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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR COUNTY OF ALAMEDA

Don Ryan Asiatico and Alexander Boyle,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

Elodie, Inc., a California Corporation and DOES
1 to 100, inclusive

Defendant.

CASE NO. RG21090364

[Assigned for all purposes to the Honorable,
Evelio Grillo, Dept. 21]

**AMENDED CLASS ACTION
SETTLEMENT AGREEMENT**

1 This Amended Class Action Settlement Agreement (“Settlement Agreement”) is made and entered
2 into between Plaintiffs Don Asiatico and Alexander Boyle (“Plaintiffs” or “Class Representatives”) and
3 Defendant Elodie, Inc. (“Defendant”) on the other hand subject to the approval of the Court, as provided
4 below. This Settlement Agreement is intended by Plaintiffs and Defendant to fully, finally, and forever
5 resolve, discharge, and settle the Action (as defined below) and Released Claims (as defined below), upon
6 and subject to the terms and conditions hereof, as follows:

7 **1. Definitions.**

8 As used herein, for the purposes of this Settlement Agreement only, the following terms will be
9 defined as set forth below:

10 **1.1** “Action” refers to the civil action entitled Don Asiatico, et al. v. Elodie, Inc. filed in Alameda
11 County Superior Court, Case No. RG21090364.

12 **1.2** “Class Counsel” refers to the attorneys of record for the Class Representative,
13 *i.e.*, Ackermann & Tilajef, P.C., and Employment Rights Law Group, APC.

14 **1.3** “Class Member” refers to all “All individuals whose wages were reported on an IRS Form
15 1099, and who worked for Defendant Elodie, Inc. in California as delivery drivers and/or crew staff from
16 March 3, 2017, through the earlier of November 20, 2021 or preliminary approval”.

17 **1.4** “Class Notice” refers to the form of direct-mail notices substantially in the form of the
18 “Notice of Settlement of Class Action and Settlement Hearing” attached as “**Exhibit A.**” as may be
19 modified by the Court.

20 **1.5** “Class Period” means March 3, 2017, through the earlier of November 20, 2021 or
21 preliminary approval.”

22 **1.6** “Complaint” refers to the operative First Amended Complaint to be filed in this Action.

23 **1.7** “Court” refers to the California Superior Court for the County of Alameda.

24 **1.8** “Defendant” means Elodie, Inc.

25 **1.9** “Final Approval Hearing” refers to the hearing at which the Court will make a final
26 determination whether the terms of the Settlement are fair, reasonable, and adequate for the Class and
27 meet all applicable requirements for approval.

28 **1.10** “Final Approval Order” refers to the final order by the Court approving the Settlement

1 following the Final Approval Hearing and entering final judgment.

2 **1.11** “Final Effective Date” refers to the date the Final Approval Order is entered if no objections
3 to the Settlement are filed. If objections are filed and overruled, and no appeal of the Final Approval
4 Order is filed, then the Final Effective Date will be sixty (60) calendar days following the date the Final
5 Approval Order is signed. If an appeal is taken from the Final Approval Order, then the Final Effective
6 Date will be twenty (20) calendar days after the appeal is withdrawn or after an appellate decision
7 affirming the Final Approval Order becomes final.

8 **1.12** “Gross Settlement Amount” (“GSA”) refers to the maximum payment of One Hundred Sixty
9 Thousand Dollars and no cents (\$160,000.00) Defendant will be obligated to make. The GSA represents
10 an “all in” figure and includes all payments made to Settlement Class Members, Enhancement Award
11 payment to Class Representative, all Settlement Administration Costs, the PAGA Award, and attorneys’
12 fees and litigation costs and expenses to Class Counsel, as approved by the Court.

13 **1.13** “Net Settlement Amount” (also referred to herein as “NSA”) is the GSA minus Court-
14 approved attorney’s fees and litigation costs, Settlement Administration Costs, Court-approved
15 Enhancement Award, and the PAGA Award. The NSA is the maximum amount that will be available for
16 distribution to Settlement Class Members except for their share of the PAGA Award.

17 **1.14** “PAGA Award” refers to the Sixteen thousand five hundred Dollars and no cents
18 (\$16,500.00) that will be set aside for the PAGA penalty, with Twelve Thousand three hundred twenty
19 five Dollars and no cents (\$12,375.00) paid to the LWDA and the remaining Four Thousand one hundred
20 twenty Five Dollars and no cents (\$4,125.00) payable to the Class Members who performed services in
21 California during the PAGA Period (regardless of whether the Class Member participates in or elects to
22 be excluded from the Settlement Class). “PAGA” refers to the California Private Attorney’s General Act.
23 “LWDA” refers to the California Labor and Workforce Development Agency.

24 **1.15** “PAGA Payment” refers to the share of the PAGA Award to be paid to each Class Member
25 who performed services in California during the PAGA Period (the “Aggrieved Employees”).

26 **1.16** “PAGA Period” means December 19, 2019 through the date of preliminary approval of the
27 settlement or November 20, 2021, whichever comes first.

28 **1.17** “Parties” are Plaintiffs and Defendant.

1 **1.18** “Released Claims” are those defined in Section 17, below.

2 **1.19** “Released Parties” means (1) Elodie Inc.; (2) any predecessors and successors in interest,
3 any current or former parent corporations, subsidiary corporations, affiliates, partners, members, and
4 assigns; (3) companies acquiring any or all of Defendant’s assets or capital stock; (4) any of Defendant’s
5 past or present, divisions, suppliers, distributors, dealers, or sales branches; (5) current or former officers,
6 directors, shareholders, agents, representatives, and employees of Defendant; and (6) insurers of any of the
7 foregoing persons or entities.

8 **1.20** “Request for Exclusion” refers to a request to be excluded from the Settlement, which must
9 be made in writing in conformity with the requirements set forth in the Class Notice, the Court’s order
10 granting preliminary approval, and herein, and mailed to the Administrator and postmarked on or before
11 the Response Deadline.

12 **1.21** “Response Deadline” refers to a date that is sixty (60) calendar days after the date that the
13 Class Notice is mailed to Class Members and is the deadline by which Class Members’ Requests for
14 Exclusion, disputes regarding Credits, and/or objections must be postmarked in order to be timely.

15 **1.22** “Enhancement Awards” refers to monetary awards to the Plaintiffs, in an amount not to
16 exceed Ten Thousand Dollars (\$10,000.00) to Plaintiff Don Asiatico and Ten Thousand Dollars
17 (\$10,000.00) Plaintiff Alexander Boyle, or other lesser amount as approved by the Court, for their service
18 as Class Representatives as described in Section 6, below, to be paid from the Gross Settlement Amount,
19 subject to approval by the Court, as described below.

20 **1.23** “Settlement Administrator” refers to the third-party administrator mutually selected by the
21 parties, Simpluris Group, Inc., subject to approval by the Court, to perform the notice, claims
22 administration, and distribution functions further described in this Settlement Agreement.

23 **1.24** “Settlement Administration Costs” refers to the costs and expenses of the administrator, to
24 perform its tasks and duties as provided by this Settlement Agreement. These costs will be paid out of the
25 GSA.

26 **1.25** “Settlement Class Member” refers to a Class Member who does not request exclusion from
27 the Settlement pursuant to Section 13, below. Collectively, the Settlement Class Members are the
28 “Settlement Class.”

1 **1.26** “Settlement Payment” refers to the amount paid to a Settlement Class Member (apart from
2 any PAGA payment owed).

3 **1.27** Workweek shall mean any week in which a class member or PAGA covered employee
4 worked at least one shift for Defendant.

5 **2. Procedural History and Recitals.**

6 **2.1** On December 19, 2020, Plaintiff Don Asiatico submitted his PAGA letter to the LWDA
7 alleging Defendant violated sections 204, 210, 226(a) and (e), 226.3, 226.7, 226.8, 512, 2802, as well as
8 IWC Wage Order 4-2001.

9 **2.2** On March 3, 2021, Plaintiffs filed their Class and PAGA action complaint in Alameda
10 Superior Court. alleging Defendant willfully misclassified marijuana delivery drivers as independent
11 contractors, failed to pay overtime, failed to provide compliant rest periods and pay missed rest break
12 premiums, failed to provide compliant meal periods and pay missed meal period premiums, failed to
13 provide complete wage statements, failed to pay timely wages, failed to reimburse business expenses,
14 violated the UCL, and owes penalties pursuant to PAGA.

15 **2.3** Shortly thereafter, the Parties exchanged informal discovery and to agreed attend a private
16 mediation in an effort to resolve the claims released by this Agreement. On September 6, 2021, the Parties
17 attended a full-day private mediation with an experienced wage and hour mediator, Judge Michael Marcus
18 (Ret.), and were able to resolve the case on a class basis and entered into a Memorandum of
19 Understanding.

20 **2.4** The Parties jointly represent that this is a fair, reasonable, and adequate settlement and have
21 arrived at this Settlement through arms-length negotiations, taking into account all relevant factors, present
22 and potential.

23 **2.5** This Agreement is entered into solely for the purpose of compromising highly disputed
24 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of
25 liability or wrongdoing. Defendant makes no admission of liability or wrongdoing by virtue of entering
26 into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class
27 certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any
28 unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the

1 claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This
2 Settlement, and Plaintiff's and Defendant's willingness to settle the Action will have no bearing on, and
3 will not be admissible in connection with, any litigation between the parties (other than in connection with
4 this Settlement).

5 **2.6** Class Counsel represent that they have thoroughly investigated the claims alleged against
6 Defendant in the Action. Class Counsel represent that they have conducted their own investigation into
7 the underlying facts, events, and issues related to the subject matter of this Action. Class Counsel represent
8 that they have further undertaken an extensive analysis of the legal principles applicable to the claims
9 asserted against Defendant, and the potential defenses thereto. Both Class Representative and Defendant
10 have had an opportunity to evaluate their respective positions on the merits of the claims asserted.

11 **2.7** Class Counsel has also engaged in intensive arm's-length negotiations with counsel for
12 Defendant with a view toward achieving substantial benefits for the Class while avoiding the cost, delay
13 and uncertainty of further litigation, trial, and appellate review.

14 **2.8** As a consequence of said negotiations, and of Class Counsel's investigation, analysis and
15 discovery, Plaintiffs and Class Counsel determined to enter into this Settlement Agreement on the terms
16 and conditions hereinafter set forth, believing such Settlement to be fair, reasonable and adequate and in
17 the best interests of Plaintiffs and the other members of the Class. Plaintiffs and Class Counsel have
18 determined to execute this Settlement Agreement and urge approval by the Court of the Settlement after
19 considering (a) the substantial factual and legal defenses available to Defendant to the claims asserted in
20 the Action, which render the outcome of the Action substantially uncertain; (b) the potential difficulties
21 Plaintiffs and Class Members would encounter in establishing the elements of their claims; (c) the
22 substantial benefits made available to Class Members pursuant to the Settlement; (d) the fact that the
23 Settlement ensures that Class Members will receive relief in the most expeditious and efficient manner
24 practicable, and thus much sooner than would be possible were the claims to be litigated successfully
25 through trial and appeal; and (e) the fact that the Settlement allows persons who would otherwise fall
26 within the definition of the Class, if they so desire, to opt out of the Action and individually pursue any
27 Released Claims that he or she may have.

28 **2.9** As set forth above, without admitting any wrongdoing or liability, Defendant is willing to

1 agree to the terms of the Settlement in order to settle, compromise, and fully resolve the Action and
2 Released Claims (as defined below).

3 **3. Limitation on Effect of Settlement.**

4 The Settlement will not constitute, in this or any other proceeding, an admission of any kind by
5 Defendant, including without limitation, that certification of a class is appropriate or proper or that
6 Plaintiffs could establish any of the requisite elements for class treatment of any of the claims in the
7 Action. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated,
8 any class and representative actions, which were certified for settlement purposes only, shall be vacated,
9 and shall be of no force or effect whatsoever and shall not be admissible nor construed as an admission or
10 concession of any kind by the Parties, in whole or part, and Defendant expressly reserves all rights to
11 challenge certification of a class on all available grounds.

12 **4. Establishment of the GSA.**

13 This Settlement will be made on a non-claims-made basis and will be non-reversionary. Under no
14 circumstances will any of the GSA revert to Defendant. Defendant shall pay a total of no more than the
15 GSA (except for any additional amounts potentially triggered by the escalatory provision below and any
16 employer-side payroll taxes, if any, found to be owed), which will cover payment by Defendant pursuant
17 to this Settlement Agreement, to Settlement Class Members, Settlement Administration Costs, attorneys'
18 fees and litigation costs to Class Counsel, the LWDA's share of PAGA penalties, PAGA Payments to
19 qualifying Class Members, and Service Awards to Plaintiffs. Defendant will deposit money into an
20 account, through the Settlement Administrator, in an amount equal to the GSA.

21 **5. Attorneys' Fees and Costs.**

22 Class Counsel shall request attorneys' fees up to 1/3 of the GSA, i.e., \$53,333.33 for attorneys'
23 fees; and up to \$8,000.00 for reimbursement of litigation costs and expenses. Defendant agrees not to
24 oppose Class Counsel's request for attorneys' fees and costs in these amounts. The terms of this Settlement
25 Agreement will not be abrogated and will continue in full force even if the Court awards a lower amount
26 of attorneys' fees or costs than requested by Class Counsel. Any unapproved amount of attorneys' fees
27 and litigation costs will be added to the NSA and be distributed to the Settlement Class Members.
28

1 **6. Enhancement Awards.**

2 Class Counsel shall request Enhancement Awards of up to Ten Thousand Dollars (\$10,000.00) for
3 each named Plaintiff (\$20,000.00 total). Any unapproved amounts will be added to the NSA and be
4 distributed to the Settlement Class Members.

5 **7. PAGA Award.**

6 Subject to Court approval, \$16,500.00 shall be attributed to Plaintiff's claims under PAGA. The
7 Settlement Administrator shall apportion and distribute the \$16,500.00 payment as follows: (a)
8 \$12,375.00 shall be paid to the LWDA as its 75% share of the settlement of civil penalties for PAGA
9 claims; and (b) \$4,125.00 shall be distributed as PAGA Payments to the Class Members who performed
10 services in California during the PAGA Period (i.e., "qualifying Class Members") as their 25% share of
11 the settlement of civil penalties for PAGA claims. PAGA Payments shall be made to all qualifying Class
12 Members who worked for Defendant during the PAGA period regardless of exclusion from the Settlement
13 Class.

14 **8. Costs of Settlement Administration.**

15 The Parties have mutually agreed to the selection of the Settlement Administrator, to undertake
16 the administration of the Settlement in this Action. The Parties estimate that the costs and expenses of
17 administration of the settlement will not exceed \$4,500.00.

18 **9. Calculation of the NSA and Distribution of Settlement Proceeds.**

19 **9.1** This settlement is a "non-claims-made" settlement. Each Settlement Class Member will be
20 entitled to a share of the NSA, and each qualifying Class Member will be entitled to a PAGA Payment, in
21 accordance with the formulae set forth below. Payments will be made from the NSA only to Settlement
22 Class Members, as set forth herein.

23 **9.2** The Net Settlement Amount will be allocated among the members of the Settlement Class
24 on a pro rata basis based on the number of weeks that each Settlement Class Member worked during the
25 Class Period. The 25% of the PAGA Award shall be separately paid to qualifying Class Members (i.e.,
26 those who performed services in California during the PAGA Period), with the amount of the PAGA
27 Payment determined on a pro rata basis based on the number of pay periods for which each qualifying
28 Class Member worked for Defendant during the PAGA Period. For purposes of settlement, payments to

Settlement Class Members and PAGA Payments to qualifying Class Members will be reported by 1099. In cases where a Class Member is qualified to receive a PAGA Payment and a settlement payment as a Settlement Class Member, the payments may be made by a single check or electronic equivalent, provided the amount of each payment is separately identified in documentation accompanying the check or provided separately at roughly the same time as payment is made (email or electronic notice being sufficient).

9.3 The amount distributed to Settlement Class Members shall not exceed the NSA.

9.4 If a Class Member timely and validly submits a written request for exclusion, as set forth herein, his or her share of the NSA will remain in the fund to be distributed to the Settlement Class Members in accordance with the above formula. Exclusion from the Settlement Class shall not affect the Class Member's right to a PAGA Payment, if qualified.

9.5 Payments to Class Members pursuant to this Settlement Agreement will not be construed as compensation for purposes of determining eligibility for or benefit calculations of any health and welfare benefit plan, retirement benefit plan, vacation benefit plan, unemployment compensation, including, without limitation, all plans, subject to Employee Retirement Income Security Act ("ERISA"). The Parties agree these payments do not represent any modification of any employee's previously-credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

9.6 Defendant will deposit the Gross Settlement Sum of One Hundred Sixty Thousand Dollars and no cents (\$160,000.00) needed to pay the entire Gross settlement Sum into an account set up and controlled by the Settlement Administrator, within thirty (30) calendar days after Final Approval or September 20, 2022, whichever is greater.

9.7 Within ten (10) calendar days of the funding of the settlement, the Settlement Administrator will calculate and pay all Class Members' settlement shares, PAGA Payments, attorney's fees, costs, enhancement payment, the LWDA's share of the PAGA Award, and administration costs, as approved by the Court.

9.8 Class Member payment checks that are not cashed within one hundred and eighty (180) calendar days from the date of issuance by the Settlement Administrator, will be canceled. Class Members

1 whose Class Member Payment checks are not timely cashed and which are canceled, will be deemed to
2 have irrevocably waived any right in or claim to any payment under the Settlement, but the settlement and
3 their release of Released Claims will remain binding upon them. The value of the canceled Class Member
4 Payment checks will be transmitted in conformity with California Civil Procedure Code section 384, to
5 Legal Aid Society of San Francisco, the *cy pres* agreed upon by the Parties and approved by the Court.

6 **9.9** Neither Plaintiffs nor Defendant shall bear any liability for lost or stolen checks, forged
7 signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of
8 omission or commission, the same is true for the Settlement Administrator.

9 **10. Tax Treatment.**

10 **10.1 Tax Treatment of Class Member Payments:** Amounts paid to individual Settlement Class
11 Members and PAGA Payments paid to Class Members shall be reported using IRS Form 1099.

12 **10.2 Tax Treatment of Service Award:** Plaintiffs will receive an IRS Form 1099 for their
13 individual Service Awards and will be responsible for payment of any taxes owing on said amount.

14 **10.3 Tax Treatment of Attorneys' Fees and Cost Award:** Class Counsel will receive an IRS
15 Form 1099 for any amount awarded to Class Counsel in the form of attorneys' fees or costs and will be
16 responsible for payment of any taxes owing on said amount.

17 **10.4 No Tax Advice:** Neither Plaintiffs nor Defendant, nor the parties' attorneys, shall give or
18 are giving any tax advice in connection with the settlement or any payments to be made pursuant to this
19 settlement. Each Settlement Class Member agrees to indemnify, and hold harmless Defendant from any
20 liability for taxes, fees, costs, or assessments resulting from his or her failure to timely pay his or her share
21 of taxes, interest, fees, or penalties owed.

22 **11. Notice Administration.**

23 **11.1** Within twenty (20) calendar days of the later of the Preliminary Approval Order or court
24 approval of the Class Notice, Defendant shall provide the following information to the Settlement
25 Administrator ("Class Data List"):

26 (a) the names, last known addresses, last known telephone numbers (to the extent
27 available), and Social Security numbers of each Class Member;

28 (b) the number of attributed to each Class Member (in accordance with the terms

1 applicable to the allocation formulae addressed above).

2 **11.2** Upon its receipt of the Class Data List, the Settlement Administrator shall access the National
3 Change of Address (“NCOA”) Database, and update the addresses contained therein.

4 **11.3** Within thirty-five (35) days of the later of the Preliminary Approval Order or court approval
5 of Class Notice, the Settlement Administrator shall provide the Class Notice by bulk first class mail,
6 forwarding requested, to the Class Members at the addresses identified through the process described
7 above.

8 **11.4** As to any Class Notices that are returned as undeliverable, or where the NCOA Database
9 indicates that the last known address of any Class Member is invalid or otherwise undeliverable, the
10 Settlement Administrator will perform a skip trace procedure and re-mail all returned, undelivered mail
11 within five (5) calendar days of the date on which the Settlement Administrator is informed that a Class
12 Notice is undeliverable or otherwise invalid.

13 **11.5** Other than the obligations set forth in this Settlement Agreement, Parties will have no
14 additional obligation to identify or locate any Class Member.

15 **11.6** Parties will not be responsible for nor have any liability in connection with the provision of
16 Class Member data to the Settlement Administrator, outside of the obligations set forth in the Settlement
17 Agreement. The Settlement Administrator and all those working through, in concert with, or on behalf of
18 the Settlement Administrator, shall be obligated to take all reasonable steps to maintain the confidentiality
19 of Class Member information and to carry out the other duties enumerated in the Settlement Agreement,
20 including calculating each Class Member’s potential share of the Settlement.

21 **11.7** The Settlement Administrator shall provide Defendant’s counsel and Class Counsel with
22 weekly summary reports, including the total number of Class Notices that were returned as undeliverable,
23 the total number of objections, and disputes regarding, and/or Requests for Exclusion. The Settlement
24 Administrator shall maintain records of its work, which will be available for inspection upon request by
25 Defendant’s counsel.

26 **12. Class Notice and Notification of Credits.**

27 **12.1** The Class Notice will be a pre-printed notice, in substantially the form attached hereto as
28 **Exhibit A** and to be approved by the Court. In addition to other information contained on the Class

1 Notice, the Class Notice will state the number of work weeks for which each Class Member was paid by
2 Defendant during the Class Period and, if applicable, the PAGA Period, which figures shall be drawn from
3 the Class Data List provided by Defendant.

4 **13. Request for Exclusion.**

5 **13.1** Any Class Member may elect to opt out of the Settlement by submitting a written request for
6 exclusion from the Settlement to the Settlement Administrator, postmarked no later than the Response
7 Deadline. The request for exclusion must contain the following: the Class Member's full name, signature,
8 address and last four digits of his or her social security number, and a clear statement that he or she seeks
9 to be excluded from the Settlement. The Settlement Administrator shall immediately send all requests for
10 exclusion to Defendant's counsel and Class Counsel. A Class Member who fails to comply with the opt
11 out procedure set forth herein on or before the Response Deadline will not be excluded and will instead
12 be bound by all provisions of the Settlement Agreement and all orders issued pursuant thereto.

13 **13.2** Any Class Member who elects to opt out of the Class in the manner and within the time limits
14 specified above and in the Class Notice: (1) will not have any rights under the Settlement Agreement;
15 (2) will not be entitled to receive any compensation under the Settlement Agreement (except for any
16 PAGA Payment owed to qualifying Class Members); (3) will not have standing to submit any objection
17 to the Settlement Agreement or proposed settlement; and (4) will not be bound by the Settlement
18 Agreement (except that any right to receive or pursue PAGA penalties whether on an individual or
19 representative basis shall be extinguished upon final approval of this settlement).

20 **13.3** Except for persons who elect to opt out of the Settlement in the manner and within the time
21 limits specified above, in the Preliminary Approval Order, and in the Class Notice, all Class Members
22 will be deemed to be within the Class for all purposes under this Settlement Agreement, and will be bound
23 by the terms and conditions of this Settlement Agreement, including all orders issued pursuant thereto.

24 **13.4** If the Settlement Agreement is given final approval, it will operate as a full, complete, and
25 final release of all the Released Claims of the Class Representative and all Settlement Class Members,
26 and as an effective covenant not to sue.

27 **13.5** Class Members will be notified in writing of any deficiencies in Requests for Exclusion and
28 will be permitted no more than fifteen (15) days to cure all deficiencies in writing. Failure to execute a

timely Request for Exclusion form shall invalidate the Request for Exclusion.

14. Objections.

14.1 Any Class Member who does not request exclusion from the Settlement may object to the Settlement Agreement by sending the Settlement Administrator, not later than the Response Deadline, a written statement objecting to the Settlement. The written objection must contain: the Class Member's full name, address, last four digits of his or her social security number, the case name and number of the Action (*Don Asiatico v. Elodie*, Alameda County Superior Court Case No. RG21090364), and a clear statement of the basis for his or her objection. The Settlement Administrator shall immediately send all objections to counsel for Defendant and Class Counsel.

14.2 Counsel for the Parties shall file any responses to any objections at the time the Motion for Final Approval is filed. Class Members may, prior to the Final Approval Hearing, withdraw their objections or opt out requests in a writing to the Settlement Administrator, which may then be filed with the Court.

14.3 All Parties and their counsel will not seek to solicit or otherwise encourage any Class Member to submit an opt out request or objection, nor encourage any Class Member to appeal from the final judgment.

14.4 If an objector also wishes to appear at the Final Approval Hearing, in person or through an attorney, he or she need not file a notice of intention to appear at the same time as the objection is filed. Filing the notice of intention to appear is not necessary to preserve the right to appear at the Final Approval Hearing. If a Class Member submits both a request for exclusion and a written objection, the request for exclusion shall be void and the Class Member shall be deemed part of the Class and bound by the Judgment upon approval by the Court.

15. Resolution of Disputes.

15.1 If a Class Member timely disputes the number of workweeks listed on his or her Class Notice, the dispute will be submitted to the Settlement Administrator, who will examine the records and either verify the calculation or provide a corrected calculation. Disputes must be in a writing that are submitted to the Settlement Administrator, postmarked on or before the Response Deadline. The dispute must contain: Class Member's full name, address, signature, and last four digits of his or her Social Security

number; the case name and number of the Action (*Don Asiatico et al v. Elodie Inc.*, Alameda County Superior Court Case No. RG21090364) and any facts supporting the Class Member's dispute, along with any supporting materials confirming that the workweeks attributed to him or her are incorrect. The Settlement Administrator's determination of disputes will be final and non-appealable.

16. Non-Materiality of Attorneys' Fees, Costs and Enhancement Award.

Any denial or reduction in amount by the Court of the application for attorneys' fees and litigation costs, Enhancement Awards, and/or Settlement Administration Costs will in no way affect the validity the remainder of this Settlement Agreement, or give rise to a right to abrogate this Settlement Agreement.

17. Released Claims.

17.1 Upon Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, Plaintiffs and all other Settlement Class Members, on behalf of themselves, as well as on behalf of all of their heirs, successors in interest, assigns, transferees, and grantees, fully and forever release, acquit, and discharge the Released Parties from those claims alleged in the operative PAGA letter, pending Complaint and forthcoming First Amended Complaint ("FAC") or that reasonably could have been alleged based on the facts and claims asserted in the PAGA letter and/or Complaint and/or FAC, and arising during the Class Release Period, including claims under Labor Code sections 201-204, 210, 226(a), 226(e), 226.3, 226.8, 226.7, 227.3, 510, 512, 2775, 2802, sections 11 and 12 of the applicable Wage order.

17.2 Plaintiffs' General Release:

In addition to the Released Claims, Plaintiff Don Asiatico and Plaintiff Alexander Boyle shall be bound by a complete and general release of all claims under any and all applicable federal and state laws and/or regulations as to Released Parties, and shall also be bound by a California Civil Code section 1542 release and waiver of all claims known and unknown, without exception, except as may be prohibited by law, such as claims for workers' compensation benefits. California Civil Code section 1542 reads as follows:

"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.”

17.3 Release of PAGA Claims:

Upon the Court’s entry of a Final Approval Order and Judgment, as detailed further below, the named Plaintiffs acting as agent and proxy of the LWDA are releasing, waiving, and fully extinguishing the claims of the LWDA predicted on the claims alleged in Plaintiff’s PAGA letter and/or Complaint, and arising during the PAGA Period (the “PAGA Claims”). The foregoing release shall be binding on Plaintiffs and the State of California, and shall bar by res judicata any claim under PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of California, as to any civil penalty claims predicted on the PAGA Claims.

18. Application for Preliminary Approval.

18.1 Within 30 business days after the Parties’ execution of this Settlement Agreement, or as soon thereafter as reasonably or actually possible, Plaintiffs shall file a motion for preliminary approval of the Settlement, requesting a Preliminary Approval Order that contains the following provisions:

18.1.1 preliminarily approving the Settlement Agreement and its terms;

18.1.2 preliminarily approving and certifying the Class for settlement purposes only;

18.1.3 approving the form of the Class Notice, and finding that the proposed method of disseminating the Class Notice meets the requirements of due process and is the best notice practicable under the circumstances;

18.1.4 establishing the procedures and the deadline by which Settlement Class Members may assert objections to the Settlement, seek exclusion from the Settlement, and/or dispute their Settlement Shares; and

18.1.5 setting a date for the Final Approval Hearing.

18.2 Counsel for Defendant will be given an opportunity to review and comment on the motion for preliminary approval of the Settlement and all supporting papers prior to being filed with the Court, and such comments will be implemented to the extent reasonable.

19. Final Approval Order and Final Judgment.

19.1 If the Settlement is preliminarily approved by the Court, the Parties shall thereafter request that the Court enter an order granting final approval of the Settlement and judgment based thereon

(“Final Approval Order and Judgment”), which includes the following provisions:

19.1.1 confirming certification of the Class for settlement purposes only;

19.1.2 finding that the dissemination of the Class Notice in the form and manner ordered by the Court was accomplished as directed, met the requirements of due process; and

19.1.3 finally approving the Settlement Agreement and the Settlement as fair, reasonable and adequate and directing consummation of the Settlement in accordance with its terms and provisions;

19.1.4 directing the Parties to implement the terms of the Settlement Agreement;

19.1.5 releasing and discharging the Released Parties from any and all liability with respect to the Released Claims as hereinabove provided;

19.1.6 resolving and settling all the Released Claims by the Class Representative and all Settlement Class Members, as herein above provided, with the release precluding them from instituting, commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of himself or herself, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any of the Released Parties, that asserts any Released Claims.

19.1.7 Releasing and fully extinguishing any right Plaintiffs and all Class Members (regardless of exclusion from the Settlement Class) have to pursue or obtain civil penalties pursuant to the PAGA, whether individually or in a representative capacity, based on the violations alleged in the Complaint and the letter to the LWDA.

19.1.8 awarding reasonable attorneys’ fees and litigation costs to Class Counsel as determined by the Court;

19.1.9 awarding Enhancement Awards to the Class Representatives as determined by the Court;

19.1.10 awarding Settlement Administration Costs to the Settlement Administrator as determined by the Court and other administration costs as provided herein;

19.1.11 approving the allocation of PAGA Penalties to the LWDA and PAGA

1 Payments to qualifying Class Members;

2 **19.1.12** entering final judgment on the Complaint; and

3 **19.1.13** preserving continuing and exclusive jurisdiction over all matters related to the
4 administration and consummation of the terms of this Settlement and enforcement of the
5 Judgment.

6 **19.2** Counsel for Defendant will be given an opportunity to comment on the motion for final
7 approval of the Settlement and supporting papers prior to being filed with the Court, and such comments
8 will be implemented to the extent reasonable.

9 **20. Effect of Settlement Not Being Final.**

10 In the event that the Settlement does not become final, then the Settlement Agreement will become
11 null and void, and all negotiations, proceedings, and statements relating thereto will be without prejudice
12 as to the rights of any and all Parties hereto, and all Parties and their respective predecessors and successors
13 will be deemed to have reverted to their respective positions in the Action as of the date and time
14 immediately prior to the execution of this Settlement Agreement. If the Court does not approve either
15 preliminarily or finally any material term or condition of the Settlement Agreement, or if the Court effects
16 a material change to the Parties' settlement (including but not limited to the scope of release to be granted
17 by Class Members or the binding effect of the Settlement on Class Members), the Parties shall work
18 together in good faith to address any concerns raised by the Court and propose a revised Settlement for
19 the Court's approval.

20 **21. Withdrawal From Settlement Based on Requests for Exclusion and Escalator Clause.**

21 Defendant shall retain the right, in the exercise of its sole discretion, to nullify the settlement if
22 Class Members representing more than an aggregate total of 5% of the Class Members opt out of the
23 settlement. Defendant must provide written notice to Class Counsel of its withdrawal within thirty (30)
24 calendar days of the Response Deadline. All signatories and their counsel agree not to encourage opt-
25 outs. Class Counsel and Defendant specifically agree not to solicit opt-outs, directly or indirectly, through
26 any means. If Defendant exercises this right, it shall be solely responsible for the costs incurred for
27 settlement administration up to the date of nullification. If Defendant exercises its right to terminate,
28 the Settlement will be void *ab initio* and of no force or effect, and will not be admissible in any

1 judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue,
2 substantive or procedural. In addition, none of the Parties to this Settlement will be deemed to have
3 waived or assigned any claims, objections, defenses, or arguments in this action, including with
4 respect to the issue of class certification. If the Class Members on the final class list amounts to more
5 than 48 (i.e., 15% more than the identified 42 as of September 20, 2021), then Defendant shall
6 increase the Total Settlement Amount by the same number of percentage points by which the number
7 of Class Members exceeds 48.

8 **22. No Admissions.**

9 The Parties understand and agree that this Settlement Agreement is the result of a good faith
10 compromise settlement of disputed claims, and no part of this Settlement Agreement, or any conduct or
11 written or oral statements made in connection with this Settlement and this Settlement Agreement,
12 including the Memorandum of Understanding, whether or not the Settlement is finally approved and/or
13 consummated, or the negotiations leading to the Settlement Agreement, or any document filed in support
14 thereof, should be construed as an admission or concession of any kind by Defendant or any of the
15 Released Parties.

16 **23. Avoidance of Undue Publicity.**

17 Except as required to obtain preliminary or final approval in this case, Plaintiffs and Class Counsel
18 agree not to publicize the amount or other terms of this settlement to any person. Nothing herein will
19 restrict Class Counsel from including publicly available information regarding this settlement in future
20 judicial submissions regarding Class Counsel's qualifications and experience.

21 **24. Construction.**

22 This Settlement Agreement was entered into after substantial good faith, arm's-length negotiations
23 between the Parties. This Settlement Agreement has been entered into without any coercion and under no
24 duress. The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement
25 Agreement so that it will not be deemed to have been prepared or drafted by one party or another.

26 **25. Advice of Counsel**

27 The Parties to this Settlement Agreement are represented by competent counsel, and they have had
28 an opportunity to consult with counsel. The Parties to this Settlement Agreement agree that it reflects

1 their good faith compromise of the claims raised in this action, based upon their assessment of the mutual
2 risks and costs of further litigation and the assessments of their respective counsel.

3 **26. Entire Agreement.**

4 This Settlement Agreement (including Exhibits hereto) sets forth the entire agreement of the
5 Parties with respect to its subject matter and supersedes any and all other prior agreements and all
6 negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding
7 the subjects covered herein. The Parties acknowledge that no representations, inducements, warranties,
8 promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any
9 of the Parties that are not embodied or incorporated by reference herein. Except as otherwise set forth in
10 this Agreement, any notice, order, judgment, or other exhibit that requires approval of the Court must be
11 approved without material alteration that substantially changes or increases the cost of compliance with
12 this Settlement Agreement in order for this Settlement Agreement to become effective. Before invoking
13 this provision to challenge the effectiveness of this Settlement Agreement, the invoking party shall consult
14 with, and if necessary mediate in good faith with, the other party in an effort to resolve any such challenge.

15 **27. Modification or Amendment.**

16 This Settlement Agreement may not be modified or amended except in a writing signed by all
17 signatories hereto or their attorneys or their successors in interest.

18 **28. Successors.**

19 This Settlement Agreement will be binding upon and inure to the benefit of the Parties hereto and
20 their respective heirs, executors, administrators, successors and assigns, and upon any corporation,
21 partnership or other entity into or with which any Party hereto may merge, combine, or consolidate.

22 **29. Counterparts & Electronic Signature.**

23 This Settlement Agreement may be executed in counterparts, each of which will be deemed an
24 original, and all of which together will constitute one and the same instrument. Further, the Parties agree
25 that this Agreement may be executed electronically pursuant to C.C.P. § 1633.1.

26 **30. Waivers.**

27 The waiver by any Party of any breach of this Settlement Agreement will not be deemed or
28 construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this

Settlement Agreement.

31. Governing Law.

This Settlement Agreement will be governed by and construed, enforced, and administered in accordance with the internal laws of the State of California.

32. Headings.

The headings contained in this Settlement Agreement are for convenience and reference purposes only, and will not be given weight in its construction.

33. Notices.

Any notices, requests, demands, or other communications required or permitted to be given pursuant to this Settlement Agreement, other than the contemplated Class Notice to the Class Members, must be in writing and mailed or emailed as follows:

33.1 To Class Counsel: to the attention of Craig Ackerman, Esq., Ackermann & Tilajef, P.C., 1180 South Beverly Drive Suite 610, Los Angeles, CA 90035 and/or emailed to cja@ackermanntilajef.com, to Amir Seyedfarshi, Esq., 1180 South Beverly Drive Suite 610, Los Angeles, CA 90035 and/or emailed to amir@employmentrightslawgroup.com. To Defendant and counsel for Defendant: to the attention of Kristina Kourasis kristina@landeggeresq.com. and Alfred Landegger, Esq., alfred@landeggeresq.com, 15760 Ventura Blvd., Suite 1200, Encino CA 914036.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties, as follows:

Plaintiffs and Proposed Class Representative

Dated: 02 / 08 / 2022, 2021 By: 
Don Asiatico

Dated: 02 / 07 / 2022, 2021 By: 
Alexander Boyle

Elodie, Inc.

Dated: 02 / 21 / 2022, 2021 By: Vacho Hovhannisyan 
On behalf of Defendant

APPROVED AS TO FORM:

Counsel for Plaintiffs and Proposed Class Counsel

Dated: 02 / 07 / 2022, 2021

By:


Craig Ackerman
Ackermann & Tilajef PC

Dated: 02 / 07 / 2022, 2021

By:


Amir Seyedfarshi
Employment Rights Law Group, APC

Counsel for Defendant

Dated: 02 / 21 / 2022, 2021

By:


Alfred Landegger
Kristina Kourasis

TITLE	2022-01-27 - Elodie - Amended Settlement Agreement - Clean...
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AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
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Sent for signature to Don Ryan Asiatico (do8nryan@yahoo.com), alexander Boyle (soy.hondo@gmail.com) and Jaclyn Blackwell (jb@ackermanntilajef.com) from amir@employmentrightslawgroup.com
IP: 76.167.87.96



02 / 07 / 2022
19:43:56 UTC

Viewed by Jaclyn Blackwell (jb@ackermanntilajef.com)
IP: 76.167.87.96



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Signed by Jaclyn Blackwell (jb@ackermanntilajef.com)
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02 / 08 / 2022
00:27:08 UTC

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Sent for signature to Vacho Hovhannisyan (vachohov@gmail.com) and kristina (kristina@landeggeresq.com) from amir@employmentrightslawgroup.com
IP: 104.174.49.218



02 / 20 / 2022
23:20:06 UTC

Viewed by Vacho Hovhannisyan (vachohov@gmail.com)
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02 / 21 / 2022
17:15:52 UTC

Signed by Vacho Hovhannisyan (vachohov@gmail.com)
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02 / 21 / 2022
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Viewed by kristina (kristina@landeggeresq.com)
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02 / 21 / 2022
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The document has been completed.