage for any data breach, defalcation declaration of funds or other - misfeasance; all facts relevant to any actual or potential conflicts of interest with Class - Members and/or the proposed Cy Pres; Recipient; and the nature and extent of any financial - relationship with Plaintiff, Class Counsel, or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts - relevant to any actual or potential conflicts of interest with Class Members, and/or the - Administrator and/or the proposed Cy Pres; (v Recipient); (vi) a signed declaration from each - Class - Counsel firm attesting to its competency to represent the Class Members; its timely - transmission to the LWDA of all necessary PAGA documents (initial notice of violations, including the PAGA Notice (Labor Code section 2699.3, subd. (a)), complaints (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), and this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) -

vii) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the -Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.-

6.3- Responsibilities of Counsel. -Class Counsel and Defense Counsel are jointly - responsible for expeditiously finalizing and filing the Motion for Preliminary Approval - no later than {30}ninety (90) calendar days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. -Class Counsel is responsible -for delivering the Court's Preliminary Approval Order to the Administrator.-

6.4- Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion - for Preliminary Approval and/or the supporting declarations and documents, Class - Counsel and Defense Counsel will expeditiously work together on behalf of the Parties - by meeting in person or by telephone, and in good faith, to resolve the disagreement. -If the Court does not grant Preliminary Approval or conditions Preliminary Approval on - any material change to this Agreement, Class Counsel and Defense Counsel will

expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns. —

8.

7. SETTLEMENT ADMINISTRATION.

8

7.1. Selection of Administrator. —The Parties have jointly selected —

Phoenix Settlement Administrators (“Phoenix”) to serve as the Administrator and verified that, as a condition of appointment, Phoenix, agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration ~~Expenses.~~ Costs. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.—

8

7.2. Employer Identification Number. The Administrator shall have and use its own —
or establish a separate Employer Identification Number for purposes of calculating payroll tax withholdings —
and providing reports state and federal tax authorities.—

7.3. Qualified Settlement Fund. —The Administrator shall establish a settlement fund —
that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury —

Regulation section 468B-1.—

8.4

7.4. Notice to Class Members.—

8

7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.
~~the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.~~—

8

7.4.2. Using best efforts to perform as soon as possible, and in no event later —
than ~~fourteen (14)~~ calendar days after receiving the Class Data, the Administrator will send to all —

Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice [with Spanish translation, ~~if applicable~~] substantially in the form attached to this Agreement as “Exhibit _____.” A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Settlement Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the number of Workweeks ~~and~~ PAGA Pay Periods (if applicable) used ~~to calculate~~ these amounts. Before mailing Class Notices, the Administrator shall update Class ~~Member~~ Members’ addresses using the National Change of Address database.—

8

7.4.3. Not later than ~~three (3)~~ business days after the Administrator's receipt of any —

Class Notice returned by the USPS as undelivered, the Administrator shall re-mail - the Class Notice using any forwarding address provided by the USPS. —If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. —The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.—

8

7.4.4. ~~The deadlines for Class Members' written objections, Challenges to - the Class Settlement, disputes regarding~~ Workweeks and/or PAGA Pay Periods, and Requests for Exclusion from the Class Settlement will be extended an - additional {fourteen (14)} calendar days ~~beyond~~from the ~~{60} days otherwise~~original Response Deadline provided in the Class Notice ~~for all Class Members whose notice~~Class Notice is re-mailed.— The Administrator will inform ~~the Class Member of the extended deadline with the re-mailed Class Notice.~~

8

7.4.5. ~~—~~ If the Administrator, ~~XYZ~~Defendant, or Class Counsel is contacted by or otherwise - discovers any persons who believe they should have been included in the Class - Data and should have received Class Notice, the Parties will expeditiously meet - and confer in person or by telephone, and in good faith, ~~in an effort to agree on - whether to include them as Class Members. -If the Parties agree, such persons will -be Class Members entitled to the same rights as other Class Members, and the - Administrator will send, via email or overnight delivery, a Class Notice requiring -them to exercise options under this Agreement not later than {fourteen (14)} calendar days after -~~

receipt of Class Notice, or the deadline dates in the Class Notice, ~~which ever~~whichever are later.—

8.5-

7.5. Requests for Exclusion from the Class Settlement (Opt-Outs).—

8.5.1-

Class Members who wish to exclude themselves (opt-out of) the Class - Settlement must send the Administrator, by ~~fax, email,~~ or mail, a signed written - Request for Exclusion not later than ~~{60} days after the Administrator mails the - Class Notice (plus an additional {14} days for Class Members whose Class Notice - is re-mailed).~~ Response Deadline. A Request for Exclusion is a letter from a Class Member or his/her ~~representative~~ that reasonably communicates the Class Member's election to be - excluded from the Class Settlement and includes the Class Member's name, address—

7.5.1. , and email address or telephone number. —To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. -Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.

8.5.2-

The Administrator may not reject a Request for Exclusion from the Class Settlement as invalid -
because it fails to contain all the information specified in the Class Notice. -The -
Administrator shall accept any Request for Exclusion as valid if the Administrator -
can reasonably ascertain the identity of the person as a Class Member and the -
Class Member's desire to be excluded. -The Administrator's determination shall -
7.5.2. be final and not appealable or otherwise susceptible to challenge. —If the
Administrator has reason to question the authenticity of a Request for Exclusion, -the Administrator
may demand additional proof of the Class Member's identity.
The Administrator's determination of authenticity shall be final and not -appealable or otherwise
susceptible to challenge.
appealable or otherwise susceptible to challenge.—

8.5.3 Every-

7.5.3. Class ~~Member~~Members who ~~does~~do not submit a timely and valid Request for -Exclusion isfrom the
Class Settlement are deemed to be ~~a~~-Participating Class ~~Member~~Members under this Agreement,
entitled to all benefits and bound by all terms and conditions of the Settlement,
including the Participating Class Members' Releasesrelease of Released Class Claims under
Paragraphs 6.2 and
6Paragraph 5.3 of this Agreement, regardless whether the Participating Class Member
actually receives the Class Notice or objects to the Class Settlement.—

8.5.4 Every-

Class ~~Member~~Members who ~~submit~~submit a valid and timely Request for -
Exclusion is-afrom the Class Settlement are Non-Participating Class ~~Member~~Members and
shall not receive ~~an-~~
Individual Class PaymentSettlement Payments or have the right to object to the class-action-
7.5.4. components-of-theClass Settlement.— Because future PAGA claims are subject to claim -preclusion
upon entry of the Judgment, Non-Participating Class Members who are also Aggrieved Employees are
deemed to release the claimsReleased PAGA Claims identified in Paragraph -5.4 of this Agreement
and are eligible for an Individual PAGA Payment.

7.6.4 of this Agreement and are eligible for an Individual PAGA Payment.—

8.6- Challenges to Calculation of Workweeks. -Each Class Member shall have [60]-
days-afteruntil the Administrator mails the Class NoticeResponse Deadline (plus an additional
{fourteen (14)} calendar days for -
Class Members whose Class Notice is re-mailed) to challenge the number of Class-
Workweeks and/or PAGA Pay Periods (if any) allocated to the Class Member and/or Aggrieved
Employee in the Class -Notice.- The Class Member may challenge the allocation by
communicating with the Administrator via ~~fax,~~ email or mail. -The Administrator must encourage
the challenging -Class Member to submit supporting documentation. -In the absence of any
contrary -
documentation, the Administrator is entitled to presume that the Workweeks and/or PAGA Pay
Periods contained -

in the Class Notice are correct so long as they are consistent with the Class Data. —The
Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods
shall be final and not appealable or otherwise susceptible to challenge. -The- Administrator shall promptly

provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.—

8.

7.7. Objections to Class Settlement.—

8

7.7.1.— Only Participating Class Members may object to the ~~class action—~~
~~components of the~~ Class Settlement and/or this Agreement, including contesting the fairness of the Class Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.—

8

7.7.2.— Participating Class Members may send written objections to the -
Administrator, by ~~fax~~, email, or mail. -In the alternative, Participating Class -
Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. —A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline.
~~than [60] days after the Administrator's mailing of the Class Notice (plus an additional [14] days for Class Members whose Class Notice was re-mailed).—~~

8

7.7.3.— Non-Participating Class Members have no right to object to ~~any of the~~
~~class action components of the~~ Class Settlement.—

7.8.8— Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
~~otherwise.—~~

8

7.8.1.— Website, Email Address and Toll-Free Number. -The Administrator will -
~~establish and maintain and use an internet website to~~ post information of interest -
to Class Members including the date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation -Expenses Payment and Class Representative Service Payment, and the Final Approval ~~and the Judgment—~~ on a portion of it's website. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, ~~faxes~~ and- emails.—

8

7.8.2.— Requests for Exclusion (Opt-outs) and Exclusion List. -The Administrator -will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. -Not later than {five (5)} calendar days after the expiration of the ~~deadline for submitting Requests for Exclusion,~~ Response Deadline (or any applicable extended Response Deadline), the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the full names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion from the Class Settlement ("Exclusion List"); (b) the full names and other identifying information of Class -

Members who have submitted invalid or untimely Requests for Exclusion from the Class Settlement; (c) copies of all Requests for Exclusion from the Class Settlement submitted (whether valid or invalid).—

8

7.8.3-. Weekly Reports. -The Administrator must, on a weekly basis, provide - written reports to Class Counsel and Defense Counsel that, among other things, - tally the number of: ~~-Class Notices mailed or re-mailed-~~ Class Notices mailed or re-mailed, Class Notices returned - undelivered, Requests for Exclusion from the Class Settlement (whether valid or invalid) received, - objections to the Class Settlement received, challenges to Workweeks and/or PAGA Pay Periods received and/or- resolved, and checks mailed for Individual ClassSettlement Payments and Individual PAGA Payments (“Weekly Report”). —The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.—

8

7.8.4-. Workweek and/or PAGA Pay Period Challenges. -The Administrator has the - authority to address and make final decisions consistent with the terms of this - Agreement on all Class Member challenges ~~overt~~ to the ~~calculation~~ number of Workweeks and/or PAGA Pay Periods— credited to them. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.—

8

7.8.5-. Administrator’s Declaration. Not later than ~~fourteen (14)~~ calendar days before the date by - which Plaintiff is required to file the Motion for Final Approval of the Settlement, - the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, ~~-the re-mailing of Class Notices,~~ attempts to locate Class Members, the total number of Requests for Exclusion from the Class Settlement it received (both valid or invalid), the number of written objections to the Class Settlement and attach the Exclusion List. ~~The as well as all objections received. The~~ Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in the Court.—

8

7.8.6-. Final Report by Settlementthe Administrator. —Within ~~ten (10)~~ calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report ~~-detailing its disbursements by employee identification number only of all payments made under this Agreement.~~ -At least ~~fifteen (15)~~ calendar days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement.— Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES ~~{and ESCALATOR CLAUSE}~~. Based on its records, ~~XYZ~~ Defendant estimates that, ~~as of the date of this Settlement Agreement;~~ (1) ~~there are~~

~~_____~~
during the period from September 22, 2016 to March 14, 2023, there were 303 Class Members and ~~_____~~
~~Total~~44,353 total Workweeks, and (2) during the Class period ~~and~~ ~~(from November 2)~~
~~, 2019 to March 14, 2023, there were _____184~~ Aggrieved Employees who worked
~~_____20,339 PAGA Pay Periods~~ ~~during~~. Should the ~~PAGA~~ qualifying Workweeks increase beyond
ten percent (10%) worked by the Class Members during the period from September 22, 2016 to preliminary approval
(i.e., more than 4,445 Workweeks), Defendant shall have the option to either: (a) 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 increases by 11% to 49,222 Workweeks, the
Gross Settlement Amount will increase by one percent (1%)); or (b) cut off the Class Period^{iv} ~~as of the date the~~
49,222 Workweek threshold is reached.

10. XYZ'S

DEFENDANT'S RIGHT TO WITHDRAW. -If the number of valid Requests for Exclusion
from the Class Settlement identified in the Exclusion List exceeds % ~~_____~~ ten percent (10%) of
the total of all Class Members, ~~XYZ~~

Defendant may, but is not obligated, elect to withdraw from the ~~Settlement~~ settlement. The Parties
agree that, if

~~XYZ~~ Defendant withdraws, the ~~Settlement~~ settlement shall be void *ab initio*, have no force or effect
whatsoever,

and that neither Party will have any further obligation to perform under this Agreement;

9. provided, however, ~~XYZ~~ Defendant will remain responsible for paying all ~~Settlement~~ Administration
Expenses Costs incurred to that point. ~~XYZ~~ Defendant must notify Class Counsel and the Court of its
election to withdraw, in writing, not later than ~~{seven}~~ fourteen (14) days after the Administrator sends the final
Exclusion List to Defense Counsel; late elections will have no effect.

11.

MOTION FOR FINAL APPROVAL. -Not later than ~~{sixteen (16)}~~ court days before the
calendared Final Approval Hearing, Plaintiff Class Counsel will file in Court, a motion for final
approval

10. of the Settlement that includes a request for approval of the ~~PAGA settlement under Labor~~
~~Code section 2699, subd. (f), a Proposed Final Approval Order and Settlement~~, a proposed Final Approval Order
and _____ a _____ proposed _____ Judgment
(collectively "Motion for Final Approval"). ~~Plaintiff~~ Class Counsel shall provide drafts of these
documents to Defense Counsel not later than ~~{seven}~~ three (3) calendar days prior to filing the Motion for
Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in
person or by telephone, and in good faith, to resolve any disagreements concerning the
Motion for Final Approval.

11

10.1. Response to Objections ~~to the Class Settlement~~. Each Party retains the right to respond
to any objection -

to the Class Settlement raised by a Participating Class Member, including the right to file
responsive documents -

in Court no later ~~that~~ ~~{than five}~~ (5) court days prior to the Final Approval Hearing, or as

otherwise ordered or accepted by the Court.—

11

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final -Approval on any material change to ~~the Settlement~~ (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. -The Court's decision to award less than the amounts -requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or ~~Administrator Expenses Payment~~ Administration Costs shall not constitute a material modification to the Agreement within the meaning of this -paragraph.—

11

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of -

Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement -

solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are -permitted by law.—

11

10.4. Waiver of Right to Appeal. -Provided the Final Approval Order and Judgment is consistent with the terms and conditions ~~of this Agreement~~, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected as set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Class Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. —The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. —If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.—

11

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. -If -

the reviewing Court vacates, reverses, or modifies the Judgment in a manner that -

requires a material modification of this Agreement (including, but not limited to, the -

scope of release to be granted by Class Members), this Agreement shall be null and void. —The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses Costs reasonably incurred after remittitur. —An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, -as long as the Gross Settlement Amount remains unchanged.—

12.

AMENDED JUDGMENT. -If any amended judgment is required under Code of Civil

Procedure section 384, the Parties will work together in good faith to jointly submit and a

11. proposed

amended

judgment.

13.

11.12. ADDITIONAL PROVISIONS.-

13

12.1. — ~~No Admission of Liability, Class Certification, or Representative Manageability for Other~~ Purposes. This Agreement represents a compromise and settlement of highly -

disputed claims. —Nothing in this Agreement is intended or should be construed as an admission by XYZDefendant that any of the allegations in the Operative Complaint or Action have merit or that XYZDefendant has any liability for any claims asserted; nor should it be intended or construed -as an admission by Plaintiff that XYZ'sDefendant's defenses in the Operative Complaint or Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only.— If, for any reason the Court does not grant Preliminary Approval, Final Approval, or enter Judgment, XYZDefendant reserves the right to contest certification of any class for any reasons, and XYZDefendant reserves all available defenses to the claims in the Operative Complaint or Action, and- Plaintiff reserves the right to move for class certification on any grounds available and to contest XYZ'sDefendant's defenses.- The Settlement, this Agreement and Parties'Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, -any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).—

13

12.2.-. ~~Confidentiality Prior to Preliminary Approval.~~ Plaintiff, Class Counsel, XYZDefendant, and- Defense Counsel separately agree that, until the Motion for Preliminary Approval of -

Settlement is filed with the Court, they and each of them will not disclose, disseminate and/or publicize, -or cause or permit another person to disclose, disseminate or publicize, any of the terms -of the Agreement directly or indirectly, specifically or generally, to any person, - corporation, association, government agency, or other entity except: -(1) to the Parties' - attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement - confidential; (2) counsel in a related matter; (3) to the extent necessary to report income - to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in - response to an inquiry or subpoena issued by a state or federal government agency. —

Each Party agrees to immediately notify each other Party of any judicial or agency order, -inquiry, or subpoena seeking such information. —Plaintiff, Class Counsel, XYZDefendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation -or other communication, before the filing of the Motion for Preliminary Approval, any with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.—, or to undertake required submissions of information and/or documents to the LWDA pursuant to PAGA.

13

12.3.-. ~~No Solicitation.~~ The Parties separately agree that they and their respective counsel - and employees will not solicit any Class Member to opt out of or object to the - Class Settlement, or appeal from the Judgment. -Nothing in this paragraph shall be construed -

to restrict Class Counsel's ability to communicate with Class Members in accordance

with Class Counsel's ethical obligations owed to Class Members.—

13

12.4— Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.—

13

12.5— Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and XYZDefendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.—

13

12.7— No Prior Assignments. —The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.—

13

12.8— No Tax Advice. —Neither Plaintiff, Class Counsel, XYZDefendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.—

13

12.9— Modification of Agreement. —This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained or contemplated in this Agreement may be modified by agreement of counsel for the Parties in writing without approval by the Court if the Parties agree and cause exists for such modification.

13

12.10. Agreement Binding on Successors. —This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.—

13

12.11. Applicable Law. —All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California,

without regard to conflict of law principles.—

13.

12.12. Cooperation in Drafting. -The Parties have cooperated in the drafting and - preparation of this Agreement. -This Agreement will not be construed against any Party - on the basis that the Party was the drafter or participated in the drafting.—

12.13.13 Confidentiality. -To the extent permitted by law, all agreements made, and orders - entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.—

13

12.14. Use and Return of Class Data. -Information provided to Class Counsel pursuant to -Cal. Evid. Code § 1152, and all copies and summaries of the Class Data provided to - Class Counsel by XYZDefendant in connection with the mediation, other settlement negotiations, - or in connection with the Settlement, may be used only with respect to this Settlement, - and no other purpose, and may not be used in any way that violates any existing - contractual agreement, statute, or rule of court. -Not later than ninety (90) calendar days after the date - when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and -electronic versions of Class Data received from XYZDefendant unless, prior to the Court's discharge of the Administrator's obligation, XYZDefendant makes a written request to Class Counsel for the return, rather than the ~~destructions~~destruction, of Class Data.

12.15. Headings. -~~The descriptive~~ heading of any section or paragraph of this Agreement -is inserted for convenience of reference only and does not constitute a part of this Agreement.—

13

12.16. Calendar Days. -Unless otherwise noted, all reference to "days" in this Agreement -shall be to calendar days.— In ~~the event~~ any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.—

13

12.17. Notice.- All notices, demands or other communications between the Parties in - connection with this Agreement will be in writing and deemed to have been duly given - as of the third business day after mailing by United States mail, or the day sent by email -or messenger, addressed as follows:—

To Plaintiff:— and Class Counsel: To Defendant:

To XYZ:—

~~13~~Edwin Aiwazian, Esq.

Arby Aiwazian, Esq.

Joanna Ghosh, Esq.

Selena Matavosian, Esq.

LAWYERS for JUSTICE, PC

410 West Arden Avenue, Suite 203

Glendale, California 91203

Vickie Grasu

Angeli Aragon

O'HAGAN MEYER.

21650 Oxnard Street, Suite 530

Woodland Hills, California 91367

12.18. Execution in Counterparts. This Agreement may be executed in one or more -
counterparts by facsimile, electronically (i.e.g., DocuSign), or email which for purposes of

this Agreement shall be accepted as an original.— All executed counterparts and each of
them will be deemed to be one and the same instrument if counsel for the Parties will
exchange between themselves signed counterparts. —Any executed counterpart will be
admissible in evidence to prove the existence and contents of this Agreement.—

~~13~~

12.19. Stay of Litigation. —The Parties agree that upon the execution of this Agreement
the litigation ~~shall be stayed~~, except to effectuate the terms of this Agreement. —The
Parties further agree that upon the signing of this Agreement that pursuant to CCP
section 583.330 ~~to extend~~ the date to bring a case to trial under CCP section 583.310 shall be extended for
the entire period of this settlement process.—

For Plaintiff

For XYZ

Counsel For Plaintiff

Counsel For XYZ

IT IS SO AGREED.

PLAINTIFF JOSE CABRERA

Dated: _____

Jose Cabrera, Plaintiff

DEFENDANT U.S. POLE COMPANY, INC.

Dated: _____

Full Name: _____
Title: _____
On behalf of Pole Company, Inc.

APPROVED AS TO FORM ONLY:

Dated: _____ By: _____

Joanna Ghosh, Esq.
Selena Matavosian, Esq.
LAWYERS for JUSTICE, PC

Attorneys for Plaintiff Jose Cabrera and Proposed Class
Counsel

Dated: _____ By: _____

Vickie Grasu, Esq.
Angeli Aragon, Esq.
O'HAGAN MEYER

Attorneys for Defendant U.S. Pole Company, Inc.

EXHIBIT 3

November 2, 2020

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

**Re: U.S. POLE COMPANY, INC.; ALCASTCO, INC.; U.S. ARCHITECTURAL
LIGHTING; SUN VALLEY LIGHTING STANDARDS, INC.**

Dear Representative:

We have been retained to represent Jose Cabrera against U.S. Pole Company, Inc.; Alcastco, Inc.; U.S. Architectural Lighting; Sun Valley Lighting Standards, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as “U.S. Pole/Alcastco/Sun Valley Lighting”) for violations of California wage-and-hour laws. Mr. Cabrera seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”) and all other remedies available under PAGA.

Mr. Cabrera seeks these remedies on behalf of the State of California and “aggrieved employees,” as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

U.S. Pole/Alcastco/Sun Valley Lighting employed Mr. Cabrera as an hourly-paid, non-exempt employee from approximately December 2010 to approximately April 2020 in the State of California.

The “aggrieved employees” that Mr. Cabrera may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, U.S. Pole/Alcastco/Sun Valley Lighting has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 1-2001, 4-2001, 7-2001, 9-2001, and 16-2001.

[U.S. Pole/Alcastco/Sun Valley Lighting required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to responding to business-related inquiries.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During

the relevant time period, Mr. Cabrera and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Cabrera and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, U.S. Pole/Alcastco/Sun Valley Lighting required Mr. Cabrera and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, U.S. Pole/Alcastco/Sun Valley Lighting failed to pay Mr. Cabrera and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, U.S. Pole/Alcastco/Sun Valley Lighting failed to pay Mr. Cabrera and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, U.S. Pole/Alcastco/Sun Valley Lighting did not provide Mr. Cabrera and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from U.S. Pole/Alcastco/Sun Valley Lighting were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Cabrera and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil

penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Cabrera and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Cabrera and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Cabrera and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Cabrera and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, U.S. Pole/Alcastco/Sun Valley Lighting failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Cabrera and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, U.S. Pole/Alcastco/Sun Valley Lighting did not provide Mr. Cabrera and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

California Labor Code section 1198 provides that "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 1-2001, 4-2001, 7-2001, 9-2001, and 16-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, U.S. Pole/Alcastco/Sun Valley Lighting failed to pay Mr. Cabrera and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Mr. Cabrera and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day's work. During the relevant time period, U.S. Pole/Alcastco/Sun Valley Lighting failed to pay Mr. Cabrera and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in

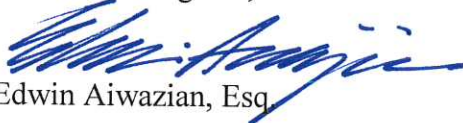
which Mr. Cabrera and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Cabrera and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by U.S. Pole/Alcastco/Sun Valley Lighting. These costs include, but are not limited to the use of personal phones for business-related tasks, and the purchase of protective equipment.

Therefore, on behalf of all aggrieved employees, Mr. Cabrera seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,


Edwin Aiwanian, Esq

Cc: (By U.S. Certified Mail / Return Receipt Requested)

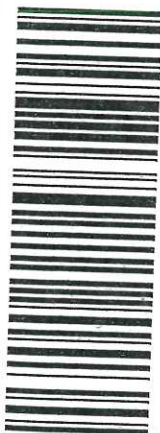
U.S. Pole Company, Inc.
Sun Valley Lighting Standards, Inc.
c/o James P. Drummy
Agent for Service of Process
624 S. Grand Avenue, Suite 2420
Los Angeles, CA 90017

Alcastco, Inc.
c/o Sonia Y Wassef
Agent for Service of Process
660 W. Avenue O
Palmdale, CA 93551

U.S. Architectural Lighting
c/o Michael Sobelman
660 West Avenue O
Palmdale, CA 93551

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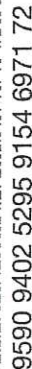
PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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| A. Signature | | ☐ Agent |
| X | | ☐ Addressee |
| B. Received by (<i>Printed Name</i>) | C. Date of Delivery | |
| D. Is delivery address different from item 1?
If YES, enter delivery address below: | | |
| ☐ Yes | | |
| ☐ No | | |

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:



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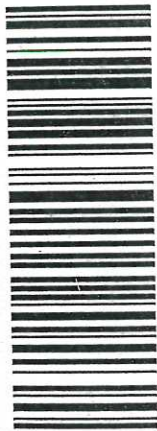
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- For an additional fee, you can request an endorsement on the return receipt for the following services:
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c/o Sonia Y Wassef
Agent for Service of Process
660 W. Avenue O
Palmdale, CA 93551

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

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Agent for Service of Process
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9590 9402 5295 9154 6973 01

2 Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

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B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

☐ Adult Signature ☐ Priority Mail Express®

☐ Adult Signature Restricted Delivery ☐ Registered Mail™

☐ Certified Mail® ☐ Registered Mail Restricted Delivery

☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise

☐ Collect on Delivery ☐ Signature Confirmation™

☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery

☐ Restricted Delivery

Domestic Return Receipt

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- A receipt (this portion)
- A unique identifier for
- Electronic verification of
- A record of delivery
- Signature (that is retained for a specified period)
- Important Reminder: You may purchase Certified Mail® First-Class Mail® service or Priority Mail® service.
- Certified Mail service is available for international mail.
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- Insurance coverage is available with Certified Mail service.
- For an additional fee, you can request a return receipt (including delivery) (including delivery).
- You can request a return receipt (including delivery) (including delivery).
- Complete PS Form 3800, April 2015.

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☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

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Sun Valley Lighting Standards, Inc.
c/o James P. Drummy
Agent for Service of Process
624 S. Grand Avenue, Suite 2420
Los Angeles, CA 90017

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Handwritten: Dora Nte Cabelo vs. Bierman #3

TURN ADDRESS LABEL TO THE RIGHT

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

U.S. Pole Company, Inc.
Sun Valley Lighting Standards, Inc.
c/o James P. Drummy
Agent for Service of Process
624 S. Grand Avenue, Suite 2420
Los Angeles, CA 90017



9590 9402 5295 9154 6972 19

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☒ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

☐ Adult Signature	☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery	☐ Registered Mail™
☐ Certified Mail®	☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise
☐ Collect on Delivery	☐ Signature Confirmation™
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Insured Mail	
☐ Insured Mail Restricted Delivery	

Domestic Return Receipt

Certified Mail

- A receipt (this portion of delivery)
- A unique identifier for you
- Electronic verification of delivery
- A record of delivery (including signature) that is retained for a specified period.

Important Reminders:

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- First-Class Mail® First-Class Mail service is not eligible for Certified Mail service.
- International mail.
- Insurance coverage is available for Certified Mail service.
- For an additional fee, a certain Priority Mail item can be insured for up to \$500.
- Return receipt service is available for Certified Mail service.
- You can request a hard copy of the receipt or an electronic version. For complete PS Form 3800, attach PS Form 3800, April 2015.