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Attorneys for Plaintiff Oswaldo Lizarraga Osuna,
 On behalf of himself and other similarly-situated employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF RIVERSIDE**

OSWALDO LIZARRAGA OSUNA, an
 individual, on behalf of himself and
 other similarly-situated employees,

Plaintiff,

v.

VINTAGE ASSOCIATES, INC., a
 California Corporation; and DOES 1 to
 10, inclusive,

Defendants.

Class Action

Case No.: CVRI2200103

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

Hon. Harold Hopp
 Dept. 10

Action filed: January 10, 2022

Trial date: None Set

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

This Joint Stipulation of Class Action and PAGA Settlement ("Joint Stipulation," "Agreement," "Settlement," or "Stipulation of Settlement") is made and entered by and between Plaintiff Oswaldo Lizarraga Osuna, in his individual capacity, as class representative, and as a private attorney general ("Plaintiff") on one hand, and Defendant Vintage Associates, Inc. ("Defendant") on the other. This

Joint Stipulation will be binding on Plaintiff and the putative settlement Class purported to be represented thereby, and Defendant, subject to the terms and conditions set forth below and the approval of the Court.

I. Definitions

To the extent any terms or phrases used in this Joint Stipulation are not specifically defined in this section (i.e., Section I), but are defined elsewhere in this Joint Stipulation, they are incorporated herein by reference.

A. “Attorneys’ Fees” means the attorneys’ fees to be awarded to Class Counsel from the Gross Settlement Fund for their efforts in the Action. Attorneys’ Fees approved by the Court will not exceed one-third of the Gross Settlement Fund, or \$337,500.

B. “Action” means the putative class and representative action entitled *Oswaldo Lizarraga Osuna v. Vintage Associates, Inc.*, Riverside County Superior Court Case No. CVRI2200103.

B. “Class Counsel” means counsel for Plaintiff, Vanessa M. Ruggles, Esq., and Beaman Jacinto Law, P.C.

C. “Class Members” or “Settlement Class” means all non-exempt employees in California described in the operative complaint who worked for Defendant during the Class Period. It shall be an opt-out class.

D. “Class Period” means from March 16, 2017, through January 17, 2023.

E. “Class Representative Enhancement Award” means the Court-approved amounts to be paid to Plaintiff Oswaldo Lizarraga Osuna in the amount of \$7,500 in addition to Plaintiff’s Individual Settlement Award, in recognition of Plaintiff’s efforts and risks in prosecuting the Action.

F. “Class Settlement Litigation Expenses” means the litigation costs to be awarded to Class Counsel from the Gross Settlement Fund for costs advanced in connection with the Action. Class Settlement Litigation Expenses will not exceed \$12,500.

1 G. “Complaint” means the Complaint filed by Plaintiff in the Action on
2 January 10, 2022, including amendments thereto, if any.

3 H. “Effective Date” means the date by which the Court’s order granting
4 Final Approval of this Joint Stipulation becomes final. Such order becomes final upon
5 either of the following events: (i) upon the Court issuing an order granting Final
6 Approval of this Joint Stipulation if no objections to the settlement are filed, or if an
7 objection is filed but is withdrawn prior to the Court’s Final Approval Hearing; or
8 (ii) in the event there are written objections filed prior to the final approval hearing
9 which are not thereafter withdrawn prior to the hearing, the later of the following
10 events: (a) the day after the last day by which a notice of appeal of the order may be
11 timely filed with the California Court of Appeal, and none is filed; (b) if an appeal is
12 filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after
13 the last date for filing a request for further review of the Court of Appeal’s decision
14 passes and no further review is requested; (c) if an appeal is filed and there is a final
15 disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and
16 further review of the Court of Appeal’s decision is requested, the day after the
17 request for review is denied with prejudice and/or no further review of the order
18 can be requested; or (d) if review is accepted, the day the Supreme Court of the State
19 of California affirms the Settlement.

20 I. “Final Approval” means the date upon which the Court enters an order
21 granting final approval of this Joint Stipulation, after having determined that the
22 settlement is fair, adequate, and reasonable to the Class following notice to the Class
23 and a hearing on the fairness of the settlement.

24 J. “Final Approval Hearing” means the final hearing held to ascertain the
25 fairness, reasonableness, and adequacy of the Joint Stipulation, after which the
26 Court will enter its order approving the Joint Stipulation finally.

27 K. “Gross Settlement Fund” means the sum of \$1,012,500. The Gross
28 Settlement Fund is an all-in settlement sum, inclusive of all fees, distributions, and

costs of every kind that are identified in this Settlement Agreement or that are necessary to effect the Settlement, except for Defendant's share of the payroll taxes, which shall be paid separately and on top of the Settlement Fund.

L. "Individual PAGA Payment" means the amount payable from the PAGA Payment to each Class Member.

M. "Individual Settlement Awards" means the amount payable from the Net Settlement Fund to each Participating Class Member

N. "Joint Stipulation" (sometimes referred to herein as the "Settlement") means the instant stipulation of Class Action and PAGA Settlement and Release.

O. "LWDA Portion" means the portion of the PAGA Payment to be paid to the California Labor & Workforce Development Agency ("LWDA") in settlement of Plaintiff's PAGA claims. The LWDA Portion is \$7,500, which is 75% of the PAGA Payment.

P. "Maximum Settlement Amount" means the Gross Settlement Fund and any automatic increase of the Gross Settlement Fund as required by Section IV(B) herein.

Q. "Net Settlement Fund" means Gross Settlement Fund less the Class Counsel Award, Class Settlement Litigation Expenses, Class Representative Enhancement Award, PAGA Payment, and Settlement Administration Costs. The Net Settlement Funds is the sum of money that will be distributed to the Participating Class Members, PAGA Members, and Participating PAGA Members.

R. "Opt-Out" means a written form submitted by a Class Member indicating a request to be excluded from the Settlement. The Opt-Out must be in writing and should: (i) be signed by the Class Member; (ii) contain the name, address, telephone number, and the last four digits of the Social Security number of the Class Member opting out; (iii) clearly state that the Class Member does not wish to be included in the Settlement; (iv) be returned by fax or mail to the Settlement Administrator at the specific address and/or facsimile number; and (v) be postmarked or faxed on or

1 before the Response Deadline. The date of the fax or postmark on the return mailing
2 envelope will be the exclusive means to determine whether an Opt-Out has been
3 timely submitted. A Class Member who does not Opt Out of the Settlement will be
4 deemed a "Participating Class Member" and will be bound by all terms of the
5 Settlement, if the Settlement is granted final approval by the Court. Any Class
6 Member who validly Opts Out from the Settlement will no longer be a member of the
7 Settlement Class and will not have any right to object, appeal, or comment on the
8 Settlement, but will remain a Participating PAGA Member and will receive an
9 Individual PAGA Payment for the PAGA Released Claims. No later than 10 calendar
10 days after the Response Deadline, the Settlement Administrator shall provide counsel
11 for the Parties a complete list of all Class Members who submitted a timely and valid
12 Opt Out.

13 S. "PAGA Member" means all non-exempt employees who worked for
14 Defendant during the PAGA Period.

15 T. "PAGA Member Portion" means the portion of the PAGA Payment that
16 will be distributed to PAGA Members. Subject to the Court's approval, the PAGA
17 Member Portion will be \$2,500, which is 25% of the PAGA Payment.

18 U. "PAGA Payment" means the amount of \$10,000, subject to Court
19 approval, to be paid from the Gross Settlement Fund for satisfaction of Plaintiff's and
20 Class Members' claims under the PAGA. Under the PAGA, 75% (\$7,500) of this sum
21 will be paid to the Labor and Workforce Development Agency and 25% (\$2,500)
22 will be distributed as the Individual PAGA Payments to Class Members.

23 V. "PAGA Period" means from March 17, 2020, through January 17, 2023.

24 W. "PAGA Released Claims" means all claims which Plaintiff or any PAGA
25 Member had, or may claim to have, against any of the Released Parties, that were
26 alleged or could have been alleged arising out of the facts, circumstances, and
27 primary rights at issue in the Complaint during the PAGA Period including but not
28 limited to the alleged violations of the following provisions of the Labor Code:

1 sections 200-203, 226, 226.3, 226.7, 510, 558, 1174, 1174.5, 1194, 1194.2, 1197,
2 1197.1, and 1198, and any and all claims deriving from the applicable Wage Orders
3 promulgated by the Industrial Welfare Commission.

4 X. "Participating Class Members" means Plaintiff and all other Class
5 Members who do not submit a valid and timely Opt-Out Form.

6 Y. "Participating PAGA Members" means all Class Members who submit a
7 valid and timely Opt-Out Form but are nevertheless bound by the PAGA Release.

8 Z. "Parties" means Plaintiff and Defendant.

9 AA. "Preliminary Approval" means the date upon which the Court enters an
10 order granting preliminary approval of this Joint Stipulation.

11 BB. "Preliminary Approval Hearing" means the hearing held on the Motion
12 for Preliminary Approval of the Joint Stipulation.

13 CC. "Qualified Settlement Fund" or "QSF" means the bank account
14 established under this Joint Stipulation from which all monies payable under this
15 Joint Stipulation shall be paid, as set forth herein.

16 DD. "Released Claims" means all claims and penalties, including penalties
17 under the California Private Attorneys' General Act, costs and attorneys' fees related
18 thereto, that could have been brought under the facts and allegations made, or that
19 could have been made, whether direct or indirect, suspected or unsuspected,
20 contingent or vested, arising from the facts alleged in the operative Complaint,
21 including claims of any and every nature based on any of the statutory provisions
22 identified therein, that accrued during the Class Period.

23 EE. "Released Parties" means Defendant and all of their past and present
24 owners, officers, directors, shareholders, employees, agents, assigns, attorneys,
25 insurers, brands and concepts, parent companies, subsidiaries, and affiliates, and
26 their respective predecessors, successors, assigns, and any individual or entity that
27 could be jointly liable with Defendants, without limitation.

28 FF. "Response Deadline" means the last day by which a Class Member may

1 opt out of the settlement, object to the settlement and/or submit a workweek or W-
2 2 income dispute. The Response Deadline shall be 30 calendar days following the
3 Settlement Administrator's mailing of notice packets. Provided, however, for Class
4 Members whose notice packets are sent to a different address subsequent to the
5 initial mailing, the Response Deadline shall be the earlier of 30 calendar days from
6 the date of re-sending or the date that is 14 calendar days before the Final Approval
7 Hearing.

8 GG. "Settlement Administrator" means Simpluris, Inc.

9 HH. "Settlement Administrator Costs" means the reasonable costs and fees of
10 administering the Settlement to be paid from the Maximum Settlement Amount, not
11 to exceed \$23,000, including, but not limited to: (i) printing, mailing and re-mailing
12 (if necessary) of Settlement Notices to Class Members in English and Spanish; (ii)
13 preparing and submitting to Class Members and government entities all appropriate
14 tax filings and forms; (iii) computing the amount of and distributing Individual
15 Settlement Awards, the Class Representative Enhancement Award, the Class Counsel
16 Award; (iv) processing and validating Opt Out Forms; (v) establishing a Qualified
17 Settlement Fund, as defined by the Internal Revenue Code; (vi) calculating and
18 remitting to the appropriate government agencies all employer and employee payroll
19 tax obligations arising from the Settlement and preparing and submitting filings
20 required by law in connection with the payments required by the Settlement; and
21 (vii) transmitting uncashed Individual Settlement Awards/Individual PAGA Payments
22 to the Controller of the State of California to be held pursuant to the Unclaimed Property
23 Law, California Civil Code §§ 1500 et seq., for the benefit of those Settlement Class
24 members who did not cash their checks until such time that they claim their property.

25 **II. Pre-trial proceedings and negotiations**

26 **A. Discovery, Investigation, and Research**

27 The Parties investigated facts and law throughout the Action. Such
28 investigation included the exchange of information and documents under formal

1 and informal discovery. Among other things, Class Counsel reviewed all relevant
2 policy documents and obtained a representative sample of the Class compensation
3 and timekeeping data. The Parties' investigation also included preparing for and
4 attending a full day of mediation with mediator JJ Johnston. The Parties investigated
5 relevant law as applied to the facts of the case, potential defenses, and damages
6 claimed by Plaintiff on behalf of himself, the Class, and the PAGA Members.

7 **B. Allegations of the Class Representative and Benefits of Settlement**

8 The Parties entered into this Joint Stipulation after arm's length bargaining by
9 the Parties with the assistance of an experienced and well-known mediator, and
10 after Class Counsel thoroughly reviewed all evidence with which they were
11 provided. The information exchanged between the Parties allowed them to assess
12 the merits of the claims and defenses and reach a compromise of the issues.

13 Plaintiff and Class Counsel contend that the claims asserted in the Action have
14 merit. However, they also acknowledge the expense and delay of continued
15 litigation. Class Counsel considered the uncertain outcome and risk of litigation, and
16 the difficulties and delays inherent in such litigation. Class Counsel also considered
17 the potential difficulty maintaining the Action as a class action and/or
18 representative action, and the likelihood of appeals. In addition, Class Counsel
19 considered Defendant's numerous defenses and the non-typical aspects of the Class
20 Members' jobs and job duties.

21 Class Counsel determined that this Joint Stipulation confers substantial
22 benefit to the Class and respectfully submits that an independent review by the
23 Court will confirm this conclusion. Class Counsel have determined that this Joint
24 Stipulation is in the best interests of Plaintiff, the Class Members, and the PAGA
25 Members.

1 **C. Defendant's Denial of Wrongdoing, Defenses, and Benefits of**
2 **Settlement**

3 Defendant generally denies all claims alleged in the Action and further denies
4 class or representative treatment is appropriate for any purpose other than this
5 Settlement. Defendant contends it complied with all applicable laws, whether
6 California or federal law. Defendant also contends many of Plaintiff's claims are
7 preempted and fail as a matter of law. It is therefore also Defendant's position that if
8 litigation continued, class certification would not be granted, or if it were, that it
9 would be reversed. Defendant contends the Plaintiff is not an adequate class
10 representative, his claims are not typical of the Class, and individual issues
11 predominate over common ones. However, Defendant also concluded further
12 litigation would be protracted and expensive. Thus, Defendant determined it is
13 desirable to settle the Action in the manner and upon the terms and conditions
14 herein.

15 **D. Intent of the Settlement**

16 This Joint Stipulation intends to achieve the following: (1) entry of an order
17 approving the Joint Stipulation, conditionally certifying the Class, and granting the
18 monetary relief set forth herein; (2) entry of judgment on Plaintiff's alleged claims;
19 and (3) discharge of Released Parties from liability for all Released Claims and PAGA
20 Released Claims.

21 **III. Procedural Issues**

22 **A. Class Certification**

23 The Parties agree and stipulate, for settlement purposes only, to certification
24 of the Class under Code of Civil Procedure section 382. If the Court does not grant
25 preliminary and final approval of the Joint Stipulation, the Class will be deemed not
26 to have been granted and any stipulation to certification thereof will have no effect.
27
28

1 **B. Preliminary Approval**

2 Class Counsel will file an unopposed motion for preliminary approval seeking
3 an order approving this Joint Stipulation, certifying the Class, approving the Notice
4 of Class Action Settlement, and setting a date for the Final Approval Hearing.

5 **C. Settlement Administrator**

6 The Parties agree to use Simpluris as Settlement Administrator. The
7 Settlement Administrator's fee will come out of the Gross Settlement Fund. The
8 Settlement Administrator will handle: (1) preparing, printing, and mailing
9 simultaneously the Notice of Class Action Settlement in substantially the same form
10 as the attached **Exhibit 1** (the "Class Notice"), **Exhibit 2** (the "Opt Out Form") and
11 **Exhibit 3** (the "Dispute Form") in both English and Spanish; (2) conducting
12 searches and/or skip tracing to locate the best mailing address for Class Members
13 and PAGA Members; (3) receiving and reviewing any Opt-Outs, Objections and
14 disputes to the number of pay period information; (4) calculating all payments
15 required under the Settlement; (5) handling inquiries from Class Members
16 concerning the Notice Packet; (6) resolving any workweek/W-2 disputes; (7)
17 providing weekly status reports to Defendant's counsel and Class Counsel regarding
18 the mailings, Opt-Outs, Objections, disputes, and settlement payments; (8)
19 distributing settlement payments to Class Members and PAGA Members, and
20 payment to other parties including all State and federal agencies under the terms of
21 this Joint Stipulation; (9) providing due diligence declarations for submission to the
22 Court, as needed; (10) printing and providing Class Members, PAGA Members, and
23 Plaintiffs with tax forms as required under this Joint Stipulation and applicable law,
24 and providing copies of the same to Defendants; (11) translating the Notice Packet
25 to Spanish; (12) sending, and/or responding to submissions of Opt-Outs, or contact
26 information updates; (13) preparing and sending reminder postcards to Class
27 Members and PAGA Members who have not cashed their settlement checks; (14)
28 calculating and remitting to the appropriate government agencies all employer and

1 employee payroll tax obligations arising from the Settlement and preparing and
2 submitting filings required by law in connection with the payments required by the
3 Settlement and (15) such other tasks as the Parties mutually agree or the Court
4 orders the Settlement Administrator to perform.

5 The Settlement Administrator will also handle payments to Plaintiff for his
6 Class Representative Enhancement Award, payment of Attorneys' Fees and Class
7 Settlement Litigation Expenses as approved by the Court, and payment of PAGA
8 penalties to the LWDA. The Settlement Administrator will also handle the
9 distribution of any remaining amounts from uncashed checks in accordance with
10 the procedures set forth below. Settlement Administrator's Fees are to be paid from
11 the Gross Settlement Amount.

12 **D. Notice to Class Members**

13 Notice will be provided to Class Members as follows:

14 Within 14 calendar days of Preliminary Approval, Defendant will provide the
15 Settlement Administrator with the following information: accurate Class Member
16 counts, separated employee data, and pay period data. (a) the name and last known
17 address, telephone number, and email address of each Class Member and PAGA
18 Member; (b) the number of pay periods worked by each Class Member during the
19 Class Period; (c) the number of pay periods that each PAGA Member worked for
20 Defendant during the PAGA Period; (d) each Class Member and PAGA Member's
21 social security number; and (e) any other data necessary to determine the proper
22 allocation among Class Members (collectively, "Class Data").

23 Within 10 calendar days after the Settlement Administrator's receipt of the
24 Class Data, the Settlement Administrator will calculate the estimated payout to the
25 individual Class Members and PAGA Members, assuming all Class Members
26 participate in the Settlement, and it will mail the Notice Packet to all Class Members
27 via first-class regular U.S. mail.
28

1 Prior to mailing, the Settlement Administrator will perform a search based on
2 the National Change of Address Database and an Accurint search (or substantially
3 similar in-depth skip trace) for information to update and correct any known or
4 identifiable address changes. It will be conclusively presumed that the Class
5 Member received the Notice Packet if the Notice Packet has not been returned
6 within 21 days of mailing. If a new address is obtained by way of a returned Notice
7 Packet or otherwise, then the Settlement Administrator will promptly forward the
8 original Notice Packet to the updated address via first-class regular U.S. mail,
9 indicating on the original packet the date of such re-mailing within three business
10 days of receipt. The Settlement Administrator will perform a skip trace and re-mail
11 all returned, undeliverable mail within three business days of receiving notice the
12 mailing was undeliverable.

13 Upon completion of these steps by the Settlement Administrator, the Parties
14 will be deemed to have satisfied their obligation to provide notice of the Settlement
15 to Class Members. Such persons will be bound by all terms of the Joint Stipulation
16 (including the release) and the Court's order and final judgment, unless they validly
17 Opt-Out of the Class.

18 In addition, the Settlement Administrator shall establish a static website and
19 post the executed version of this Agreement, any preliminary approval order(s), the
20 Final Approval Order, and Judgment. Posting of the Final Approval Order and
21 Judgment on such website shall constitute notice of judgment to the Class, as
22 required by California Rule of Court 3.771(b).

23 **E. Procedure for Opting Out of Class**

24 Class Members who wish to exclude themselves from the Settlement must
25 mail the Settlement Administrator a signed and dated Opt-Out Form (Exhibit 2) no
26 later than the Response Deadline, unless the Court orders otherwise. All Opt Outs
27 must be made in writing, signed by the Class Member, and must be submitted by U.S.
28

1 Mail, fax, or email. The delivery date is the date the Opt-Out Form is deposited in the
2 U.S. Mail as evidenced by the postmark, the date of faxing, or date of email.

3 An Opt-Out Form will be deemed valid only if the Class Member completed,
4 dated, and signed the Opt-Out Form by the Response Deadline. The written request
5 to be excluded must indicate the Class Member's intent to be excluded from the
6 Settlement. The Parties have drafted the Opt-Out Form specifically for this purpose.

7 Any Class Member who timely submits a valid Opt-Out Form will not be
8 entitled to any recovery from the Gross Settlement Fund except to the extent they
9 receiving a PAGA Payment as a Participating PAGA Member, but those individuals
10 will not be bound by the Settlement, judgment, or order in this Action, nor will he or
11 she be able to object to the Settlement or appeal any of the Court's rulings regarding
12 the Settlement. Class Members who fail to properly submit an Opt-Out Form will be
13 bound by all the terms of this Joint Stipulation, and any judgment and order entered
14 in the Action. PAGA Members may not opt out of the PAGA portion of the Settlement.

15 The Settlement Administrator will provide counsel for the Parties with
16 weekly updates about Class Members who submit Opt-Out Forms.

17 **F. Procedures for Disputing Pay Periods**

18 Subject to the Court's review, the Settlement Administrator's determination
19 of eligibility for, and the amounts of, any settlement payment under this Joint
20 Stipulation will be conclusive, final, and binding on all Parties, including all Class
21 Members. To dispute the number of pay periods with which he or she has been
22 credited, a Class Member must complete and submit a completed Dispute Form
23 (Exhibit 3) on or before the Response Deadline. Such submission should include any
24 evidence that the stated pay period information is inaccurate. The delivery date is
25 deemed to be the date the completed Dispute Form is faxed, emailed, or sent by U.S.
26 Mail, as evidenced by the postmark, to the Settlement Administrator. The Settlement
27 Administrator shall decide the dispute after notifying Class Counsel and Defendant's
28 counsel of the dispute. Defendant's records will be presumed correct, but the

1 Settlement Administrator will evaluate the evidence submitted by the Class Member
2 and will make the final decision on the merits of the dispute, subject to the Court's
3 review. The Settlement Administrator may ask Defendant to produce the personnel
4 and payroll files of the Class Member in order for the Settlement Administrator to
5 resolve the dispute.

6 **G. Procedure for Objecting to Settlement**

7 Any Class Member who seeks to object to the Settlement may submit a
8 written objection to the Settlement Administrator on or before the Response
9 Deadline. The delivery date is deemed to be the date written objection is faxed,
10 emailed, or sent by U.S. Mail, as evidenced by the postmark, to the Settlement
11 Administrator. An objection must include the Class Member or PAGA Member's
12 name, the basis for the objection, whether Class Member or PAGA Member intends
13 to appear at the Final Approval Hearing, and be signed by the Class Member, PAGA
14 Member or their counsel. Any Class Member may also object by appearing either in
15 person or by attorney at the Final Approval Hearing. Neither the Parties nor their
16 respective counsel will solicit or otherwise encourage any Class Member, directly or
17 indirectly, to object to the Settlement, or appeal from the Judgment. The Settlement
18 Administrator will provide counsel for the Parties with any written objection(s)
19 within 5 calendar days of receipt of the written objection. Class Counsel will
20 promptly file any written objections received in advance of the Final Approval
21 Hearing.

22 **H. Final Approval**

23 At the Final Approval Hearing, Class Counsel will move the Court for the entry
24 of judgment, incorporating the Joint Stipulation. Class Counsel will seek approval of
25 the Joint Stipulation as being fair, adequate, and reasonable to the Class Members.
26 Class Counsel and Defendant's counsel will submit to the Court such pleadings and
27 evidence as may be required for the Court's determination.
28

1 No later than the time designated for filing the motion for final approval, the
2 Settlement Administrator will provide to Class Counsel, for filing with the Court in
3 support of Plaintiffs' motion for final approval of the Settlement, a declaration of due
4 diligence setting forth its compliance with its obligations under this Joint
5 Stipulation.

6 **I. Notice of Judgment**

7 The Settlement Administrator shall post the Final Approval Order and
8 Judgment on the Settlement Administrator's website within seven calendar days
9 after entry of Order and Judgement. The Settlement Administrator shall post a copy
10 of the signed judgment for 180 calendar days on its website in compliance with Rule
11 3.771(b) of the California Rules of Court in order to provide notice to the Class
12 Members of this Judgment.

13 **IV. Settlement Terms**

14 **A. Gross Settlement Fund and Settlement Payments**

15 To settle the Released Claims in the Action, Defendant will pay the aggregate
16 Gross Settlement Amount on a non-reversionary basis. This is an all-in settlement,
17 inclusive of Attorneys' Fees, Class Settlement Litigation Expenses, Class
18 Representative Enhancement Award, Settlement Administrator Costs, and payment
19 to the LWDA. Except as may be required in Section IV(B) , Defendant will not be
20 required to contribute additional sums to fund the Settlement or otherwise resolve
21 this action. All Class Members will be eligible to participate in the Settlement. Class
22 Members will receive a pro-rata share of the Net Settlement Fund under a pay
23 period formula, as set forth below. The PAGA Member Portion will be divided
24 among and distributed to all PAGA Members based upon the number of pay periods
25 that they worked during the PAGA Period.

26 **B. Increase of Gross Settlement Amount**

27 As of the date the Parties executed the Memorandum of Understanding,
28 Defendant represented that the Settlement Class includes 1,296 individuals. The

Parties agreed in the Memorandum of Understanding that if the total number of Class Members exceeds this number by more than 7.5%, the Gross Settlement Fund shall increase pro rata. On December 20, 2022, Defendant disclosed that there are actually 1,621 Class Members, an increase of 25%. Accordingly, the Gross Settlement Fund increased from \$810,000 to \$1,012,500.

C. Establishment of Settlement Fund Account

Within seven days of Final Approval, the Settlement Administrator will establish the QSF in a non-interest-bearing transaction account at an FDIC-insured institution with at least one branch in California.

D. Tax Treatment of Settlement Payments

The Net Settlement Fund will be distributed to the Settlement Class Members and will be allocated 25% wages and 75% as penalties and interest. Payments to PAGA Members shall be allocated as 100% penalties. Amounts paid as wages shall be subject to all tax withholdings customarily made from employee's wages and all other authorized and required withholdings and shall be reported by IRS Form W-2. The interest and penalties will be reported by IRS Form 1099. The Settlement Administrator will issue the appropriate federal and state tax forms.

E. Distribution of Settlement Proceeds

The Settlement Administrator will keep Defendant's counsel and Class Counsel apprised of all distributions from the QSF. No person will have any claim against Defendants, Defendant's counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on distributions and payments made under this Joint Stipulation. Distribution of the Gross Settlement Amount will be as follows:

1. Time for Defendant to Pay Gross Settlement Amount

Thirty calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with the Gross Settlement Amount and the employer's share of payroll taxes and fees. Within 10 calendar days after receiving the Gross Settlement Amount from Defendant, the Settlement Administrator will pay the

1 Attorneys' Fees, the Class Settlement Litigation Expenses, the Service and Release
2 Awards, the payment to the LWDA, and the Settlement Administrator's Fees, based
3 on how the Court rules at the Final Approval Hearing.

4 The settlement payments to Class Members and PAGA Members will be paid
5 within 10 calendar days after the Settlement Administrator's receipt of the Gross
6 Settlement Amount and employer's portion of payroll taxes and fees. It is expressly
7 understood and agreed that the receipt of settlement payments will not entitle any
8 Class Member or PAGA Member to additional or derivative compensation or
9 benefits under any company bonus, contest, or other compensation or benefit plan
10 or agreement in place during the Class Period, nor will it entitle any Class Member
11 or PAGA Member to any increased retirement, 401k benefits or matching benefits,
12 or deferred compensation benefits. It is the intent of the Parties that the settlement
13 payments provided for in this Joint Stipulation are the sole payments to be made by
14 Defendant to the Class Members and PAGA Members for the Released Claims and/or
15 PAGA Released Claims, and that the Class Members are not entitled to any additional
16 or derivative compensation or benefits as a result of having received the settlement
17 payments (notwithstanding any contrary language or agreement in any benefit or
18 compensation plan document that might have been in effect during the period
19 covered by this Settlement).

20 The remainder of the Gross Settlement Fund, known as the Net Settlement
21 Fund, will be calculated and distributed as set forth below.

22 **2. Payout to Class Members and PAGA Members**

23 The Maximum Settlement Amount shall be paid by Defendant in one lump sum
24 payment within 30 calendar days after the Effective Date. Defendant shall provide the
25 Maximum Settlement Amount to the Settlement Administrator in any feasible manner,
26 including, but not limited to, by way of a wire transfer. If this Settlement is not finally
27 approved by the Court in full, or is terminated, rescinded, canceled or fails to become
28

1 effective for any reason, or if the Effective Date does not occur, then no portion of the
2 Maximum Settlement Amount shall be paid.

3 a. Payments to the Settlement Class. Class Members shall not be
4 required to submit a claim in order to receive a share of the Net Settlement Fund,
5 and no portion of the Maximum Settlement Amount shall revert to Defendant or
6 result in any unpaid residue. The Settlement Administrator shall first compute the
7 Net Settlement Fund by deducting from the Maximum Settlement Amount approved
8 by the Court for the Class Counsel Award, Class Representative Enhancement
9 Award, PAGA Payment, and Settlement Administration Costs. To the extent the
10 Court does not approve the full requested Attorneys' Fees, Class Settlement
11 Litigation Expenses, Class Representative Enhancement Award, or Settlement
12 Administrator Fees, the Net Settlement Fund will increase accordingly, by the
13 difference between the request amount and the amount awarded by the Court.

14 i. Individual Settlement Award: From the Net Settlement
15 Fund, the Settlement Administrator will calculate each Individual Settlement Award
16 by dividing the Net Settlement Fund by the total number of Pay Periods resulting in
17 the Pay Period Value and then multiplying the Pay Period Value by the number of
18 Pay Periods worked by each Class Member. All Class Members will be entitled to
19 payment for at least one Pay Period. Defendant will provide the total number of Pay
20 Periods for each Class Member to the Settlement Administrator. The Settlement
21 Administrator will calculate the number of Pay Periods worked by the Class
22 Members during the Class Period, the amount to be paid per Pay Period, and the
23 Individual Settlement Awards to eligible Class Members. All Pay Period Disputes will
24 be resolved and decided by the Settlement Administrator and the Settlement
25 Administrator's decision on all Pay Period Disputes will be final and non-appealable.

26 ii. Individual PAGA Payment: The Settlement Administrator
27 will calculate each PAGA Member's Individual PAGA Payment by dividing the 25% of
28 the PAGA Payment to be distributed to the PAGA Members, i.e., \$2,500, by the total

1 number of Pay Periods during the PAGA Period, which will equal the PAGA Pay
2 Period Value; and then multiplying the PAGA Pay Period Value by the number of Pay
3 Periods worked during the PAGA Period by each PAGA Member.

4 iii. Each Participating Class Member's Individual Settlement
5 Award and Individual PAGA Payment shall be calculated solely by the Settlement
6 Administrator using Defendant's Pay Period data. Defendant's Pay Period data will
7 be presumed to be correct, unless a particular Class Member proves otherwise to
8 the Claims Administrator by credible evidence. All Pay Period Disputes will be
9 resolved and decided by the Claims Administrator and the Claims Administrator's
10 decision on all Pay Period Disputes will be final and non-appealable.

11 iv. Individual Settlement Awards and Individual PAGA
12 Payments shall be mailed by the Settlement Administrator by regular first-class U.S.
13 Mail to each Participating Class Member's last known mailing address within 10
14 calendar days after Defendant provides the Settlement Administrator with the
15 Maximum Settlement Amount. Prior to mailing the Individual Settlement Awards
16 and the Individual PAGA Payments, the Settlement Administrator shall perform a
17 search based on the National Change of Address Database maintained by the United
18 States Postal Service to update and correct any known or identifiable address
19 changes.

20 v. Should any of the following occur, the Settlement
21 Administrator will proportionately increase the estimated Individual Settlement
22 Award of each Participating Class Member to ensure that the entire Net Settlement
23 Fund is distributed to Participating Class Members: (i) any Class Members submit
24 timely and valid, or otherwise accepted, Opt-Out Forms following the provision of
25 Settlement Notices; (ii) the Court approves the Class Representative Enhancement
26 Award in amounts less than those requested by Plaintiff, as detailed herein; (iii) the
27 Court approves a Class Counsel Award in an amount less than that requested by
28 Plaintiff, as detailed herein; and/or (iv) the Court approves Settlement

Administration Costs in an amount less than that requested by Plaintiff, as detailed herein.

vi. Individual Settlement Awards and Individual PAGA Payments shall be made by check and shall be made payable to each Participating Class Member as set forth in this Stipulation of Settlement.

vii. Individual Settlement Awards shall be allocated as follows: 25% as alleged unpaid wages subject to all applicable tax withholdings; 75% as unpaid interest and penalties. The Settlement Administrator shall issue an IRS Form W-2 to each Participating Class Member for the portion of each Individual Settlement Award allocated as alleged unpaid wages and subject to all applicable tax withholdings. Individual PAGA Payments are deemed 100% alleged unpaid non-wage interest and penalties. The Settlement Administrator shall issue an IRS Form 1099 to each Class Member for the Individual PAGA Payment and for the portion of each Individual Settlement Award allocated as alleged unpaid non-wage penalties and interest and not subject to payroll tax withholdings. The Settlement Administrator shall calculate the amount of the Employer's Share of Payroll Taxes and shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities in a timely manner. Defendant will be responsible for paying its share of the Payroll Taxes and this amount will not be deducted from the Maximum or Net Settlement Fund.

viii. Any Individual Settlement Award check and/or Individual PAGA Payment check issued by the Settlement Administrator to Participating Class Members and Participating PAGA Members will be valid and negotiable for at least 180 calendar days from the date they are issued. After the expiration of the 180-day period, the Settlement Administrator will prepare the Final Report regarding the distribution of the Maximum Settlement Amount, including the total amount that was cashed/deposited by Participating Class Members and Participating PAGA Members, and the total amount of any uncashed settlement checks pursuant to

1 California Code of Civil Procedure § 384. After the Final Report is filed, the total
2 amount of any uncashed settlement checks will be transmitted by the Settlement
3 Administrator to the Controller of the State of California to be held under the Unclaimed
4 Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class
5 members who did not cash their checks until such time that they claim their property.

6 ix. In the event a Class Member fails to cash/deposit his or
7 her Individual Settlement Award check and/or Individual PAGA Payment check, the
8 Participating Class Member/Participating PAGA Member shall nevertheless remain
9 bound by the Settlement.

10 All monies received by Class Members under the Settlement which are
11 attributable to wages shall constitute income to such Class Members solely in the year
12 in which such monies actually are received by the Class Members. It is expressly
13 understood and agreed that the receipt of Individual Settlement Awards shall not
14 entitle any Class Member to additional or derivative compensation or benefits under
15 any collective bargaining agreement or under any bonus, contest or other
16 compensation or benefit plan or agreement in place during the period covered by the
17 Settlement, nor shall it entitle any Class Member to any increased pension and/or
18 retirement, or other deferred compensation benefits. It is the intent of the Parties that
19 the Individual Settlement Awards and Individual PAGA Payments provided for in this
20 Stipulation of Settlement are the sole payments to be made by Defendant to Class
21 Members in connection with this Settlement, with the exception of Plaintiff, and that
22 the Class Members are not entitled to any new, additional, or derivative compensation
23 or benefits as a result of having received the Individual Settlement Awards and/or and
24 Individual PAGA Payments. Furthermore, the receipt of Individual Settlement Awards
25 and Individual PAGA Payments by Class Members shall not, and does not, by itself
26 establish any general, special, or joint employment relationship between and among
27 the Class Member(s) and Defendant.
28

F. Attorneys' Fees

Class Counsel may request, and Defendant will not oppose, an award of Attorneys' Fees up to one-third of the Gross Settlement Fund (or \$337,500). Defendant will not be obligated to pay any Attorneys' Fees of Class Counsel, Plaintiff, Class Members, or PAGA Members above this amount. Class Counsel's attorney fee application will be submitted and heard during the Final Approval Hearing. The Court will determine the Attorneys' Fees. If the Court believes the Attorneys' Fees should be reduced, the other terms of the settlement will remain in effect and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Fund. Class Counsel shall have the right to appeal an order from the Court denying the full amount of Attorneys' Fees requested.

G. Class Settlement Litigation Expenses

Defendant will not oppose Class Counsel's request for reasonable litigation expenses not to exceed \$12,500 from the Gross Settlement Fund. Defendant will not be obligated to pay any costs of Class Counsel, Plaintiff, Class Members, or PAGA Members above the amount approved by the Court. Class Counsel's request for costs must be submitted with its fee application and heard during the Final Approval Hearing. The Court will determine the Class Settlement Litigation Expenses. If the Court believes the Class Settlement Litigation Expenses should be reduced, the other terms of the Settlement will remain in effect and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Fund. Class Counsel shall have the right to appeal an order from the Court denying the full amount of costs requested.

H. Class Representative Enhancement Award

Defendant will not object to a Class Representative Enhancement Award of no more than \$7,500 to Plaintiff. The Class Representative Enhancement Award will be deducted from the Gross Settlement Fund. The Class Representative Enhancement Award is in addition to whatever payment the named Plaintiff is otherwise entitled

1 to as a Class Member or PAGA Member. Defendant will not be obligated to pay any
2 Class Representative Enhancement Award in the Action above this amount. The
3 Class Representative Enhancement Award will be considered miscellaneous income.
4 The Settlement Administrator will issue an IRS Form 1099, and any other tax forms,
5 to Plaintiff relating to this award. The Court will determine the Class Representative
6 Enhancement Award. If the Court believes the Class Representative Enhancement
7 Award should be reduced, the other terms of the settlement will remain in effect and
8 any such reduction will not affect the remaining terms, other than adjusting the Net
9 Settlement Fund. Plaintiff shall have the right to appeal an order from the Court
10 denying the full amount of the enhancement requested.

11 Plaintiff acknowledges and agrees that Defendant and its attorneys have
12 made no representations or warranties regarding the tax consequences of payment
13 of the Class Representative Enhancement Award, and Plaintiff has not relied on any
14 such representations or warranties. Plaintiff further agrees to pay and bear sole
15 responsibility for all taxes, liens, levies, encumbrances, interest, and penalties that
16 may be due or payable to any taxing authority as a result of payment of the Class
17 Representative Enhancement Award. Furthermore, Plaintiff agrees to defend and
18 indemnify Defendant in connection with any taxes, fines, interest, or penalties
19 incurred as a result of any failure by Plaintiff to pay taxes due, if any, on the Class
20 Representative Enhancement Award paid.

21 **I. Settlement Administrator Costs**

22 The Parties agree the Settlement Administration Costs will be deducted from
23 the Gross Settlement Fund, subject to approval by the Court, not to exceed \$23,000.

24 **J. PAGA Penalties**

25 The Parties agree to allocate \$10,000 of the Gross Settlement Fund to the
26 resolution of all claims for penalties under PAGA during the PAGA Period. Under
27 Labor Code section 2699(i), 75% of that amount, or \$7,500, will be allocated to the
28 LWDA ("LWDA Portion"). This amount will be paid by the Settlement Administrator

1 within 10 calendar days after receiving the Gross Settlement Amount from
2 Defendant. The other 25%, or \$2,500, will paid to the PAGA Members as set forth
3 above.

4 **K. Defendant's Fees and Costs**

5 Defendant will bear its own fees and costs.

6 **V. Release of Claims by the Class**

7 Upon the Effective Date and upon Defendant's payment of the Gross
8 Settlement Fund and employer's share of payroll taxes and fees, Plaintiff and Class
9 Members will be deemed to have released the Released Parties of and from all of the
10 Released Claims during the Class Period.

11 **VI. Release of Claims by PAGA Members**

12 Upon the Effective Date and upon Defendant's payment of the Gross
13 Settlement Fund and employer's share of payroll taxes and fees, Plaintiff, the LWDA,
14 and PAGA Members will be deemed to have released the Released Parties of and
15 from all of the PAGA Released Claims during the PAGA Period.

16 **VII. Release of Claims by Plaintiff**

17 Upon the Effective Date and upon Defendant's payment of the Gross
18 Settlement Fund and employer's share of payroll taxes and fees, Plaintiff will be
19 deemed to have released the Released Parties of and from all of the Released Claims
20 and PAGA Released Claims during the Class and PAGA Periods, as set forth above.
21 Plaintiff's releases also include a waiver of all rights under California Civil Code
22 section 1542, which includes a release of all known and unknown claims against the
23 Released Parties that have been alleged or could have been alleged arising out of the
24 facts, circumstances, causes of action, and primary rights alleged in the Complaint.
25 Civil Code section 1542 provides:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
27 **THAT THE CREDITOR OR RELEASING PARTY DOES**
28 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**

1 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**
2 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
3 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
4 **WITH THE DEBTOR OR RELEASED PARTY.**

5
6 Upon the Effective Date and upon Defendant's payment of the Gross
7 Settlement Fund and employer's share of payroll taxes and fees, Plaintiff will be
8 deemed to have waived their rights under Civil Code section 1542, as set forth
9 above.

10 **VIII. Nullification of the Joint Stipulation**

11 If (a) the Court should for any reason fail to approve this Joint Stipulation in
12 the form agreed to by the Parties, or (b) the Court should for any reason fail to enter
13 a judgment in the Action, or (c) the judgment is reversed, modified, or declared or
14 rendered void, this Joint Stipulation will be null and void, and neither this Joint
15 Stipulation, nor any of the related negotiations or proceedings, will be of any force
16 or effect, and all Parties will stand in the same position, without prejudice, as if the
17 Joint Stipulation had not been entered into or filed. Invalidation of any material
18 portion of this Joint Stipulation will invalidate this Joint Stipulation in its entirety,
19 unless the Parties subsequently agree in writing that the remaining provisions of
20 the Joint Stipulation are to remain in full force and effect or unless as otherwise set
21 forth above.

22 If the number of Class Members who submit valid Opt-Outs is 5% of more of
23 the total Class Members, Defendant may revoke this Joint Stipulation, in its sole
24 discretion. If Defendant revokes, they must do so in writing to Class Counsel within
25 10 calendar days after the Settlement Administrator notifies the Parties of the total
26 number of valid Opt-Outs received by the Response Deadline. Defendant shall pay
27 any costs incurred by the Settlement Administrator in the event that Defendant
28 rescinds the Joint Stipulation. If the Joint Stipulation is ultimately not approved by

1 the Court despite exhaustive efforts and/or denial of approval is with prejudice,
2 through no fault of Defendant, Defendant and Plaintiff shall equally share in
3 payment of any costs incurred by the Settlement Administrator. If the Joint
4 Stipulation is ultimately not approved by the Court despite exhaustive efforts
5 and/or denial of approval is with prejudice because of the lack of cooperation or
6 best efforts by Defendant, Defendant shall pay any costs incurred by the Settlement
7 Administrator.

8 **IX. Duties of the Parties**

9 **A. Mutual Full Cooperation**

10 The Parties agree to cooperate, and to accomplish and implement the terms
11 of this Joint Stipulation. Such cooperation will include, but is not necessarily limited
12 to, execution of such other documents and taking such other actions as may be
13 reasonably necessary to fulfill the terms of this Joint Stipulation. The Parties will use
14 their best efforts, including all efforts contemplated by this Joint Stipulation and any
15 other efforts that may become necessary by court order, or otherwise, to effectuate
16 this Joint Stipulation and the terms set forth herein. As soon as practicable after
17 execution of this Joint Stipulation, Class Counsel, with the cooperation of Defendant
18 and its counsel, will try to secure Preliminary Approval and Final Approval.

19 **B. Duty to Support and Defend the Settlement**

20 The Parties agree the Settlement is fair, adequate, and reasonable and will so
21 represent to the Court. In addition, mediator JJ Johnston, Esq., may execute a
22 declaration supporting the settlement, and the Court may contact the mediator to
23 discuss the settlement and whether the settlement is fair, adequate, and reasonable.
24 The Parties agree to abide by all terms of the Joint Stipulation in good faith and to
25 support the Joint Stipulation fully, and to use their best efforts to defend this
26 settlement from any legal challenge, whether by appeal or collateral attack.
27
28

X. Miscellaneous Provisions

A. No Media Comments or Publicity

If contacted by the media, the Parties and Class Counsel will merely inform them that the case has been resolved and refer them to the public filings. In addition, there shall be no public statements to the media or press releases with regard to the Action or the terms of this Joint Stipulation.

B. No Admission of Liability

This Joint Stipulation is not an admission of liability by Defendant or any of the Released Parties.

C. Construction

The Parties agree this Joint Stipulation resulted from lengthy, intensive, arm's-length negotiations, and it is not to be construed for or against any party for any reason.

D. Choice of Law

Joint Stipulation is intended to and will be governed by the laws of California, without regard to conflicts of law principles.

E. Jurisdiction

The Court will retain continuing jurisdiction over the Action and the Joint Stipulation pursuant to Code of Civil Procedure section 664.6 for purposes of (1) enforcing the Joint Stipulation; (2) addressing any claim administration matters that may raise; and (3) addressing post-judgment matters as may be appropriate.

F. Captions and Interpretations

Paragraphs, titles, or captions contained herein are inserted as a matter of convenience and for reference only, and in no way define, limit, extend, or describe the scope of this Joint Stipulation or any provision thereof.

G. Modifications

This Joint Stipulation may not be changed, altered, or modified, except in writing signed by counsel for the Parties and approved by the Court. This Joint

1 Stipulation may not be discharged except by performance under its terms or by a
2 writing signed by the Parties.

3 **H. Integration Clause**

4 Except for the binding MOU the Parties executed during the mediation on
5 October 21, 2022, that identifies all core terms of the agreement memorialized in
6 long form herein, all other prior or contemporaneous agreements, understandings,
7 representations, and statements, whether oral or written, between the Parties are
8 merged herein. No rights under this Joint Stipulation may be waived except in
9 writing. However, if there is a conflict between the terms of this Joint Stipulation
10 and the Memorandum of Understanding entered into between the Parties, the
11 latter shall control.

12 **I. Successors and Assigns**

13 This Joint Stipulation will be binding upon and inure to the benefit of the
14 Parties and their respective heirs, trustees, executors, administrators, successors,
15 and assigns.

16 **J. Class Counsel Signatories**

17 Because the Class Members are so numerous, the Parties agree it is
18 impossible or impractical to have each Class Member sign this Joint Stipulation. This
19 Joint Stipulation may be executed on behalf of the Class Members by Class Counsel
20 and Plaintiff.

21 **K. Plaintiff's Waiver of Right to Opt Out or Object**

22 Plaintiff agrees not to Opt-Out of the Class and agrees not to object to any
23 terms of this Joint Stipulation. Non-compliance by Plaintiff with this paragraph will
24 be void and of no force or effect. Any such request for exclusion or objection by
25 Plaintiff will therefore be void and of no force or effect.

26 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily
27 executed this Joint Stipulation of Class Action and PAGA Settlement and Release
28

between Plaintiff, on the one hand, and Defendant, on the other hand, as of the date(s) set forth below:

Dated: 1/20/2023

Oswaldo
Lizarraga O.

ID TcwvuLzWbd2BER1TBaXcyRTS

Plaintiff Oswaldo Lizarraga Osuna

VINTAGE ASSOCIATES, INC.

Dated: 12/22/2022

DocuSigned by:

Greg Gritters

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Greg Gritters CEO

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

**VANESSA M. RUGGLES, ESQ.
BEAMAN JACINTO LAW P.C.**

Dated: 1/20/2023

Vanessa M. Ruggles, Esq.

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Vanessa M. Ruggles, Esq.
Megan Beaman, Esq.
Attorneys for Plaintiff Oswaldo Lizarraga Osuna

LAW OFFICE OF KAREN J. SLOAT, APC

Dated: December 22, 2022

Karen J. Sloat

Karen J. Sloat
Attorneys for Defendant