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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SACRAMENTO**

18 DON ASIATICO and GEORGE LUIS,
19 individually and on behalf of all others
20 similarly situated,

21 Plaintiffs,

22 v.

23 WESTERN MESSENGER SERVICES,
24 INC., a California Corporation,

25 Defendant.

Case No. 34-2021-00307297-CU-OE-GDS

**JOINT STIPULATION AND SETTLEMENT
AGREEMENT OF CLASS ACTION AND
PAGA CLAIMS**

Complaint Filed: September 1, 2021

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1 This Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims
2 (“Stipulation of Settlement” or “Settlement”) is made and entered into by and between Plaintiffs Don
3 Asiatico and George Luis (hereinafter referred to as “Class Representatives” or “Plaintiffs”) and on
4 behalf of the Class Members and Aggrieved Employees (as defined below) and Defendant Western
5 Messenger Services, Inc. (“Defendant”) (Plaintiffs and Defendant hereinafter collectively referred to
6 as the “Parties”).

7 THE PARTIES STIPULATE AND AGREE as follows:

8 **DEFINITIONS**

9 1. “**Action**” shall mean the action entitled *Don Asiatico, et al. v. Western Messenger*
10 *Services, Inc.* filed in Sacramento Superior Court (Case Number 34-2021-00307297-CU-OE-GDS),
11 Plaintiffs’ PAGA Notice, dated January 28, 2021 (Case No. LWDA-CM-820021-21), and Plaintiffs’
12 Amended PAGA Notice, dated August 4, 2021 (Case No. LWDA-CM-820021-21).

13 2. “**Class Counsel**” shall mean Craig Ackermann of Ackermann & Tilajef, P.C. and Amir
14 Seyedfarshi of Employment Rights Law Group, APC.

15 3. “**Class Members**” shall mean Plaintiffs and all other California residents who are or
16 were employed by Defendant as drivers, messengers, couriers, or in a similar position, who worked at
17 least one shift in California from April 2, 2017 through August 31, 2021 (“Settlement Class
18 Members”). Defendant represents that the Class consists of approximately 83 Class Members (as of
19 July 12, 2021) who worked approximately 5,178 shifts during the Class Period up until July 12, 2021.

20 4. “**Class Period**” shall mean April 2, 2017 through August 31, 2021.

21 5. “**Class Released Claims**” shall have the meaning ascribed to it in Paragraph 63 below.

22 6. “**Class Representatives**” or “**Plaintiffs**” shall mean Plaintiffs Don Asiatico and
23 George Luis.

24 7. “**Complaint**” shall mean the lawsuit entitled *Don Asiatico, et al. v. Western Messenger*
25 *Services, Inc.* filed in Sacramento Superior Court (Case Number 34-2021-00307297-CU-OE-GDS).

26 8. “**Court**” shall mean the Superior Court of the State of California for the County of
27 Sacramento.

28 9. “**Court’s Final Order and Judgment**” means the Final Order Approving Class Action

1 and PAGA Settlement, and Judgment in a form to be agreed upon by the Parties and approved by the
2 Court.

3 10. **“Defendant’s Counsel”** shall mean Babak Yousefzadeh of Sheppard Mullin Richter
4 & Hampton LLP.

5 11. **“Effective Date”** shall have the meaning ascribed to it in Paragraph 39, below.

6 12. **“Final Approval Hearing”** shall mean the hearing whereat the Court shall consider,
7 without limitations, any timely objections to the Settlement from Settlement Class Members,
8 testimony from the Parties or their counsel, declarations regarding the notice process from the
9 Settlement Administrator, and otherwise make a final determination regarding the fairness of the
10 Settlement Agreement as set forth herein.

11 13. **“Gross Settlement Amount”** shall refer to One Hundred Seventy Thousand Dollars
12 and No Cents (\$170,000.00), which is the maximum amount that Defendant will pay pursuant to this
13 Settlement, excluding (a) Defendant’s share of payroll taxes (which shall be paid by Defendant
14 separately as outlined in paragraph 48 below) and (b) the amounts Defendant will pay to Plaintiffs in
15 Plaintiffs’ Individual Severance Agreements (which shall be paid by Defendant separately as outlined
16 in paragraph 49 below).

17 14. **“Incentive Awards”** shall mean the payments made to Plaintiffs in their capacity as
18 Class Representatives, which sum is over and above their Individual Settlement Payments.

19 15. **“Individual Settlement Payment”** will be the portion of the Net Settlement Amount
20 payable to a Settlement Class Member.

21 16. **“Net Settlement Amount”** shall have the meaning ascribed to it in Paragraph 42,
22 below.

23 17. **“Notice of Proposed Settlement”** or **“Notice”** means the Notice of Pendency of Class
24 Action in substantially the form attached hereto as Exhibit A, and as approved by the Court.

25 18. **“PAGA”** shall mean the California Labor Code Private Attorneys General Act, Labor
26 Code §§ 2698 *et seq.*

27 19. **“PAGA Employee”** or **“Aggrieved Employee”** shall mean Plaintiffs and all other non-
28 exempt individuals who are or were employed by Defendant as a driver, messenger, courier, or in a

1 similar position in the State of California and who worked one or more shifts during the time period
2 of January 29, 2020 through August 31, 2021. Defendant represents that the PAGA Employees consist
3 of approximately 38 individuals during the PAGA Period.

4 20. **“PAGA Payment”** means the payment to the State of California LWDA and the PAGA
5 Employees in settlement of all claims for PAGA penalties.

6 21. **“PAGA Employee Payments”** means the payment issued to each PAGA Employee
7 for his/her/their share of the PAGA Payment.

8 22. **“PAGA Period”** shall mean January 29, 2020 through August 31, 2021.

9 23. **“Parties”** shall refer to the Plaintiffs and Defendant, each of whom is a “Party.”

10 24. **“Payment Schedule”** shall refer to the schedule under which Defendant will fund the
11 Gross Settlement Amount. Fifty percent (50%) of the Gross Settlement Amount shall be funded within
12 75 days of the Court’s entry of the final approval order provided there are no appeals or objections.
13 The remaining fifty percent (50%) of the Gross Settlement Amount, plus any applicable taxes shall be
14 funded within 120 days after the Defendant’s first payment is made.

15 25.

16 26. **“Released Parties”** collectively shall encompass Defendant and all of its parents,
17 subsidiaries, and affiliates, and each of their respective officers, directors, shareholders, members,
18 employees, attorneys, insurers, representatives, agents, predecessors, successors, and assigns.

19 27. **“Settlement Administrator”** shall mean CPT Group, Inc., ILYM Group, Inc., or
20 another administrator to be agreed upon by the Parties after bidding out the project.

21 28. **“Settlement Class Members”** shall mean the individual Class Members who did not
22 opt-out of the Settlement by submitting a valid request for exclusion as described in Paragraph 56.

23 24 **RECITALS**

25 29. In the Action, Plaintiffs served a PAGA Notice, dated January 28, 2021 (LWDA Case
26 No. LWDA-CM-820021-21), an Amended PAGA Notice, dated August 4, 2021 (LWDA Case No.
27 LWDA-CM-820021-21), and in the Complaint, Plaintiffs alleged causes of action for (1) failure to
28 pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide timely, duty-free meal

1 periods and/or pay missed meal period premiums; (4) failure to provide timely, duty-free rest periods
2 to and/or pay missed rest break premiums; (5) failure to pay timely wages; (6) failure to pay final
3 wages; (7) failure to provide complete and accurate wage statements; (8) failure to reimburse business
4 expenses; (9) UCL violations; and (10) PAGA penalties.

5 30. Following exchange and extensive review of relevant documents and class data and
6 PAGA data, on July 6 and 12, 2021, the Parties engaged in face to face settlement negotiations, which
7 resulted in this settlement.

8 31. Defendant denies any liability or wrongdoing of any kind whatsoever associated with
9 the claims in the Action, and further deny that, for any purpose other than settling this Action, this
10 Action is appropriate for class action or representative treatment.

11 32. It is the Parties' desire to fully, finally and forever settle, compromise and discharge all
12 disputes and claims arising from or related to the allegations of this Action.

13 33. It is the Parties' intention that this Stipulation of Settlement shall constitute a full and
14 complete settlement and release of all Class Released Claims and all PAGA Claims (as defined in
15 Paragraphs 63 and 64 below) against all Released Parties.

16 34. It is the Parties' intention that this Settlement shall not become effective until the
17 Effective Date, as defined in paragraph 39, below.

18 35. Class Counsel have conducted a thorough investigation into the facts of this Action,
19 including an extensive review of relevant documents and data, and has diligently pursued an
20 investigation of the Class Members' claims against Defendant. Based on its and their own independent
21 investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is
22 fair, reasonable and adequate and is in the best interest of the Class Members in light of all known
23 facts and circumstances, including the risks of significant delay, the class not being certified, and the
24 defenses asserted by Defendant. Defendant and Defendant's Counsel also agree that the Settlement is
25 in the best interests of the Class Members. Counsel for the Parties further agree that the Settlement is
26 fair, reasonable and adequate with respect to civil penalties sought pursuant to PAGA.

27 36. The Parties agree to cooperate and take all steps necessary and appropriate to
28 consummate this settlement in accordance with the terms of this Stipulation of Settlement.

TERMS OF SETTLEMENT

37. In consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, to the terms herein.

38. It is agreed by and between Plaintiffs and Defendant that this Action and any claims, demands, liabilities, penalties, damages or causes of action of any kind whatsoever claimed by Plaintiffs on behalf of themselves, the Class Members, and/or the PAGA Employees arising out of the disputes as outlined in Plaintiffs' PAGA Notice, dated January 28, 2021 (LWDA Case No. LWDA-CM-820021-21), Amended PAGA Notice, dated August 4, 2021 (LWDA Case No. LWDA-CM-820021-21), and Complaint which are the subject of this Action, be settled and compromised, subject to the terms and conditions set forth in this Stipulation of Settlement and the Court's approval.

39. Effective Date: The Settlement embodied in this Stipulation of Settlement shall become effective when all of the following events have occurred ("Effective Date"): (i) this Stipulation of Settlement has been executed by Plaintiffs, Defendant, Class Counsel and Defendant's Counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been sent to the Class Members, providing them the opportunity to object to the Settlement, and the opportunity to opt out of the Settlement; (iv) the Court has held a formal fairness hearing and entered the Court's Final Order and Judgment; and (v) the later of the following events: (A) when the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; (B) when any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (C) when any appeal, writ or other appellate proceeding has upheld the Court's Final Order and Judgment with no right to pursue further remedies or relief. Notwithstanding the foregoing, if there are no objections to the Settlement, the Effective Date shall be the date of entry of the Final Approval Order. If the Court declines to approve the Settlement, the entire Stipulation of Settlement is deemed void and unenforceable as if no settlement of any claim was ever reached. All negotiations, statements and proceedings and data relating thereto shall be protected by California Evidence Code §1152 and shall be without prejudice to the rights of any of the Parties.

40. Gross Settlement Amount: To implement the terms of this Settlement, Defendant

1 agrees to pay a maximum total payment of One Hundred Seventy Thousand Dollars and No Cents
2 (\$170,000.00) which includes payments to Settlement Class Members, Incentive Awards to the Class
3 Representatives, the PAGA Payment, the Settlement Administrator's fees and costs, approved
4 attorneys' fees and litigation costs, and any other payments provided by this Stipulation of Settlement.
5 Except as otherwise specified herein, Defendant shall not be required to pay any additional monies
6 beyond the amount of the Gross Settlement Amount, Defendant's share of payroll taxes (outlined in
7 paragraph 48 below). Further, no portion of the Gross Settlement Amount shall revert to Defendant,
8 and any amount of the Gross Settlement Amount not required to pay the above referenced amounts
9 shall be paid to the Settlement Class Members on a pro rata basis according to the formula contained
10 herein in paragraph 42.

11 41. Funding of Settlement Amount: Defendant shall transfer to the Settlement
12 Administrator the Gross Settlement Amount on pursuant to the Payment Schedule. The delivery of
13 the entire Gross Settlement Amount and the employer's share of payroll taxes to the Settlement
14 Administrator shall constitute full and complete discharge of the entire obligation of Defendant under
15 this Settlement. Once Defendant has made such payments, it will be deemed to have satisfied all terms
16 and conditions under this Settlement, shall be entitled to all protections afforded to Defendant under
17 this Settlement, and shall have no further obligations under the terms of the Settlement regardless of
18 what occurs with respect to those sums.

19 42. Allocation of the Gross Settlement Amount: Subject to Court approval and the
20 conditions specified in this Agreement, and in consideration of the mutual covenants and promises set
21 forth herein, the Parties agree the Gross Settlement Amount shall encompass the following: (1) Class
22 Counsel's fees; (s) Class Counsel's Costs; (3) the Plaintiffs' Incentive Awards; (4) the Settlement
23 Administrator's costs; (5) the PAGA Payment (including both the PAGA payment to the LWDA and
24 the PAGA Employee Payments); and (6) the Net Settlement Amount. After the deduction of the
25 amounts approved for the Incentive Awards to the Class Representatives, the PAGA Payment, the
26 Settlement Administrator's costs, Class Counsel's fees and expenses, the remainder shall be referred
27 to as the Net Settlement Amount.

28 a. The Net Gross Settlement Amount shall be divided among the Settlement Class

Members pro-rata on a “checks cashed” basis based upon the following:

- i. Each Settlement Class Member’s weeks worked count, which shall be the sum of the total number of weeks the Settlement Class Member worked during the Class Period;
 - ii. Divided by the combined sum of all Settlement Class Members’ weeks worked count; and
 - iii. Multiplied by the value of the Net Gross Settlement Amount. Each Settlement Class Member’s calculation of total weeks worked and estimated share of the Net Settlement Amount shall be identified in the Notice.
- b. The Parties agree that if any Settlement Class Member disputes the basis for determining their share of the Settlement, Defendant’s records shall presumptively control unless the Settlement Class Member can produce documentation evidence of other weeks worked during the relevant time period. The Parties further agree that any dispute that cannot be resolved by Class Counsel and Defendant’s counsel may be brought before the Court before final approval of the Class Settlement.
- c. To the extent that amounts in Paragraphs 46 and 47 below are not approved by the Court, such amounts will be reallocated to the Net Settlement Amount unless allocated otherwise by agreement of the Parties, with approval of the Court, or by the Court.
- d. Twenty percent (20%) of the Net Settlement Amount distributed to each Settlement Class Member will be considered wages, and will be reported as such to each Settlement Class Member on an IRS Form W-2. The Parties agree that eighty percent (80%) of the Net Settlement Amount distributed to each Settlement Class Member will be considered penalties and interest, and will be reported as such to each Settlement Class Member on an IRS Form 1099 misc., if applicable. The Parties further agree that the PAGA payment distributed to each PAGA Employee will be treated entirely as civil penalties, and will be reported as such to each PAGA Employee on an IRS Form 1099-Misc, if applicable.
- e. Within ten (10) calendar days of the transfer of the entire Gross Settlement Amount to

the Settlement Administrator, and only upon the Effective Date being met, the Settlement Administrator shall issue to each Settlement Class Member his/her/their Individual Settlement Payment.

- f. Any portion of the Net Settlement Amount not cashed within one-hundred eighty (180) days from the date of issuance of the check shall be paid to the *cy pres* recipients to be agreed upon by the Parties and approved by the Court in accordance with California Code of Civil Procedure § 384.

43. PAGA Payment: Subject to the Court's Approval, up to a maximum of Ten Thousand Dollars and No Cents (\$10,000.00) of the Gross Settlement Amount shall be allocated as the PAGA Payment. Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00), representing 75% of the PAGA Payment, shall be paid to the LWDA. Two Thousand Five Hundred Dollars and No Cents (\$2,500.00), representing 25% of the penalties paid pursuant to PAGA, shall be distributed to the PAGA Employees as PAGA Employee Payments. The PAGA Employees shall release their PAGA claims in their entirety and may not opt out of or object to the PAGA release. To arrive at the PAGA Employee Payments, the portion of the PAGA Payment allocated to the PAGA Employees shall be divided among the PAGA Employees on a pro-rata basis, based upon the following:

- a. Each PAGA Employee's weeks worked count, which shall be the sum of the total number of weeks the PAGA Employee worked during the PAGA Period;
- b. Divided by the combined sum of all PAGA Employees' weeks worked counts; and
- c. Multiplied by the value of the portion of the PAGA Payment allocated to the PAGA Employees.

Within ten (10) calendar days of the transfer of the entire Gross Settlement Amount to the Settlement Administrator, and only upon the Effective Date being met, the Settlement Administrator shall issue to each PAGA Employees his/her/their PAGA Employee Payments.

44. Individual Settlement Payments Do Not Trigger Additional Benefits: All Individual Settlement Payments, PAGA Employee Payments, and the Incentive Awards shall not be utilized to calculate any additional benefits under any benefit plans to which any Plaintiffs, Settlement Class Members and/or PAGA Employee may be eligible including, but not limited to: retirement plans,

1 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
2 PTO plans, pension plans, or any other benefit plan. It is the Parties' intention that this Agreement will
3 not affect any rights, contributions, or amounts to which Plaintiffs, Settlement Class Members and
4 PAGA Employees may be entitled under any benefit plans.

5 45. Settlement Administrator: The Settlement Administrator shall be CPT Group, Inc.,
6 ILYM Group, Inc., or another administrator to be agreed upon by the Parties after bidding out the
7 project. The Settlement Administrator will maintain acceptable electronic and physical security
8 protocols to adequately protect and safeguard the private employee information it will have access to
9 as a result of the claims process. The fees and expenses of the Settlement Administrator, which is
10 currently estimated at approximately Four Thousand Dollars and Zero Cents (\$4,000.00), shall be paid
11 through the Gross Settlement Amount.

12 46. Attorneys' Fees and Attorneys' Costs: Subject to the Court's approval, Class Counsel
13 shall seek attorneys' fees, which collectively shall not exceed one-third of the Gross Settlement
14 Amount, or up to Fifty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty Six Cents (\$56,666.66)
15 ("Fees"), plus reasonable costs/expenses not to exceed Five Thousand Dollars and Zero Cents
16 (\$5,000.00) ("Costs"). Defendant will not object to Class Counsel's application for attorneys' fees
17 and costs in these amounts. The amount set forth above will cover all work performed and all fees
18 and costs incurred to date, and all work to be performed and all fees and costs to be incurred in the
19 future in connection with the approval by the Court of this Stipulation of Settlement, and the
20 administration of the Settlement. Should Class Counsel collectively request a lesser amount, or should
21 the Court approve a lesser amount of attorneys' fees and/or attorneys' costs, the difference between
22 the lesser amount and the maximum amount set forth above shall be added to Net Settlement Amount.
23 No Class Counsel shall be entitled to further fees or costs from Defendant if it or they elect to appeal
24 any reduction in the requested fee or cost award. Any reduction by the Court of Class Counsel's
25 claimed attorneys' fees and/or reasonable costs/expenses shall not be sufficient grounds to void the
26 Settlement. Plaintiffs and Defendant shall bear their own attorney's fees and costs, except as provided
27 herein.

28 47. Class Representatives' Incentive Awards: Subject to the Court's approval, the Class

Representatives will be paid Incentive Awards in an amount up to a maximum of Ten Thousand Dollars and No Cents (\$10,000.00) for each of the Plaintiffs in recognition for their service as Class Representatives, which shall be paid from the Gross Settlement Amount. Defendant will not object to Class Counsel's application for Court approval of Incentive Awards to the Class Representatives in the aggregate amount of Twenty Thousand Dollars and No Cents (\$20,000.00). It is understood that the Incentive Awards are in addition to any claimed Individual Settlement Payment, PAGA Employee Payment. The Incentive Awards shall not be deemed wages and will be reported on an IRS Form 1099-Misc, if applicable.

48. Payroll and Tax Forms: Defendant will pay the employer's share of payroll taxes due on the portion of the Net Settlement Amount allocated to wages in addition to payment of the Gross Settlement Amount. The employer's maximum portion of payroll taxes will be Two Thousand Dollars and No Cents (\$2,500.00). Any amount in excess of Two Thousand Dollars and No Cents (\$2,500.00) will be paid out of the Gross Settlement Amount. The Settlement Administrator shall be responsible for issuing the payments and withholding all required state and federal taxes in accordance with this Stipulation of Settlement. The Settlement Administrator will issue IRS Forms W-2 with respect to the amounts paid as wages to the Settlement Class Members, and IRS Forms 1099 with respect to the amounts paid as interest and penalties to the Settlement Class Members and PAGA Employees. The Settlement Administrator will also issue IRS Forms 1099 to: (1) Plaintiffs for the Incentive Awards; (2) PAGA Employee Payment; (3) Class Counsel Fee; and (4) Class Counsel Costs. The Settlement Administrator will be responsible for preparing these forms correctly. The Settlement Administrator shall also be responsible for submitting Defendant's share of payroll taxes to the appropriate government agencies on behalf of Defendant. Plaintiffs and Class Counsel will be responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received.

49. Indemnification: Plaintiffs and Class Counsel acknowledge and agree that they are and will be responsible for the payment of any and all Federal, State, and Local taxes or penalties associated with their respective allocated portions of the payments described herein, and agree to indemnify, defend, and hold the Released Parties harmless from any and all claims by any Federal,

1 State, or Local taxing authority that Plaintiffs or Class Counsel failed to pay or underpaid their or her
2 or his share of taxes associated with the payments set forth in this Settlement. The Parties acknowledge
3 and agree that Class Counsel is not responsible for the payment of any Federal, State, and Local taxes
4 or penalties associated with payments to Plaintiffs and Class Members.

5 **NOTICE TO THE SETTLEMENT CLASSES**

6 50. Within twenty (20) calendar days of preliminary approval of this Settlement by the
7 Court, Defendant shall provide to the Settlement Administrator a database containing the following
8 information (“Class Member List”):

- 9 a. The full name, and last known address and full social security number of all Class
10 Members; and
11 b. The information necessary to determine the estimated settlement allocation to each
12 Class Member, including: (i) The total number of weeks worked by each Class Member
13 within the Class Period; and (ii) The total number of weeks worked by each PAGA
14 Employee within the PAGA Period.

15 51. The Settlement Administrator (along with any of its agents) shall represent and warrant
16 that it will: (1) provide reasonable and appropriate administrative, physical and technical safeguards,
17 including a reasonable security protocol, for any personally identifiable information (“PII”), which it
18 receives from Defendant’s Counsel and/or Class Counsel; (2) not disclose the PII to third parties,
19 including agents or subcontractors, without Defendant’s consent; (3) not disclose or otherwise use the
20 PII other than to carry out its duties as set forth herein; and (4) promptly provide Defendant with notice
21 if PII is subject to unauthorized access, use, disclosure, modification, or destruction. The Settlement
22 Administrator may provide notice to both parties if the PII is subject to unauthorized access, use,
23 disclosure, modification or destruction; however, all additional communications from the Settlement
24 Administrator regarding the scope, circumstances, and substance shall be communicated solely to
25 Defendant.

26 52. The Settlement Administrator shall send a Notice, Exhibit A, with an estimate of their
27 payments, to each Class Member and Aggrieved Employee by first class mail within ten (10) calendar
28 days of receipt of the Class Member List. Prior to mailing the Notice, the Settlement Administrator

1 shall update the addresses of the Class Members by reference to the National Change of Address
2 Database maintained by the United States Postal Service. If a Notice is returned as non-deliverable
3 but with a forwarding address, the Settlement Administrator shall resend the Notice to the forwarding
4 address. If a Notice is returned as non-deliverable with no forwarding address, the Settlement
5 Administrator shall conduct an advanced skip trace to locate the most current address of the person to
6 whom the Notice was addressed, and shall resend within five (5) calendar days the Notice to any
7 updated address. Upon completion of these steps, the Parties shall be deemed to have satisfied their
8 obligations to provide the Notice to the affected Class Members.

9 53. The Settlement Administrator shall provide to the Court, concurrently with Plaintiffs'
10 Motion for Final Approval, a declaration of due diligence and proof of mailing with regard to the
11 mailing of the Notices.

12 54. The Settlement Administrator shall also be responsible for:

- 13 a. Mailing the Notice as directed by the Court;
- 14 b. Consulting with counsel for the Parties concerning any relevant issue, including
15 (without limitation) the estimated amounts of approximate Individual Settlement
16 Payments, PAGA Employee Payments, and the acceptance of any late or deficient
17 disputes;
- 18 c. Keeping track of timely and proper requests for exclusion;
- 19 d. Calculation of the Individual Settlement Payments, PAGA Employee Payments, and
20 the PAGA Payment to the LWDA;
- 21 e. Providing weekly status reports to counsel for the Parties, including: (a) the number of
22 Notices mailed (including information regarding undeliverable and/or emailed
23 Notices); (b) the number of disputes received (and sending copies of said disputes); (c)
24 the number of objections received; and, (d) the number of requests for exclusion
25 received;
- 26 f. Notifying Counsel for Defendant of the wiring instructions to fund the Settlement
27 Amount as approved by the Court;
- 28 g. Preparing the checks containing the Individual Settlement Payments;

- h. Distributing and paying the Incentive Awards, Individual Settlement Payments, PAGA Employee Payments, the PAGA Payment to the LWDA, and fees and costs awarded to Class Counsel;
- i. Issuing tax forms and addressing employer and employee-side payroll taxes; and
- j. Such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform, including responding to questions from Class Members.

REQUESTS FOR EXCLUSION

55. Each Class Member shall have forty-five (45) calendar days from the mailing of the Notice within which to complete and postmark a written request for exclusion, for return to the Settlement Administrator. The request need not be in any particular form and will be considered a valid request for exclusion so long as it communicates a clear desire by the Settlement Class Member not to be included in the Settlement and/or Settlement Class, and identifies his/her/their full name and date of birth, and current address along with his/her/their signature. No requests for exclusion shall be accepted if postmarked after the forty-five (45) calendar day period for the filing of exclusions. Class Members are responsible to maintain a photocopy of their request for exclusion, reflecting that it was submitted in a timely manner. Any disputes regarding the timeliness of a request for exclusion or whether a written communication constitutes a valid request that cannot be resolved between the Parties shall be determined by the Court, whose determination shall be final. Class Members shall have no right to request exclusion from the PAGA release or PAGA Payment

56. Any Class Member who validly excludes himself/herself/themselves from this Settlement shall not be bound by this Stipulation of Settlement and shall not be entitled to any portion of the Net Settlement Amount except for his or her portion of the PAGA Payment if applicable.

57. If eight (8) or more of the Class Members opt out of the Settlement by submitting valid and timely requests for exclusion, Defendant shall have the sole and absolute discretion to rescind/void the Stipulation of Settlement within twenty (20) days after receiving from the Settlement Administrator the final list of requests for exclusion. The Parties agrees to meet and confer in good faith before rescinding or voiding the Stipulation of Settlement. In the event that Defendant elects to rescind/void the Stipulation of Settlement, the electing Party shall provide written notice of such

1 rescission to the other Party. Such rescission shall have the same effect as a termination of the
2 Stipulation of Settlement for failure to satisfy a condition of settlement, and the Stipulation of
3 Settlement shall become null and void and have no further force or effect. The Parties specifically
4 agree not to solicit opt-outs, directly or indirectly, through any means.

5 **OBJECTIONS TO THE SETTLEMENT**

6 58. Each Class Member shall have forty-five (45) calendar days from the mailing of the
7 Notice, or such number of days as the Court shall specify, within which to postmark an objection, for
8 return to the Settlement Administrator. Any Class Member, who does not affirmatively opt-out of the
9 Settlement by submitting a valid and timely request for exclusion, may object to the approval of class
10 action settlement (“Objecting Class Member”). Any Class Member who makes a timely request for
11 exclusion has waives their right to object. The Objecting Class Member shall inform the Court and the
12 Parties in the objection of (1) full name and current address of the Objecting Class Member; (2) the
13 specific reason(s) for the objection; and (3) shall also provide any and all evidence and supporting
14 papers (including, without limitation, all briefs, written evidence, and declarations) to be considered
15 by the Court.

16 59. Any Objecting Class Member who wishes to appear at the Final Approval Hearing and
17 be heard orally in support of, or in opposition to the class action settlement, need not state so in the
18 objection.

19 60. Counsel for the Parties shall file any response to the objections submitted by Objecting
20 Class Members, if any, at least seven (7) calendar days before the date of the Final Approval Hearing.

21 61. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
22 Class Members to submit written objections to the Settlement or to appeal from the Court’s Final
23 Order and Judgment. Class Counsel shall not represent any Class Members with respect to any such
24 objections to this Settlement.

25 **RELEASE OF CLAIMS BY CLASS REPRESENTATIVES, SETTLEMENT CLASS**

26 **MEMBERS, AND PAGA EMPLOYEES**

27 62. The “Class Released Claims”. Upon the execution of the Stipulation of Settlement,
28 Plaintiffs and all other Class Members will release the Released Parties from those claims alleged in

1 Plaintiff's LWDA letters and in their forthcoming Complaint, and that arose during the Class Period,
2 including claims under Labor Code sections 201, 202, 203, 204, 210, 226(a), (e), and (h), 226.3, 226.7,
3 246, 510, 512, 1194, 1194.2, 1197, 1198, and 2802, as well as IWC Wage Order No. 4 and IWC
4 Wage Order No. 9 sections 3, 7, 11, and 12, and section 17200 et. seq of. the California Business and
5 Professions Code, based on the foregoing. The claims set forth hereinabove shall be collectively
6 referred to as the "Released Claims."

7 63. Release of PAGA Claims. Upon the date Defendant funds the first portion of the Gross
8 Settlement Amount, Plaintiffs and the PAGA Employees hereby do and shall be deemed to have fully,
9 finally, and forever released, settled, compromised, relinquished and discharged any and all of the
10 Released Parties of and from any and all civil penalty claims predicated on the claims alleged in the
11 Complaint under PAGA. The PAGA Employees will be issued a check for their share of the PAGA
12 Payment and will not have the opportunity to opt out of the PAGA Payment and release of the PAGA
13 Claims set forth in this Paragraph. The PAGA Employees are bound by the release of the PAGA
14 Claims regardless of whether they cash or deposit their PAGA Employee Payment.

15 64. Release of Claims by Class Representatives. Upon the date Defendant funds the first
16 portion of the Gross Settlement Amount, and as a condition of receiving any portion of their Incentive
17 Awards, the Class Representatives, for themselves only, agree to the additional following General
18 Release: In consideration of Defendant's promises and agreements as set forth herein, the Class
19 Representatives hereby fully release the Released Parties from any and all Class Released Claims and
20 also generally release and discharge the Released Parties from any and all any claims for wages,
21 bonuses, severance pay, vacation pay, penalties, employment benefits, stock options, violation of any
22 personnel policy, any claims based on discrimination, harassment, unlawful retaliation, violation of
23 public policy, or damages of any kind whatsoever, arising out of any common law torts, contracts,
24 express or implied, any covenant of good faith and fair dealing, any theory of wrongful discharge, any
25 theory of negligence, any theory of retaliation, any legal restriction on any Defendant's right to
26 terminate the employment relationship, or any federal, state, or other governmental statute, executive
27 order, regulation or ordinance, or common law, or any other basis whatsoever, to the fullest extent
28 provided by law. Class Representatives shall be deemed to have, and by operation of the Judgment

1 shall have, expressly waived and relinquished to the fullest extent permitted by law the provisions,
2 rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under
3 federal or state law that purports to limit the scope of a general release. Class Representatives, for
4 themselves, have read Section 1542 of the Civil Code of the State of California, which provides as
5 follows:

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

10 The Class Representatives understand that Section 1542 gives the right not to release existing claims
11 of which they are not now aware, unless the Class Representatives voluntarily choose to waive this
12 right. Having been so apprised, the Class Representatives nevertheless voluntarily waive the rights
13 described in Section 1542, and elect to assume all risks for claims that now exist in their favor, known
14 or unknown. The release of the claims of the Class Representatives as set forth in this Paragraph is a
15 condition precedent to enforcement of this Stipulation of Settlement.

16
17 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL/CLASS CERTIFICATION**

18 65. Upon execution of this Stipulation of Settlement, Plaintiffs shall file a Complaint that
19 asserts all claims under the Labor Code, UCL, and PAGA that could be asserted based on the
20 allegations and theories set forth in their LWDA letters. Defendant's counsel shall have the right to
21 review the Complaint and make comments before it is filed.

22 66. For settlement purposes only, the Parties agree that the Class as defined in Paragraph 3
23 herein, and which will run through the end of the Class Period, may be certified in the Action. The
24 Parties are not certifying any PAGA claims. In support of this Agreement, Plaintiffs will request that
25 the Court certify for settlement purposes only the Class as to all non-PAGA claims that have been
26 asserted, which Defendant shall not oppose or object to.

27 67. Class Counsel shall promptly submit this Stipulation of Settlement to the Court in
28 support of Plaintiffs' Motion for Preliminary Approval and for determination by the Court as to

whether the proposed Settlement is within the range of possible judicial approval. Promptly upon execution of this Stipulation of Settlement, Class Counsel shall apply to the Court for the entry of an order substantially in the following form:

- a. Scheduling of the Final Approval Hearing on the question of whether the proposed Settlement, including payment of attorneys' fees and costs and the Incentive Award should be finally approved as fair, reasonable and adequate as to the Settlement Class Members and for approval of the PAGA Settlement;
- b. Certifying the Settlement Class;
- c. Approving the Class Notice attached hereto as **Exhibit A**;
- d. Directing the mailing of the Notice by first class mail to the Class Members and PAGA Employees; and
- e. Preliminarily approving the Settlement subject only to the objections of the Class Members and final review by the Court.

68. The Parties will work cooperatively to mutually agree upon the form and content of the Notice, as well as the Proposed Order Granting Preliminary Approval.

69. The Class Representatives and Class Counsel will not make any public disclosure of the Settlement until after the filing of the motion for preliminary approval of the Settlement. The Class Representative and each Class Counsel represent that they have not made any such disclosure. The Class Representatives and Class Counsel shall not encourage any Class Members to opt-out. Class Counsel will take all steps necessary to ensure that the Class Representatives are aware of, and will encourage them to adhere to, the restriction against any public disclosure of the Settlement until after the Settlement is preliminarily approved by the Court. Thereafter, Class Counsel and the Class Representatives agree not to publicize the terms of this Settlement, including identifying Defendant, (electronically or otherwise) with the media, including but not limited to, any newspaper, journal, magazine, website and/or online reporter of settlements, blog, social media, or publicize the fact or the terms of this Settlement on any website.

DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL

70. Following final approval by the Court of the Settlement provided for in this Stipulation

1 of Settlement, Class Counsel shall submit a proposed Final Order and Judgment in approximately the
2 following form and with input from Defendant's Counsel: Approving the Settlement, adjudging the
3 terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and
4 provisions including the approval of Class Counsel's application for an award of attorneys' fees and
5 costs and the Incentive Awards to the Class Representatives. The Parties will work cooperatively to
6 mutually agree upon the form and content of the Proposed Order Granting Final Approval of the Class
7 Settlement and Approval of the PAGA Settlement and Judgment.

8 **VOIDING OF AGREEMENT IF SETTLEMENT NOT FINALIZED**

9 71. Subject to the obligations of mutual full cooperation set forth herein, either Plaintiffs
10 or Defendant may terminate this Settlement if after submitting the settlement for approval to the Court,
11 the Court declines to enter the preliminary approval order, the final approval order, or judgment in
12 substantially the form submitted by the Parties, or if the Stipulation of Settlement as agreed does not
13 become final because of appellate court action. The terminating Party shall give to the other Party
14 (through counsel) written notice of its decision to terminate no later than fourteen (14) calendar days
15 after receiving notice that one of the enumerated events has occurred. Termination shall have the
16 following effects:

- 17 (a) The Stipulation of Settlement shall be terminated and shall have no force or effect, and
18 no Party shall be bound by any of its terms.
- 19 (b) In the event the Stipulation of Settlement is terminated, Defendant shall have no
20 obligation to make any payments at all to any party, Settlement Class Member, PAGA
21 Employee or Class Counsel.
- 22 (c) The preliminary approval order, final approval order and judgment shall be vacated.
- 23 (d) The Class shall no longer be certified.
- 24 (e) The Stipulation of Settlement and all negotiations, statements and proceedings relating
25 thereto shall be without prejudice to the rights of any of the Parties, all of whom shall
26 be restored to their respective positions prior to the Settlement.
- 27 (f) Except as otherwise discoverable, neither this Stipulation of Settlement nor any
28 ancillary documents, actions, statements or filings in furtherance of settlement

(including all matters associated with the mediation) shall be inadmissible or offered into evidence in the Action or any other action for any purpose whatsoever.

PARTIES' AUTHORITY

72. The signatories hereto hereby represent that they are fully authorized to enter into this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

CATALYST THEORY

73. Defendant will not object to Plaintiffs representing in their approval papers that Defendant became Labor Code compliant as to various issues such as the timely payment of wages within seven days after each pay period in response to and shortly after Plaintiffs' January 28, 2021 letter was sent to the LWDA.

ESCALATOR CLAUSE

74. In the event the total number of weeks worked by the Class Members in the Class Period is ten percent (10%) more than the 5,178 figure provided by Defendant, then the Gross Settlement Amount shall be increased proportionally for each additional week worked over 5,696.

MUTUAL FULL COOPERATION

75. The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation of Settlement, including, but not limited to, execution of such documents and taking of such action as reasonably may be necessary to implement the terms of this Stipulation of Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein. As soon as practicable after execution of this Stipulation of Settlement, Class Counsel shall take all necessary steps to secure the Court's final approval of this Stipulation of Settlement.

76. The Parties and their respective counsel agree that they will not attempt to encourage or discourage Class Members from filing requests for exclusion or opt outs.

NO PRIOR ASSIGNMENTS

77. The Parties and their respective counsel represent, covenant and warrant that they have not, directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer or

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

3 **NO ADMISSION**

4 78. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to
5 be construed or deemed an admission of liability, culpability, negligence or wrongdoing on the part of
6 any Defendant. Each of the parties hereto has entered into this Stipulation of Settlement solely with
7 the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

8 **BREACH AND ENFORCEMENT ACTIONS**

9 79. The Parties will jointly request that the Court retain jurisdiction pursuant to California
10 Code of Civil Procedure § 664.6 to oversee and enforce the terms of this Settlement. In the event of
11 a breach of this Settlement, the non-breaching Party shall provide notice to the breaching party and
12 request that the breaching party cure any alleged breach. If the breach is not cured within thirty (30)
13 days of said notice, the non-breaching party may pursue legal action or other proceeding against any
14 other breaching party or parties to enforce the provisions of this Stipulation of Settlement or to declare
15 rights or obligations under this Stipulation of Settlement. In the event of such enforcement actions,
16 the successful party or parties shall be entitled to recover from the unsuccessful party or parties
17 reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any
18 enforcement actions. All such disputes shall be resolved by the Court.

19 **NOTICES**

20 80. Unless otherwise specifically provided herein, all notices, demands or other
21 communications given hereunder shall be in writing and shall be deemed to have been duly given as
22 of the third business day after mailing both electronically and by United States registered or certified
23 mail, return receipt requested, and addressed as follows:

24 To Plaintiffs, the Settlement Class and Class Counsel:
25
26
27
28

Craig J. Ackermann (SBN: 229832)
ACKERMANN & TILAJEF, P.C.
1180 S. Beverly Drive, Suite 610
Los Angeles, CA 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635
Email: cja@ackermanntilajef.com

Amir Seyedfarshi (SBN: 301656)
EMPLOYMENT RIGHTS LAW GROUP, APC
1180 S. Beverly Drive, Suite 610
Los Angeles, CA 90035
Telephone: (424) 777-0964
Email: amir@employmentrightslawgroup.com

To Defendant and Defendant's Counsel:

Babak Yousefzadeh
SHEPPARD MULLIN RICHTER & HAMPTON LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111
Telephone: 415.434.9100
Facsimile: 415.403.6043
E-mail: byousefzadeh@sheppardmullin.com

CONSTRUCTION

81. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Stipulation of Settlement shall not be construed in favor of or against any party by reason of the extent to which any Party or their counsel participated in the drafting of this Stipulation of Settlement.

CAPTIONS AND INTERPRETATIONS

82. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Stipulation of Settlement or any provision of it. Each term of this Stipulation of Settlement is contractual and not merely a recital.

MODIFICATION

83. This Stipulation of Settlement may not be changed, altered or modified, except in writing and signed by the Parties hereto and approved by the Court. This Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

84. This Stipulation of Settlement, and the Exhibits attached hereto and incorporated herein by reference, contain the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

BINDING ON ASSIGNS

85. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

CLASS MEMBER SIGNATORIES

86. It is agreed that because the Class Members are so numerous, it is impossible or impractical to have each member execute this Stipulation of Settlement. The Class Notice, Exhibit "A" hereto, will advise the Class Members of the binding nature of the release, and the release shall have the same force and effect as if this Stipulation of Settlement were executed by each member.

COUNTERPARTS

87. This Stipulation of Settlement may be executed in counterparts and by facsimile signatures, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and effective as to all parties.

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiffs and Defendant as of the date(s) set forth below:

Dated: 09 / 19 / 2021, 2021



Don Asiatico
Plaintiff and Class Representative

Dated: 09 / 21 / 2021, 2021



George Luis
Plaintiff and Class Representative

1 Dated: _____, 2021

Joe McManus
Chief Executive Officer
Defendant Western Messenger

5 **APPROVED AS TO FORM AND CONTENT:**

8 Dated: September 21, 2021



Craig J. Ackermann
Counsel for Plaintiffs and the Putative Class

12 Dated: 09 / 18 / 2021, 2021



Amir Seyedfarshi
Counsel for Plaintiffs and the Putative Class

17 Dated: _____, 2021

Babak G. Yousefzadeh
Counsel for Defendant Western Messenger

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Dated: 09/21/21, 2021


Joe McManus
Chief Executive Officer
Defendant Western Messenger

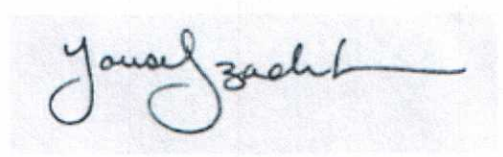
APPROVED AS TO FORM AND CONTENT:

Dated: _____, 2021

Craig J. Ackermann
Counsel for Plaintiffs and the Putative Class

Dated: _____, 2021

Amir Seyedfarshi
Counsel for Plaintiffs and the Putative Class



Dated: September 18, 2021

Babak G. Yousefzadeh
Counsel for Defendant Western Messenger