

1 **SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS**

2 Plaintiff Juan Rebulloza (hereinafter "Plaintiff"), individually and in his capacity as
3 representative of the State of California on behalf of other aggrieved employees, and Defendant Acosta
4 Employee Holdco, LLC and does 1-50 including Acosta's parents, subsidiaries and affiliated entities
5 (hereinafter "Defendant" or "Acosta"), hereby enter into this Settlement Agreement and Release of
6 Private Attorneys General Act of 2004 claims ("Settlement" or "Agreement") as follows:

7 **I. DEFINITIONS**

8 As used in this Settlement, the following terms shall have the following meanings:

9 1. "Action" shall mean the civil action entitled *Rebulloza v. Acosta Employee Holdco LLC*,
10 filed on or about February 1, 2021, in Alameda Superior Court, Case No. RG21087775.

11 2. "Defendant" shall mean Acosta Employee Holdco LLC and does 1-50 including
12 Acosta's parents, subsidiaries and affiliated entities.

13 3. "Defense Counsel" shall mean Michael D. Thomas, Esq. and Jade M. Brewster, Esq. of
14 Jackson Lewis P.C.

15 4. "Effective Date" means the later of: (a) the date that approval of the Settlement is
16 granted by the Superior Court of California for the County of Alameda, or other court assuming
17 jurisdiction of this matter; (b) if any timely objections or intervenor requests are filed and not
18 subsequently withdrawn, the 60th day after the Court enters an Order or Judgment approving of this
19 PAGA Settlement; or (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any
20 such appeal in a way that does not alter the material terms of the Settlement.

21 5. "LWDA" refers to the California Labor & Workforce Development Agency.

22 6. "PAGA" refers to the Labor Code Private Attorneys General Act of 2004, California
23 Labor Code Sections 2698, *et seq.*

24 7. "PAGA Period" shall mean the period from January 28, 2020, through either March 27,
25 2022, or the date that the Court grants approval in this Settlement, whichever occurs earlier.

26 8. "PAGA Members" shall mean all current and former hourly non-exempt employees of
27 Defendant in California at any time during the PAGA Period.

28 9. "PAGA Fund" shall mean the Total Settlement Payment, less Plaintiff's Counsel

1 Payment, Plaintiff's Enhancement Awards, the Settlement Administrator Costs, and any other Court
2 mandated or approved deductions.

3 10. "Plaintiff" refers to Juan Rebulloza, individually and in his capacity as representative of
4 the State of California on behalf of other aggrieved employees.

5 11. "Plaintiff's Counsel" collectively refers to Joshua Falakassa, Esq. of Falakassa Law,
6 P.C. and Mehrdad Bokhour, Esq. of Bokhour Law Group, P.C.

7 12. "Parties" collectively refers to Plaintiff and Defendant.

8 13. "Released Claims" shall mean any and all claims for wages, damages, unpaid costs,
9 penalties, liquidated damages, interest, attorney fees, litigation costs, restitution, or equitable relief,,
10 whether known or unknown, that were asserted or could have been asserted based on the facts set forth
11 in the operative pleading in the Action and/or notice submitted to the LWDA in connection with the
12 Action, to recover civil penalties pursuant to PAGA for any alleged violations by Defendant, including
13 without limitation California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 510,
14 512, 1174, 1194, 1197.1, 1199, 2800, 2802, California Industrial Commission Wage Orders, and
15 California Code of Regulations Title 8, section 11050, 11000 *et seq.* which arose during the PAGA
16 Period.

17 14. "Released Parties" shall mean Defendant Acosta Employee Holdco, LLC, including its
18 parent corporation, Acosta Inc. d/b/a Acosta Sales and Marketing Inc., affiliates, subsidiaries, divisions,
19 predecessors, insurers, successors, and assigns, and their current and former employees, attorneys,
20 officers, directors, and agents thereof, both individually and in their business capacities, and their
21 employee benefit plans and programs and the trustees, administrators, fiduciaries, and insurers of such
22 plans and programs.

23 15. "Settlement Administrator" shall mean a neutral third-party settlement administrator to
24 be mutually selected by the Parties.

25 16. "Total Settlement Payment" shall mean an amount not to exceed Five-Hundred Twenty
26 Five Thousand Dollars and Zero Cents (\$525,000.00).

27 **II. RECITALS**

28 17. On or about January 28, 2021, Plaintiff sent a letter to the LWDA on behalf of himself

1 and other aggrieved employees in compliance with California Labor Code section 2699.3 (“PAGA
2 Notice”). Plaintiff seeks to represent himself and all PAGA Members. The LWDA did not indicate that
3 it intended to investigate the alleged violations referenced in the letter, and the 65-day time period
4 permitted for the LWDA to provide such a notification expired. On or about August 4, 2021, Plaintiff
5 sent a supplemental PAGA Notice. The LWDA has not indicated that it intends to investigate the
6 alleged violations referenced in the supplemental PAGA Notice.

7 18. On February 1, 2021, Plaintiff filed this matter in Alameda Superior Court alleging the
8 same Labor Code violations set forth in his PAGA Notice.

9 19. On January 26, 2022, Plaintiff’s Counsel and Defendant’s counsel participated in private
10 mediation before an experienced wage and hour mediator, Marc Feder. Through the mediator’s and the
11 parties’ efforts in mediation, the parties were able to reach a settlement of the Action, the terms of which
12 have been formalized in this Agreement.

13 20. Counsel for all Parties have thoroughly investigated the facts relating to the claims
14 alleged in the operative complaint and engaged in significant informal discovery in advance of
15 mediation including an exchange of company policies and practices and an exchange of time keeping
16 and payroll records. Based on their investigation and evaluation of this case, Plaintiff’s Counsel have
17 concluded that the settlement is fair, reasonable, and adequate considering all known facts and
18 circumstances, including the defenses asserted by Defendant, the risks and uncertainties associated with
19 ongoing litigation, the potential inability for the Action to proceed to trial as a PAGA representative
20 action, potential adverse findings regarding liability, the statutory discretion provided to the Court to
21 decrease civil penalties under PAGA, and numerous potential appellate issues.

22 21. Defendant specifically denies, and continues to deny, each and every claim and
23 contention alleged in the Action and has always maintained that it has never engaged in any unlawful
24 acts regarding any of the matters alleged in the Action. Defendant further asserts that the Action cannot
25 manageably proceed to trial as a PAGA representative action.

26 **NOW, THEREFORE,** in consideration of the mutual covenants, promises, and conditions set
27 forth, the Parties agree as follows:

1 **III. NON-ADMISSION OF LIABILITY**

2 22. Based on the factual and legal issues involved, the expense and time necessary to
3 prosecute the Action, the risks, uncertainty, and costs of further prosecution, the existence of arbitration
4 agreements with express class waiver clauses, the difficulty of proof necessary to establish a PAGA
5 representative action for purposes of liability, and the relative benefits to the PAGA Members of an
6 expeditious resolution of the Action, the Parties have concluded that the terms set forth in this
7 Settlement are fair, reasonable, adequate, and in the best interests of the PAGA Members.

8 23. By entering into this Settlement, Defendant denies any liability for any of the claims in
9 the Action, as well as any other potential or unknown claims based on wage and hour violations under
10 state or federal law. Neither this Settlement, nor any document referred to or contemplated herein, nor
11 any action taken to carry out this Settlement, is, may be construed as, or may be used as, an admission,
12 concession, or indication by or against Defendant of any unlawful conduct, fault, wrongdoing or liability
13 whatsoever. Defendant specifically denies that it engaged in any unlawful or wrongful conduct against
14 Plaintiff and/or the PAGA Members. Rather, Defendant maintains it always complied with applicable
15 laws governing wages and hours of work for its employees.

16 **IV. TERMS OF THE PAGA SETTLEMENT**

17 **A. *The Total Settlement Payment***

18 24. Defendant shall pay a Total Settlement Payment in a total amount of Five-Hundred
19 Twenty-Five Thousand Dollars and Zero Cents (\$525,000.00).

20 25. The Total Settlement Payment shall include Plaintiff's Counsel Payment, Enhancement
21 Award to Plaintiff, Settlement Administrator Costs, and the PAGA Fund. Subject to the limited
22 escalator provision in Paragraph 27, in no event shall Defendant be required to pay more than the Total
23 Settlement Payment in connection with the Settlement.

24 26. Defendant shall provide the Total Settlement Payment to the Settlement Administrator
25 within thirty (30) days of the Effective Date.

26 27. Defendant represents that there are approximately 28,500 pay periods in the PAGA
27 Period. If the actual number of pay periods during the PAGA Period is more than ten percent (10%)
28 greater than 28,500 pay periods (*i.e.*, greater than 31,350), the Total Settlement Payment will be

1 increased by the percentage difference between the 10% increase and the actual number of pay periods
2 (i.e., if there is a 12% difference, the Total Settlement Payment will increase by 2%).

3 28. The Parties agree that there is no statutory right for any PAGA Member to object to, opt
4 out of, or otherwise exclude himself or herself from the settlement of the Released Claims.

5 ***B. Enhancement Awards To Named Plaintiff***

6 29. Subject to Court approval, Plaintiff shall seek a payment of Ten-Thousand Dollars
7 (\$10,000.00), subject to Court approval, to be paid from the Total Settlement Payment, as an
8 enhancement for his services as the PAGA representatives and execution of a general release with
9 respect to Defendant (“Enhancement Award”), in addition to any payment he may otherwise receive as
10 a PAGA Member.

11 30. Defendant will not oppose Plaintiff’s request for the Enhancement Award. Plaintiff will
12 be responsible for characterizing this compensation for tax purposes and for paying any taxes owing on
13 said amount. The Enhancement Awards approved by the Court and issued to Plaintiff will, if required
14 by law, be reported on an IRS Form 1099 to Plaintiff. The Parties agree that a reduction by the Court of
15 the requested Enhancement Awards does not constitute a material alteration of the terms of this
16 Agreement and shall not provide a basis for rendering the Settlement void or unenforceable. Any
17 reductions by the Court of the Enhancement Awards shall revert to the PAGA Fund.

18 31. Release by Named Plaintiff:

19 In addition to the Released Claims identified in Paragraph 13, Plaintiff agrees to release any
20 and all claims, whether known or unknown, under all federal, state and local statutes, and federal
21 and state common law (including but not limited to those for contract, tort, and equity), including,
22 without limitation, the California Unfair Competition Act (California Business and Professions
23 Code section 17200, *et seq.*); the California common law of contract; the Fair Labor Standards
24 Act, 29 U.S.C. § 201 *et seq.*, and federal common law; all claims for lost wages and benefits,
25 emotional distress, retaliation, punitive damages, and attorneys’ fees and costs arising under
26 federal, state, or local laws for discrimination, harassment, and wrongful termination,
27 including but not limited to, 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964,
28 the Americans with Disabilities Act, the Age Discrimination in Employment Act, the

1 California Fair Employment and Housing Act, the California Labor Code, and the law of
2 contract and tort against the Released Parties. Plaintiff acknowledges the language of Section 1542
3 of the California Civil Code, which provides:

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

8 Plaintiff expressly waives the protection of Section 1542. Plaintiff understands and agrees that
9 claims or facts in addition to or different from those which are now known or believed by Plaintiff to
10 exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all claims Plaintiff
11 now has against the Released Parties, whether known or unknown, suspected or unsuspected. Plaintiff
12 expressly acknowledges that the release in this Paragraph is intended to include in its effect, without
13 limitation, all claims Plaintiff did not know or suspect at the time of execution hereof, regardless of
14 whether the knowledge of such claims, or the facts upon which they might be based, would materially
15 have affected the settlement of this matter, and that the consideration given under this Settlement is also
16 for the release of those claims and contemplates the extinguishment of any such claims.

17 32. Plaintiff represents and affirms that he does not have any pending court actions,
18 arbitrations, or other legal proceedings against Defendant other than the Action.

19 ***C. Plaintiff's Counsel Payment of Attorneys' Fees and Costs***

20 33. Plaintiff's Counsel will apply to the Court for an award of attorneys' fees not to exceed
21 one-third (1/3) of the Total Settlement Payment, which is One-Hundred Seventy-Five Thousand Dollars
22 and Zero Cents (\$175,000.00). Plaintiff's Counsel will also seek reimbursement of reasonable litigation
23 costs not to exceed Fifteen-Thousand Dollars (\$15,000.00) (Plaintiff's Counsel's attorneys' fees and
24 reasonable litigation costs are collectively referred to as the "Plaintiff's Counsel Payment"). Plaintiff's
25 Counsel will submit declarations in support of their request for Plaintiff's Counsel Payment.

26 34. Defendant will not oppose or object to Plaintiff's Counsel Payment and any request or
27 application for attorneys' fees and costs submitted in connection therewith.

28 35. In the event that the Court does not approve the requested Plaintiff's Counsel Payment,

1 or the Court alters the attorneys' fees and litigation costs sought by Plaintiff's Counsel, the Parties agree
2 that any modifications or reductions by the Court of the requested Plaintiff's Counsel Payment (whether
3 in the aggregate or individually) does not constitute a material alteration of the terms of this Agreement
4 and shall not provide a basis for rendering the Settlement void or unenforceable.

5 36. Plaintiff's Counsel Payment shall be paid from the Total Settlement Payment. Any
6 reductions by the Court of Plaintiff's Counsel's request for attorneys' fees or costs shall revert to the
7 PAGA Fund in the event Plaintiff's Counsel elect not to seek appellate review of the Court's order
8 awarding a lower amount of attorneys' fees sought.

9 ***D. Settlement Administration Fees and Costs***

10 37. Settlement administration shall be done by the qualified, third-party Settlement
11 Administrator agreed to by the Parties and approved by the Court. The Parties agree that the Settlement
12 Administrator Costs shall be paid from the Total Settlement Payment. This includes all fees and costs
13 for postage, envelopes, and computer searches to locate addresses, expenses of the Settlement
14 Administrator to implement and complete the settlement process according to the terms of this
15 Settlement, to calculate payments to individual PAGA Members, any cost associated with the
16 escheatment process for any uncashed or undeliverable settlement checks, to prepare any necessary tax
17 documents, and any other related fees and costs associated with the administrative duties associated with
18 the Settlement (the "Settlement Administrator Costs").

19 38. The Settlement Administrator Costs shall be paid from the Total Settlement Payment.
20 The Settlement Administrator Costs are estimated by Plaintiff's Counsel to not exceed Ten Thousand
21 Dollars (\$10,000.00). Any reductions by the Court or any unused Settlement Administrator Costs shall
22 revert to the PAGA Fund.

23 ***E. PAGA Fund***

24 39. After deducting the Plaintiff's Counsel Payment, Plaintiff's Enhancement Awards, and
25 Settlement Administrator Costs, the remainder of the Total Settlement Payment shall be allocated to the
26 LWDA and PAGA Members (the "PAGA Fund").

27 40. Seventy-five percent (75%) of the PAGA Fund will be sent to the LWDA ("LWDA
28 Payment") and twenty-five percent (25%) of the PAGA Fund will be allocated among the PAGA

Members (“PAGA Member Payment”), based on his or her proportionate share of pay periods during the PAGA Period as set forth in Section V(B.).

V. COMPUTATION AND DISTRIBUTION OF TOTAL SETTLEMENT FUND

A. *Deposit of Total Settlement Payment*

41. The Settlement Administrator shall establish a Qualified Settlement Fund (“QSF”) for purposes of administering the Settlement. The Settlement Administrator shall furnish the QSF with its own Employer ID Number and calculate all settlement checks required under law based on information that will be confidentially furnished by Defendant. There are no payroll deductions to be calculated under this Settlement since no part of the Settlement will be classified as wages.

B. *Formula for Calculating Share of PAGA Fund*

42. The pro-rata portion of the PAGA Fund that is paid to each PAGA Member shall be determined based on the following formula:

The payment to PAGA Members will be based on the number of pay periods that each PAGA Member performed work for Defendant during the PAGA Period.

(a) The amount to be paid per pay period for each PAGA Member will be calculated by dividing the number of pay periods that the PAGA Member performed work for Defendant during the PAGA Period by the total aggregate number of pay periods all PAGA Members performed work for Defendant during the PAGA Period. The PAGA Member’s percentage of the PAGA Period will then be multiplied by the PAGA Member Payment to arrive at the PAGA Member’s pro rata share. Individual PAGA Payments will be allocated as one hundred percent (100%) penalties (to be reported on IRS Form 1099).

(b) Defendant’s records shall be determinative for purposes of calculating the number of pay periods and any payments to PAGA Members. The Settlement Administrator shall be responsible for calculating each individual PAGA Member’s respective pro-rata settlement payment.

C. *Distribution of PAGA Fund*

43. Pursuant to an order by the Court specifically compelling Defendant to do so (in light of the California Consumer Privacy Act and the California Privacy Rights Act), Defendant shall provide the Settlement Administrator with a list of the names, addresses and number of pay periods each of the

1 PAGA Members performed work for Defendant during the PAGA Period within ten (10) days after the
2 Court issues an Order approving the Settlement. The contact information shall be provided
3 confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the
4 information as private and highly confidential and take all necessary precautions to maintain the
5 confidentiality of contact information of the PAGA Members. This information is to be used only to
6 carry out the Settlement Administrator's duties as specified in this Settlement, shall not be shared with
7 Plaintiff's Counsel, and shall be destroyed promptly once the Settlement Administrator has completed
8 its delineated duties.

9 44. Within thirty (30) days after the Effective Date or the Total Settlement Payment is fully
10 funded, whichever is later, the Settlement Administrator shall pay to the LWDA an amount equivalent
11 to seventy-five percent (75%) of the PAGA Fund, or as otherwise directed by the Court.

12 45. Within thirty (30) days after the Effective Date or the Total Settlement Payment is fully
13 funded, whichever is later, the Settlement Administrator shall distribute to PAGA Members their
14 individual portion of the PAGA Fund (the "Individual Payment"), or as otherwise directed by the Court.
15 A letter approved by the Parties will be included in the mailing of the Individual Payment to each
16 PAGA Member.

17 46. Within thirty (30) days after the Effective Date or the Total Settlement Payment is fully
18 funded, whichever is later, the Settlement Administrator shall distribute the Plaintiff's Enhancement
19 Award.

20 47. Within thirty (30) days after the Effective Date or the Total Settlement Payment is fully
21 funded, whichever is later, the Settlement Administrator shall distribute to Plaintiff's Counsel the court-
22 approved Plaintiff's Counsel Payment.

23 48. The Settlement Administrator will send the Individual Payments to the PAGA Members
24 by First Class U.S. Mail.

25 49. To provide the best notice and delivery of Individual Payments practicable, any
26 Individual Payment returned to the Settlement Administrator as non-delivered shall be sent by First
27 Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address is provided
28 for an Individual Payment that is returned as non-deliverable, the Settlement Administrator shall use the

1 best available technology accessible (e.g., skip tracing, address verification, etc.) to the Settlement
2 Administrator or other mutually agreeable method to locate PAGA Members and will then mail the
3 Individual Payment to the address identified by First Class U.S. Mail. If no valid address is located, the
4 Individual Payment for that individual will be deemed undeliverable. If any PAGA Members cannot be
5 located within two attempts at mailings by the Settlement Administrator, the Individual Payment for that
6 individual will be deemed undeliverable.

7 50. The Settlement Administrator shall maintain a list of the postmark date for the original
8 mailing of the Individual Payment to the PAGA Members, the postmark date of any subsequent mailing
9 to any PAGA Members, and a list of PAGA Members who did not receive the Individual Payment due
10 to the inability to locate a valid address using the procedures described herein or who otherwise could
11 not be located within two attempts at mailing.

12 51. All Individual Payment checks will remain valid and negotiable for 180 days from the
13 date of their initial mailing by the Settlement Administrator. After 180 days from the date of their
14 mailing by the Settlement Administrator, any uncashed checks will be void. For any PAGA Member
15 whose funds are undeliverable and/or who does not cash or negotiate her or his Individual Payment
16 check within 180 days, the uncashed funds shall be distributed to the Controller of the State of
17 California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et*
18 *seq.* for the benefit of the PAGA Member(s) who did not cash their checks until such time that they
19 claim their property, or the property is otherwise disposed of pursuant to the Unclaimed Property
20 Laws. The Settlement Administrator will send Defense Counsel a list of any such uncashed checks
21 seven days prior to distributing those uncashed funds to the Controller.

22 52. The Settlement Administrator will prepare and issue any tax forms required by law,
23 including any IRS Form 1099s to PAGA Members, Plaintiff, and Plaintiff's Counsel.

24 53. The Settlement Administrator shall also prepare any accounting, declaration of
25 completion of distribution of settlement funds, or other settlement administrative task required by the
26 Court to effectuate the Settlement.

27 ***D. Settlement Administration Payment***

28 54. Within thirty (30) days after the Effective Date or the Total Settlement Payment is fully

1 funded, whichever is later, the Settlement Administrator shall deduct an amount equivalent to the
2 Settlement Administrator Costs.

3 **VI. RELEASED CLAIMS**

4 **A. *Claims Released by Plaintiff, the LWDA, and the State of California***

5 55. Upon the Effective Date, the LWDA, the State of California, Plaintiff and PAGA
6 Members fully release and forever discharge the Released Parties from any and all Released Claims.

7 **B. *Tax Treatment and Tax Indemnification***

8 56. PAGA Members, including Plaintiff, will assume any tax obligations or consequences
9 which may arise from this Settlement. PAGA Members, including Plaintiff, release any and all claims
10 that they have or may have against Defendant for any claims, demands, deficiencies, levies,
11 assessments, executions, judgments, penalties, taxes, indemnification, and any other recoveries related
12 to any payments made under this Settlement or any compensation provided at any time by Defendant or
13 any of the Released Parties. If any state or federal taxing authority contacts, investigates, or pursues any
14 action against any PAGA Members, including Plaintiff, for their individual share of taxes related to any
15 payments made under this Settlement or any compensation provided at any time by Defendant or any of
16 the Released Parties, each PAGA Member, including Plaintiff, shall be responsible for their own
17 defense of and payment for any claim of unpaid taxes, interest, or penalties brought by any state or
18 federal taxing authority for the PAGA Settlement Member's share of any state or federal tax obligation.
19 PAGA Members agree to hold Defendant and any of the Released Parties harmless and fully indemnify
20 Defendant and any of the Released Parties for any costs, assessments, penalties, taxes, and/or attorneys'
21 fees, which Defendant and any of the Released Parties may incur arising out of any and all claims made,
22 sought or imposed by the I.R.S., the California Franchise Tax Board, and/or any other federal, state or
23 local taxing board and/or agency in regard to any amounts due, or claimed to be due, by the PAGA
24 Member, if any, to such authority or agency as a result of the tax treatment of the payment described
25 above. If a PAGA Member has questions about any liability to any state or federal taxing authority,
26 they shall contact the Settlement Administrator. The PAGA Members, including Plaintiff, shall not
27 contact Defendant, any of the Released Parties, or Defense Counsel regarding this Settlement or its tax
28 consequences. Nothing herein shall be deemed to constitute tax advice or guidance.

1 57. Any payment to PAGA Members pursuant to this Settlement will not result in additional
2 benefit payments, such as 401(k) or bonus payments.

3 58. Circular 230 Disclaimer.

4 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
5 “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN
6 THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES
7 THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION
8 OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
9 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH
10 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED
11 UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY
12 DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
13 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN,
14 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
15 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT
16 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
17 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
18 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER
19 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
20 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY
21 HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY
22 SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER
23 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
24 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
25 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
26 AGREEMENT.

1 **VII. MISCELLANEOUS PROVISIONS**

2 **A. Nullification of Settlement Agreement.**

3 59. In the event that: (a) the Court does not approve the Settlement as provided herein; (b)
4 the Court strikes, modifies, or does not approve any material term of this Agreement; or (c) the
5 Settlement does not become final as written and agreed to by the Parties for any other reason, then this
6 Agreement, and any documents generated to bring it into effect, will be null and void, all amounts
7 deposited into the QSF will be returned to Defendant, and the Parties shall be returned to their original
8 respective positions. The Parties' agreement to a representative PAGA Member group is for purposes of
9 Settlement only, therefore, if the Settlement is nullified or void, so too, is the agreement to treat this as a
10 representative action. Should such a nullification occur each of the Parties shall be referred to her, his,
11 its or their respective positions as if this Agreement did not exist. Pursuant to California Evidence Code
12 § 1152, this Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or
13 enforce this Agreement. If this Agreement is not approved or does not become Effective (as defined by
14 the Effective Date), the Parties agree that this Settlement Agreement is void, and remains protected by
15 California Evidence Code § 1152.

16 **B. Mutual Full Cooperation**

17 60. Plaintiff and Defendant, Plaintiff's Counsel, and Defense Counsel agree to fully
18 cooperate with each other to accomplish the terms of this Settlement, including, but not limited to,
19 execution of such documents and to take such other action as may reasonably be necessary to implement
20 the terms herein. The Parties agree to use their best efforts and any other efforts that may become
21 necessary by Order of the Court, or otherwise, to effectuate this Settlement.

22 **C. Parties' Authority**

23 61. The signatories hereto represent that they are fully authorized to enter into this
24 Settlement.

25 **D. Binding Nature of the Settlement**

26 62. This Settlement shall be binding upon, and inure to the benefit of, the successors or
27 assigns of the Released Parties. Plaintiff represents, covenants, and warrants that he has not directly or
28 indirectly, assigned, transferred, or encumbered any claim, demand, action, cause of action or rights

1 released in the Released Claims in this Settlement. This Settlement also shall be binding upon Plaintiff,
2 the PAGA Members, the State of California, and the LWDA.

3 63. This Settlement may be amended or modified only by a written instrument. No rights
4 under this Settlement may be waived except in writing.

5 64. This Settlement constitutes the entire agreement between Plaintiff and Defendant
6 relating to the terms contained herein. All prior or contemporaneous agreements, understandings, and
7 statements, whether oral or written, whether express or implied, and whether by a party or its counsel,
8 concerning this Settlement are merged herein. No oral or written representations, warranties or
9 inducements have been made to any party concerning this Settlement or its exhibits other than the
10 representations, warranties and covenants contained and memorialized in such documents.

11 65. Paragraph titles or captions contained herein are inserted as a matter of convenience and
12 for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its
13 provisions. Each term of this Settlement is intended to be contractual and not merely a recital.

14 ***E. Joint Drafting of Settlement Documents***

15 66. Plaintiff's Counsel and Defense Counsel have arrived at this Settlement as a result of a
16 series of arm's-length negotiations, including a full-day mediation with experienced wage and hour
17 mediator Marc Feder, Esq., and counsel have taken into account all relevant factors, present and
18 potential risks with ongoing litigation.

19 67. This Settlement has been drafted jointly by Plaintiff's Counsel and Defense Counsel
20 and, therefore, in any construction or interpretation of this Settlement, the same shall not be construed
21 against any of the Parties.

22 ***F. Execution of the Settlement***

23 68. This Agreement may be executed in any number of counterparts, any of which shall be
24 deemed to be the original if fully executed by both Parties. This Agreement may be executed and
25 delivered by facsimile or email and, when fully executed and delivered, this Settlement and photocopies
26 thereof shall be legally binding and enforceable as the original. If an electronic signature is utilized by
27 any signatory to this Agreement the Party and/or our counsel utilizing the electronic signature
28 acknowledge that the electronic signature is binding pursuant to California Civil Code section 1633.1, et

1 seq. (the “Uniform Electronic Transactions Act”) and that it was obtained by the person for whom it
2 appears, and appropriate measures were taken to protect the security and authenticity of the signatory.

3 ***G. Continuing Jurisdiction of the Court***

4 69. Pursuant to California Code of Civil Procedure section 664.6, the Parties agree that the
5 Court shall retain jurisdiction over the Parties, and over this Settlement, in order to: (i) monitor and
6 enforce compliance of Settlement, and/or (ii) resolve any disputes over this Settlement or the
7 administration of the benefits of this Settlement.

8 ***H. Invalidity of Any Provision***

9 70. Before declaring any provision of this Agreement invalid, the Court will first attempt to
10 construe the provision as valid to the fullest extent possible consistent with applicable precedents so as
11 to define all provisions of this Agreement valid and enforceable.

12 ***I. No Collateral Attack***

13 71. This Agreement shall not be subject to collateral attack by any PAGA Member after the
14 Effective Date. Such prohibited collateral attacks shall include but not be limited to claims that the
15 PAGA Member failed for any reason to receive notice of the settlement and/or her or his Individual
16 Payment. PAGA Members do not have the right to object or opt out of the Settlement.

17 ***J. Notifications to the LWDA***

18 72. Plaintiff’s Counsel shall notify the LWDA of the Settlement at the same time that it is
19 submitted to the Court and take all other steps required to effectuate the Settlement under Labor Code
20 Section 2699(l).

21 ***K. Representations by Plaintiff***

22 73. Plaintiff acknowledges the following:

23 (a) Plaintiff has carefully read and fully understands all of the provisions of this Settlement;

24 (b) Plaintiff knowingly and voluntarily agrees to all of the terms set forth in this Settlement
25 and have not been coerced, threatened, or intimidated into executing this Settlement;

26 (c) Plaintiff was advised, and hereby is advised in writing, to consider the terms of this
27 Settlement and consult with their attorneys before signing this Settlement; and

28 (d) Other than the fees and costs awarded pursuant to the terms of this Settlement, Plaintiff

acknowledges that all Parties shall bear their own fees and costs through the conclusion of the Actions.

L. Representations by Defendant

74. Defendant acknowledges the following:

(a) Defendant has carefully read and fully understand all of the provisions of this Settlement;

(b) Defendant knowingly and voluntarily agrees to all of the terms set forth in this Settlement and have not been coerced, threatened, or intimidated into executing this Settlement;

(c) Defendant was advised, and hereby is advised in writing, to consider the terms of this Settlement and consult with its attorneys before signing this Settlement.

(d) Other than the fees and costs awarded pursuant to the terms of this Settlement, Defendant acknowledges that all Parties shall bear their own fees and costs through the conclusion of this Action.

M. No Comments to Press or Media.

If contacted by the media or members of the press, the Parties, Defendant's Counsel, and Plaintiff's Counsel will merely inform them that the case has been resolved, and refer them to the public filings. The terms of the Settlement shall remain confidential until the Parties submit the approval to the court. Furthermore, Plaintiff's Counsel will undertake any and all disclosures required to be made to the LWDA in conformity with PAGA.

N. Interim Stay of Proceedings.

The Parties agree to hold in abeyance all proceedings in the Action (including with respect to California Code of Civil Procedure section 583.310), except such proceedings necessary to implement and complete the Agreement, pending approval by the Court.

O. Dates.

If any of the dates fall on a weekend, bank holiday, or court holiday, the time to act shall be extended to the next business day.

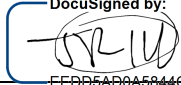
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IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement and Release of PAGA Claims as of the date(s) set forth below:

AGREED TO BY PLAINTIFF AS TO FORM AND CONTENT:

DATED: February __, 2022
2/6/2022

JUAN REBULLOZA, individually and on behalf of other aggrieved employees

DocuSigned by:

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DATED: February __, 2022

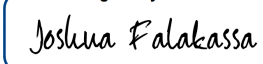
ACOSTA EMPLOYEE HOLDCO, LLC

By: _____
Title: _____

AGREED TO BY PLAINTIFF’S COUNSEL:

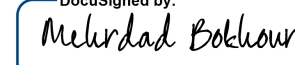
FALAKASSA LAW, P.C.

DATED: February __, 2022
2/4/2022

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15A628B2C5A149C...
Joshua Falakassa
Attorney for Plaintiff and the Aggrieved Employees

BOKHOUR LAW GROUP, P.C.

DATED: February __, 2022
2/4/2022

DocuSigned by:

88D3643F271940F...
Mehrdad Bokhour
Attorney for Plaintiff and the Aggrieved Employees

APPROVED AS TO FORM TO BY DEFENDANT’S COUNSEL:

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IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement and Release of PAGA Claims as of the date(s) set forth below:

AGREED TO BY PLAINTIFF AS TO FORM AND CONTENT:

DATED: February __, 2022 JUAN REBULLOZA, individually and on behalf of other aggrieved employees

DATED: February 7, 2022 ACOSTA EMPLOYEE HOLDCO, LLC

By: Robert Devine
Title: Chief Litigation Officer

AGREED TO BY PLAINTIFF'S COUNSEL:

FALAKASSA LAW, P.C.

DATED: February __, 2022 Joshua Falakassa
Attorney for Plaintiff and the Aggrieved Employees

BOKHOUR LAW GROUP, P.C.

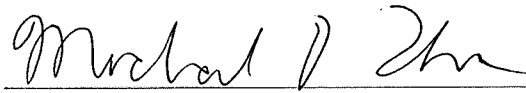
DATED: February __, 2022 Mehrdad Bokhour
Attorney for Plaintiff and the Aggrieved Employees

APPROVED AS TO FORM TO BY DEFENDANT'S COUNSEL:

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JACKSON LEWIS P.C.

DATED: February 7, 2022



Michael D. Thomas, Esq.

Jade M. Brewster, Esq.

Attorneys for Defendant Acosta Employee Holdco,
LLC