

1 **STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

2 IT IS HEREBY STIPULATED by and between Plaintiff Jose Rosalio Velez, on behalf of
3 himself and others similarly situated, on the one hand, and Defendant La Fortaleza, Inc., on the other
4 hand, and subject to the approval of the Court, that the Lawsuit is hereby being compromised and
5 settled pursuant to the terms and conditions set forth in this Stipulation of Class and Representative
6 Action Settlement (“Settlement Agreement”) and that the Court shall make and enter judgment,
7 subject to the continuing jurisdiction of the Court as set forth below, subject to the definitions, recitals
8 and terms set forth herein which by reference become an integral part of this Settlement Agreement.

9 **DEFINITIONS**

10 1. “Administration Costs” means fees and costs of settlement administration services
11 rendered in administering the settlement.

12 2. “Attorneys’ Fees and Costs” means the amount the Court authorizes to be paid to Class
13 Counsel for attorneys’ fees, not to exceed 35% of the Gross Settlement Amount, and litigation costs
14 incurred in connection with the Lawsuit, not to exceed \$15,000, paid from the Gross Settlement
15 Amount.

16 3. “Class Counsel” means CounselOne, P.C.

17 4. “Class” or “Class Member(s)” means all current and former non-exempt, hourly-paid
18 employees who worked for Defendant within the State of California during the Class Period.

19 5. “Class List” means a list of contact information, compiled by Defendant based on its
20 records, containing the following information for each Class Member: full name, last-known mailing
21 address, last-known telephone number, Social Security number, number of Workweeks during the
22 Class Period, number of pay periods during the PAGA Period, along with the start and end dates of
23 employment in an hourly-paid, non-exempt position in California during the Class Period.

24 6. “Class Notice” means the document to be sent via first class U.S. mail to the Class
25 following Preliminary Approval, in substantially the form that is attached hereto as “**EXHIBIT 1**,” or
26 otherwise approved by the Court, which will notify Class Members of the settlement, explain the basic
27 terms of this Settlement Agreement, and inform Class Members of their options with regard to the
28 settlement. The Class Notice will be sent in both English and Spanish.

1 7. “Class Period” means the period beginning on February 1, 2017 and ending on
2 November 14, 2021.

3 8. “Court” means the Superior Court for the State of California, County of Merced.

4 9. “Defendant” means La Fortaleza, Inc.

5 10. “Defendant’s Counsel” means LightGabler.

6 11. “Effective Date” will be the date of entry of the Final Approval Order and Judgment if
7 no objections to the settlement are filed. If objections are filed and overruled or withdrawn, and no
8 appeal is taken, then the Effective Date will be sixty-five (65) calendar days after the entry of the Final
9 Approval Order and Judgment. If an appeal is taken from the Court’s overruling of objections to the
10 settlement, then the Effective Date will be twenty (20) calendar days after the appeal is dismissed or
11 after an appellate decision affirming the Final Approval Order and Judgment becomes final.

12 12. “Enhancement Payment” means the amount that the Court authorizes to be paid to
13 Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and risks in
14 assisting with the prosecution of the Lawsuit and in exchange for him executing a General Release of
15 Defendant, paid from the Gross Settlement Amount.

16 13. “Final Approval Hearing” means the hearing following Preliminary Approval and
17 distribution of the Class Notice to the Class, at which the Court will determine whether to fully and
18 finally approve the fairness and reasonableness of the settlement, and at which Plaintiff will request
19 that the Court enter the Final Approval Order and Judgment, approve and award Attorneys’ Fees and
20 Costs, Enhancement Payment, Individual Settlement Payments, Administration Costs, and LWDA
21 Payment, and take other appropriate or necessary action as described herein.

22 14. “Final Approval Hearing Date” means the date of the Final Approval Hearing.

23 15. “Final Approval Order and Judgment” means the order or orders entered by the Court
24 that, *inter alia*, finally approve(s) this Settlement Agreement, disposes of all issues raised in the
25 Lawsuit by way of judgment in conformity with California Rules of Court 3.769, and awards and
26 orders the payment of all required amounts pursuant to the terms of this Settlement Agreement.

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1 16. “Gross Settlement Amount” or “GSA” means the maximum total payment of nine
2 hundred eighty six thousand seven hundred forty six dollars (\$986,746) payable by Defendant under
3 this Settlement Agreement, inclusive of all Individual Settlement Payments, Attorneys’ Fees and
4 Costs, Administration Costs, Enhancement Payment to Plaintiff, and the LWDA Payment. The Gross
5 Settlement Amount is non-reversionary, subject to increase pursuant to Paragraph 52. All payroll taxes
6 are included in the GSA.

7 17. “Individual Settlement Share(s)” means a Settlement Class Member’s *pro rata* share
8 of the Net Settlement Amount, which is to be determined in conformity with Paragraph 46(e), which
9 is inclusive of the employee-side payroll taxes, contributions, and withholdings with respect to the
10 wages portion of the Individual Settlement Shares (“Employee Taxes”). The net payment of each
11 Settlement Class Member’s Individual Settlement Shares (after reduction for Employee Taxes), and
12 PAGA Group Member’s individual PAGA payment (if applicable) is referred to as his or her
13 “Individual Settlement Payment.”

14 18. “Lawsuit” means the action entitled *Jose Rosaliano Velez, et al. v. La Fortaleza, Inc.,*
15 *et al.*, filed in the Merced County Superior Court and assigned case number 21CV-03310.

16 19. “LWDA Payment” means the payment that is to be approved by the Court pursuant to
17 Labor Code section 2699 and distributed as follows: seventy-five (75%) of the PAGA Payment (*i.e.*,
18 \$75,000) to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five
19 (25%) (*i.e.*, \$25,000) to the Class Members employed during the PAGA Period (“PAGA Group
20 Members”) on *pro rata* basis in conformity with Paragraph 44(d). Class Counsel shall give timely
21 notice of the settlement to the LWDA under Labor Code section 2699(1)(2).

22 20. “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement Amount
23 that is available for distribution to Settlement Class Members, which will be the Gross Settlement
24 Amount less the amounts awarded for Attorneys’ Fees and Costs, Enhancement Payment, PAGA
25 Payment, payroll taxes attributed to the settlement, and Administration Costs.

26 21. “Notice Plan” means the plan for the provision of notice to all Class Members under
27 this Settlement Agreement.

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22. “PAGA Group” or “PAGA Group Members” mean all Class Members, whether or not they submit a request for exclusion from the Settlement Class, employed by Defendant during the PAGA Period.

23. “PAGA Group Members’ Released Claims” means all claims, during the PAGA Period, asserted under the PAGA (codified in California Labor Code §§ 2698, *et seq.*) alleged in the operative complaint in the Lawsuit, or that could have been asserted based on the facts, circumstances, transactions, occurrences, acts, omissions, or failures to act alleged by Plaintiff in the operative complaint in the Lawsuit.

24. “PAGA Payment” means the payment of penalties pursuant to California Labor Code sections 2968, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”), that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims encompassed by the underlying allegations in the Lawsuit, which is \$100,000.

25. “PAGA Period” means the period beginning on January 5, 2020 and ending on November 14, 2021.

26. “Parties” means Plaintiff, individually and on behalf of all Class Members and PAGA Group Members, and Defendant, who are individually referred to as “Party.”

27. “Plaintiff” or “Class Representative” means Jose Rosaliano Velez.

28. “Plaintiff’s Released Claims” means that, in addition to the Settlement Class Members’ Released Claims and PAGA Group Members’ Released Claims, in exchange for the consideration recited in this Settlement Agreement, including but not limited to the Enhancement Payment, Plaintiff, individually, releases, acquits, discharges, and covenants not to sue Defendant and any of the Released Parties for any claim, whether known or unknown, which he has ever had, or hereafter may claim to have, arising during the Class Period, relating to or arising out of any aspect of his relationship with Defendant. The release by Plaintiff includes a waiver of his individual rights under Section 1542 of the Civil Code of the State of California. The specific terms and details of which are set forth in Paragraph 45.

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1 29. “Preliminary Approval Order” means the order to be entered by the Court that
2 preliminarily approves the terms and conditions of this Settlement Agreement, including the content
3 of the Class Notice and Notice Plan, and sets a Final Approval Hearing.

4 30. “Released Parties” means Defendant La Fortaleza, Inc., and each of its joint employers,
5 staffing companies, former and present parents, officers, directors, employees, partners, shareholders,
6 owners, trustees, independent contractors, representatives, agents, attorneys, subsidiaries, related
7 companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, affiliates,
8 insurers, and related entities, and all of their respective successors, subsidiaries, assigns, or legal
9 representatives.

10 31. “Response Deadline” means the date forty-five (45) days after the Settlement
11 Administrator mails the Class Notice to Class Members and the last date on which Class Members
12 may submit an opt-out/request for exclusion or object to the settlement.

13 32. “Settlement Administrator” means CPT Group, Inc., the neutral third-party
14 administrator mutually agreed upon by the Parties, subject to approval by the Court.

15 33. “Settlement Class” or “Settlement Class Members” means Class Members who have
16 not submitted a timely and valid Opt-Out/Request for Exclusion pursuant to Paragraph 53.

17 34. “Settlement Class Members’ Released Claims” means all claims, during the Class
18 Period, alleged in the operative complaint in the Lawsuit, or that could have been asserted based on
19 the facts, circumstances, transactions, occurrences, acts, omissions, or failures to act alleged by
20 Plaintiff in the operative complaint in the Lawsuit for: (1) failure to pay minimum wages; (2) failure
21 to pay overtime wages; (3) non-compliant meal periods and/or failure to make premium payments
22 thereon; (4) non-compliant rest breaks and/or failure to make premium payments thereon; (5) failure
23 to provide sick pay; (6) failure to provide accurate itemized wage statements; (7) failure to maintain
24 and keep accurate records; (8) untimely wages during employment; (9) failure to pay all wages due
25 upon separation of employment; and (10) unfair business practices related to the Settlement Class
26 Members’ Released Claims. This release excludes the release of claims not permitted by law. The
27 specific terms and details of which are set forth in Paragraph 44.

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35. “Workweek(s)” means a seven-day work week during the Class Period during which, based on Defendant’s records, Class Members were actively employed by Defendant and worked during at least a portion of such Workweek in an non-exempt, hourly-paid position in California.

RECITALS

36. **Procedural History.** Plaintiff filed his complaint in the Merced County Superior Court, alleging: (1) failure to pay minimum wages pursuant to Labor Code §§ 1194, 1194.2, 1197, 1197.1, and 1199; (2) failure to pay overtime pursuant to Labor Code §§ 510, 1198, and 1199; (3) failure to provide compliant meal periods and/or pay premiums owed thereon in violation of Labor Code §§ 226.7 and 512(a); (4) failure to provide compliant rest breaks and/or pay premiums owed thereon in violation of Labor Code § 226.7; (5) failure to provide paid sick leave in violation of Labor Code § 246; (6) failure to provide accurate itemized wage statements in violation of Labor Code § 226(a); (7) failure to maintain and keep accurate records; (8) failure to pay all wages owed timely during employment and upon termination in violation of Labor Code §§ 201-204; (9) failure to keep requisite payroll records in violation of Labor Code § 1174(d); (10) violations of California Business and Professions Code §§ 17200, *et seq.*; and (11) violation of the PAGA.

37. **Pre-Filing PAGA Notice.** Plaintiff’s counsel provided pre-filing written notice to the LWDA and by certified mail to Defendant of the above-identified allegations on behalf of Plaintiff and similarly situated aggrieved employees in accord with the PAGA, California Labor Code §§ 2698, *et seq.*

38. **Discovery and Investigation.** The Parties entered into a tolling agreement prior to the filing of the complaint. Plaintiff’s attorneys began their investigation into the at-issue allegations well in advance of filing the complaint and engaged in extensive informal discovery and investigation, and such was sufficient to allow the Parties to evaluate the case prior to settlement. In advance of mediation, the Parties agreed to an informal exchange of information and documents. For example, Class Counsel requested production of and reviewed key information and documents such as the number of putative class members and aggrieved employees, relevant wage and hour policies, time and payroll records, rates of pay, among other things. Class Counsel analyzed time and payroll records

1 and interviewed Class Members to determine violation rates. The Parties met and conferred at length
2 regarding the information and documents produced.

3 39. **Mediation.** After having performed extensive investigation and analysis of the legal
4 and factual issues and risks, the Parties participated in a full-day mediation before mediator Marc J.
5 Feder, Esquire of Frank & Feder, in an attempt to resolve the Lawsuit. The settlement discussions
6 were conducted at arm's-length. Pursuant to a mediator's proposal, the Parties came to agreement on
7 all material terms of this settlement.

8 40. **Benefits of Settlement.** Plaintiff and Class Counsel recognize the expense and length
9 of continued proceedings necessary to litigate their disputes through trial and through any possible
10 appeals. Plaintiff has also taken into account the uncertainty and risks of the outcome of further
11 litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are
12 also aware of the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit,
13 both generally and in response to Defendant's defenses thereto, and the difficulties in establishing
14 damages for Class Members. Plaintiff and Class Counsel have also taken into account the extensive
15 settlement negotiations conducted. Based on the foregoing, Plaintiff and Class Counsel have
16 determined that the settlement set forth herein is a fair, adequate and reasonable settlement, and is in
17 the best interests of Class Members and PAGA Group Members.

18 41. **Defendant's Reasons for Settlement and Non-Admission.** Defendant has concluded
19 that any further defense of this litigation would be protracted and expensive for all Parties. Substantial
20 amounts of time and resources of Defendant have and, unless this settlement is made, will continue to
21 be devoted to the defense of the claims asserted by Plaintiff, Class Members, and PAGA Group
22 Members. Defendant has also taken into account the risks of further litigation in reaching its decision
23 to enter into this Settlement Agreement. Despite continuing to contend that it is not liable for any of
24 the claims set forth by Plaintiff, Defendant has, nonetheless, agreed to settle in the manner and upon
25 the terms set forth in this Settlement Agreement to put to rest the entirety of the claims as set forth in
26 the Lawsuit. Defendant has claimed and continues to claim that the Plaintiff's Released Claims,
27 Settlement Class Members' Released Claims, and PAGA Group Members' Released Claims have no
28 merit and do not give rise to liability. This settlement is a compromise of disputed claims.

42. **This Settlement Is Fair, Adequate and Reasonable.** The Parties believe this settlement is a fair, adequate and reasonable settlement of this Lawsuit and have arrived at this settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential. In addition, the mediator may, at his discretion, execute a declaration supporting the settlement and the reasonableness of this settlement, and the Court, may in its discretion, contact the mediator to discuss the settlement and whether or not the settlement is fair and reasonable.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the Recitals listed above and the promises and warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set herein, the Plaintiff, individually and on behalf of others similarly situated, on the one hand, and Defendant, on the other hand, agree that the Lawsuit shall be, and is finally and fully compromised and settled on the following terms and conditions, subject to Court approval:

43. **Non-Admission of Liability.** This Settlement Agreement represents a compromise and settlement of highly disputed claims. Defendant denies each and all of the claims alleged by Plaintiff in the Lawsuit. The Parties enter into this Settlement Agreement to resolve the Lawsuit and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and generally and specifically denies, that it has: violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees, the Class, and/or PAGA Group Members. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a noncompliance with, federal, state, local

1 or other applicable law. In addition, as set forth herein, the Parties intend this settlement to be
2 contingent upon the Preliminary Approval and Final Approval of this Settlement Agreement; and the
3 Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend the
4 Lawsuit as if this Settlement Agreement never existed in the event the settlement is not finally
5 approved as set forth herein.

6 44. **Release of Claims.**

7 As of the Effective Date, Plaintiff and all Class Members who did not submit valid requests
8 for exclusion from the settlement, for the period from February 1, 2017 and ending on November 14,
9 2021, will release and forever discharge Defendant La Fortaleza, Inc., and each of its joint employers,
10 staffing companies, former and present parents, officers, directors, employees, partners, shareholders,
11 owners, trustees, independent contractors, representatives, agents, attorneys, subsidiaries, related
12 companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, affiliates,
13 insurers, and related entities, and all of their respective successors, subsidiaries, assigns, or legal
14 representatives (again, the “Released Parties”), from the Settlement Class Members’ Released Claims
15 during the Class Period. The Settlement Class Members’ Released Claims include all wage-and-hour
16 claims contained in the operative complaint in the Lawsuit, or that could have been asserted in the
17 Lawsuit based on the facts, circumstances, transactions, occurrences, acts, omissions, or failures to act
18 alleged by Plaintiff in the operative complaint during the Class Period. The Settlement Class Members’
19 Released Claims include all claims based on allegations for: (1) failure to pay minimum wages; (2)
20 failure to pay overtime wages; (3) non-compliant meal periods and/or failure to make premium
21 payments thereon; (4) non-compliant rest breaks and/or failure to make premium payments thereon;
22 (5) failure to provide sick pay; (6) failure to provide accurate itemized wage statements; (7) failure to
23 maintain and keep accurate records; (8) untimely wages during employment; (9) failure to pay all
24 wages due upon separation of employment; and (10) unfair business practices related to the Settlement
25 Class Members’ Released Claims. This release excludes the release of claims not permitted by law.

26 Notwithstanding the foregoing, all Class Members, whether or not they submit a request for
27 exclusion from the settlement, employed by Defendant during the PAGA Period (the “PAGA Group
28 Members”) will receive a PAGA payment and will no longer be able to seek penalties against the

Released Parties pursuant to the PAGA, arising from any and all claims, for the period from January 5, 2020 and ending on November 14, 2021, alleged in the operative complaint filed in the Lawsuit, or that could have been asserted based on the facts, circumstances, transactions, occurrences, acts, omissions, or failures to act alleged by Plaintiff in the operative complaint filed in the Lawsuit (“PAGA Group Members’ Released Claims”).

45. **General Release by Plaintiff Only.** As of the Effective Date, in addition to the Settlement Class Members’ Released Claims and PAGA Group Members’ Released Claims, Plaintiff individually, releases, acquits, discharges, and covenants not to sue Defendant and any of the Released Parties for any claim, whether known or unknown, which he has ever had, or hereafter may claim to have, arising during the Class Period relating to or arising out of any aspect of his relationship with Defendant. The release by Plaintiff includes a waiver of his individual rights under Section 1542 of the Civil Code of the State of California states as follows:

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

Accordingly, if the facts relating in any manner to this Settlement Agreement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims (again, “Plaintiff’s Released Claims”). Plaintiff’s Released Claims exclude the release of claims not permitted by law.

46. **Payments under the Settlement.** In consideration of the mutual covenants and promises set forth herein, Defendant agrees to make a total payment under this Settlement Agreement in an amount up to, but not to exceed the Gross Settlement Amount of nine hundred eighty six thousand seven hundred forty six dollars (\$986,746). In no event shall Defendant be required to pay any amount above the Gross Settlement Amount under this Settlement Agreement. The Parties agree that the payment of all payroll taxes in connection with the wages portion of the payouts to Settlement Class Members is included in the Gross Settlement Amount. The Parties further agree that the Gross Settlement Amount will be paid by Defendant on a non-reversionary basis and no portion of the Gross

1 Settlement Amount will revert to Defendant. The Parties further agree, subject to Court approval, that
2 the Gross Settlement Amount shall be apportioned as follows:

3 a. Plaintiff will apply to the Court for an award of attorneys' fees of no more than
4 thirty-five percent (35%) of the Gross Settlement Amount (*i.e.*, no more than \$345,361) to Class
5 Counsel ("Attorneys' Fees") and for an award of reimbursement of actual litigation costs and expenses
6 up to fifteen thousand dollars (\$15,000) to Class Counsel ("Attorneys' Costs"). The Attorneys' Fees
7 and Attorneys' Costs (again, in the aggregate, "Attorneys' Fees and Costs") are included in, and will
8 be paid from, the Gross Settlement Amount. Defendant will not oppose such application.

9 b. Plaintiff will also apply to the Court for payment to the Settlement
10 Administrator for the costs of notice and settlement administration not to exceed sixteen thousand
11 dollars (\$16,000) (again, "Administration Costs"). The Administration Costs are included in, and will
12 be paid from, the Gross Settlement Amount. Defendant will not oppose such application.

13 c. Plaintiff will apply to the Court for payment in the amount of ten thousand
14 dollars (\$10,000) to Plaintiff (again, "Enhancement Payment"), for his services and responsibilities in
15 prosecuting the Lawsuit. The Enhancement Payment is included in, and will be paid from, the Gross
16 Settlement Amount. Defendant will not oppose such application.

17 d. The amount of one hundred thousand dollars (\$100,000) is allocated towards
18 penalties pursuant to California Labor Code sections 2698, *et seq.* ("PAGA Payment"), of which the
19 LWDA will be paid in the amount of seventy-five thousand dollars (\$75,000) ("LWDA Payment")
20 and the amount of twenty-five thousand dollars (\$25,000) will remain available for distribution on a
21 *pro rata* pay periods basis to all PAGA Group Members (*i.e.*, individual recovery depends on each
22 PAGA Group Member's ratio of his or her pay periods relative to the total of pay periods of all PAGA
23 Group Members) who worked during the PAGA Period, and irrespective of whether he or she is a
24 Settlement Class Member. The PAGA Payment will be included in, and will be paid from, the Gross
25 Settlement Amount.

26 e. The Net Settlement Amount will be the amount that is available for distribution
27 to Settlement Class Members on a *pro rata* basis based on Workweeks. The Settlement Administrator
28 will determine each Settlement Class Member's individual Workweeks in accordance with Paragraph

35. The sum of all Settlement Class Members' individual Workweeks will be the "Total Workweeks." The Net Settlement Amount will be divided by the Total Workweeks to yield the "Workweek Value." Each Settlement Class Member's Individual Settlement Share will be determined by multiplying his or her individual Workweeks by the Workweek Value.

f. The net payment of each Settlement Class Member's Individual Settlement Share (after reduction of Employee Taxes) and individual PAGA payment (if applicable) is referred to as his or her Individual Settlement Payment.

47. **No Credit Toward Benefit Plans.** Payments made to Plaintiff, Settlement Class Members, and PAGA Group Members under this Settlement Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which they may be eligible, including, but not limited to, under profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which Plaintiff, Settlement Class Members, and PAGA Group Members, may be entitled under any benefit plans.

48. **Taxation of Settlement Proceeds.**

a. The Parties agree that twenty (20%) of each Individual Settlement Share will be considered taxable wages and will be reported as such to each Settlement Class Member on a W-2 Form. The Parties agree that eighty percent (80%) of each Individual Settlement Share will be considered interest and penalties and will be reported as such to each Settlement Class Member on an IRS Form 1099 (if required).

b. The Settlement Administrator shall calculate and remit to applicable taxing authorities sufficient amounts for the Employee and Employer Taxes. Any funds returned by taxing authorities due to cancellation of any Individual Settlement Payment checks will be transmitted in accordance with Paragraph 56(d), the same as all other residual funds associated with Individual Settlement Payment checks.

c. The Settlement Administrator will issue appropriate tax forms to each Settlement Class Member consistent with the foregoing breakdown.

1 d. All Parties represent that they have not received, and shall not rely on, advice
2 or representations from Class Counsel or Defendant's Counsel regarding the tax treatment of payments
3 under federal, state, or local law, and that no representations have been made to them regarding the
4 taxability of any payments under this Settlement Agreement.

5 e. Class Counsel will be issued an IRS Form 1099 for Attorneys' Fees and Costs
6 awarded by the Court. Except as provided herein, each of the Parties shall bear his, her, their, or its
7 own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the
8 Lawsuit.

9 f. Plaintiff will be issued an IRS Form 1099 for any Enhancement Payment. The
10 Enhancement Payment payable to Plaintiff shall be in addition to the Individual Settlement Payment
11 he is contemplated to receive under this Settlement Agreement.

12 49. **Notice Procedure.**

13 a. The Parties shall use CPT Group, Inc. as the Settlement Administrator to
14 distribute the Class Notice, distribute payments under this Settlement Agreement, handle tax reporting,
15 establish and host a dedicated case settlement website, and field questions with a toll-free telephonic
16 hotline.

17 b. Defendant will provide the Settlement Administrator with the Class List within
18 fourteen (14) calendar days following the date of Preliminary Approval. The Class List and any other
19 data provided by Defendant to the Settlement Administrator shall be treated as confidential and shall
20 not be used by the Settlement Administrator for any purpose other than as permitted by this Settlement
21 Agreement. The Settlement Administrator will keep the list confidential, use it only for the purposes
22 described herein, and ensure that any other communications with Class Members shall not include the
23 Class Members' Social Security number except for the last four digits.

24 c. The Settlement Administrator shall be responsible for:

25 i. Mailing the Class Notice in both English and Spanish to the Class
26 Members as directed by the Court;

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- 1 ii. Consulting with counsel for the Parties concerning any relevant issue(s),
2 including (without limitation) the estimated amounts of Individual Settlement Shares and Individual
3 Settlement Payments;
- 4 iii. Receiving and processing Workweek Disputes and rejecting timely or
5 improper Workweek Disputes;
- 6 iv. Keeping track of Requests for Exclusion, and rejecting untimely or
7 improper Requests for Exclusion;
- 8 v. Keeping track of Objections that it receives;
- 9 vi. Calculation and distribution of payments in accordance with this
10 Settlement Agreement and the Court's orders;
- 11 vii. Providing weekly status reports to counsel for the Parties, including: (a)
12 the number of Class Notices mailed; (b) the number of Workweek Disputes received; (c) the number
13 of Objections received; and (d) the number of Requests for Exclusion received;
- 14 viii. No later than twenty-one (21) calendar days before the Final Approval
15 Hearing, preparing and providing to Class Counsel and Defendant's Counsel, for filing with the Court
16 in support of Plaintiff's motion for final approval of the settlement, a declaration of due diligence
17 setting forth its compliance with its obligations under this Settlement Agreement;
- 18 ix. Notifying Defendant's Counsel, within three (3) business days after the
19 Effective Date, of the wiring instructions to fund the Gross Settlement Amount, which must be paid
20 by Defendant in the amounts and in accordance with the deadlines set forth in Paragraph 56(a);
- 21 x. Distributing payments due under this Settlement Agreement;
- 22 xi. Issuing a W-2 Form to each Settlement Class Member for the wage
23 portion of each Individual Settlement Share, a 1099 Form (if required) to each Settlement Class
24 Member for the non-wage portion of each Individual Settlement Share, a 1099 Form (if required) to
25 each PAGA Group Member, a 1099 Form to Plaintiff for the Enhancement Award, a 1099 Form to
26 Class Counsel for the Attorneys' Fees and Costs award, and a 1099 Form to the Settlement
27 Administrator for all Administration Costs; and,

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xii. Such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform, including responding to questions from Class Members.

d. Within twenty-one(21) calendar days after Preliminary Approval, the Settlement Administrator shall mail the Class Notice to all persons shown by Defendant's records to be Class Members, as reflected in the Class List, via first class U.S. mail, using the most current mailing address available after a National Change of Address search. The Class Notice shall state an estimate of each Class Member's respective Individual Settlement Share and the number of Workweeks and pay periods (if applicable) credited to him or her.

e. Any Class Notice(s) returned to the Settlement Administrator as undelivered within fifteen (15) calendar days of initial mailing and bearing a forwarding address shall be re-mailed by the Settlement Administrator within three (3) business days following receipt of the returned mail. For any such Class Notice returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall first conduct a National Change of Address search as required for undeliverable notices, followed by a "skip trace" search to obtain an updated address, and shall promptly re-mail the Class Notice to any newly-found address or addresses. The Settlement Administrator shall also re-mail by first class U.S. mail any such Class Notice returned by the Post Office with a forwarding address. It shall be conclusively presumed that those Class Members whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within five (5) calendar days after re-mailing, received the Class Notice.

f. Class Counsel shall provide the Court with a declaration from the Settlement Administrator confirming that the Class Notice was mailed to all Class Members as required by this Settlement Agreement, as well as any additional information Class Counsel deems appropriate to provide to the Court, before the Final Approval Hearing.

50. **Settlement Payments.** Class Members and PAGA Group Members are not required to submit a claim form to receive a settlement payment.

51. **Submission of Workweek Disputes.**

a. If any Class Member disputes the Workweeks set forth on the Class Notice during the Class Period ("Workweek Dispute"), the Class Member may submit documentation

1 supporting his or her position by mail to the Settlement Administrator no later than forty-five (45)
2 calendar days from the date the Class Notice is originally mailed by the Settlement Administrator,
3 (“Response Deadline”). Workweek Disputes not postmarked or confirmed received by the Settlement
4 Administrator on or before the Response Deadline will be considered late and may be summarily
5 rejected by the Settlement Administrator, in consultation with Class Counsel and Defendant’s
6 Counsel.

7 b. The Settlement Administrator will notify counsel for the Parties via email. If
8 there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an
9 adjustment is warranted. The Parties and the Settlement Administrator will evaluate the evidence and
10 discuss in good faith how many Workweeks to be credited and in conformity with Paragraph 46(e). If
11 the Parties and the Settlement Administrator do not reach agreement, the Court will make the final
12 determination as to how many Workweeks should be credited.

13 52. **Pro-Rata Increase of Gross Settlement Amount.** As of August 16, 2021,
14 Defendant’s best estimate of the total number of Workweeks for the Class is 21,451. Plaintiff is
15 entering into this Settlement Agreement based on such representations. In the event it is determined
16 that the actual number of Workweeks and/or pay periods exceeds these estimates by more than 10
17 percent, the Gross Settlement Amount shall increase 1 percent for every 1 percent increase in the
18 Workweeks and/or pay periods over the 10 percent threshold.

19 53. **Opt-Out Procedure.**

20 a. Class Members will have forty-five (45) days until the Response Deadline to
21 mail by first class U.S. mail, with proof of date of submission to be the postmark date, a written request
22 to opt out of the settlement (“Request for Exclusion”). Unless a Class Member submits a timely and
23 valid Request for Exclusion, he or she shall be bound by the terms and conditions of this Settlement
24 Agreement, including the release of claims as set forth herein.

25 b. A Request for Exclusion, in order to be deemed valid, must: (1) be signed by
26 the Class Member; (2) contain the case name and number of the Lawsuit; (3) contain the Class
27 Member’s full name, telephone number, mailing address and last four digits of the Class Member’s
28

1 Social Security Number; (4) clearly state that the Class Member wants to opt out of the settlement;
2 and (5) be postmarked no later than the Response Deadline.

3 c. Upon receipt of any timely Request for Exclusion, the Settlement Administrator
4 shall review the request to verify the information contained therein and confirm that the request
5 complies with the requirements of this Settlement Agreement.

6 d. Any Class Member who fails to submit via first class U.S. mail a timely,
7 complete, and valid Request for Exclusion shall be barred from opting out of the settlement. The
8 Settlement Administrator shall not review or consider any Request for Exclusion postmarked after the
9 Response Deadline. Under no circumstances shall the Settlement Administrator have the authority to
10 extend the Response Deadline for Class Members to file a Request for Exclusion, except as ordered
11 by the Court or mutually agreed by the Parties.

12 e. Plaintiff agrees not to request to be excluded from the settlement.

13 54. **Defendant's Right To Cancel.**

14 If more than five percent of the Class Members submit a timely and valid Request for
15 Exclusion, Defendant shall have the sole and absolute discretion to withdraw from this Settlement
16 Agreement within ten (10) calendar days after the Response Deadline by providing written notice of
17 such withdrawal to Class Counsel. In the event that Defendant elects to withdraw as set forth in this
18 provision, the withdrawal shall have the same effect as a termination of this Settlement Agreement for
19 failure to satisfy a condition of settlement and shall become null and void and have no further force or
20 effect. If Defendant exercises its option to terminate this settlement, it shall pay all Administration
21 Costs incurred up to the date and as a result of the termination.

22 55. **Objections to Settlement.**

23 a. Any Settlement Class Member may object to the settlement by mailing a written
24 objection ("Objection") to the Settlement Administrator. To be timely, Objections must be mailed to
25 the Settlement Administrator, postmarked on or before the Response Deadline.

26 b. An Objection must: (1) be signed by the Class Member; (2) contain the case
27 name and number of the Lawsuit; (3) the words "Notice of Objection" or "Formal Objection"; (4)
28 contain the Class Member's full name, telephone number, and mailing address; (5) clearly state the

1 factual and legal basis for objecting to the settlement; (6) indicate whether the Class Member is
2 represented by counsel and identify said counsel; and (7) indicate whether the Class Member intends
3 to appear at the Final Approval Hearing and seeks to be heard at the Final Approval Hearing. The
4 Settlement Administrator will provide the Parties' counsel with any objections received and also attach
5 the objections as exhibits to its declaration regarding due diligence that will be filed with the Court in
6 advance of the Final Approval Hearing.

7 c. Settlement Class Members have the right to appear and have their Objections
8 heard or offer comments at the Final Approval Hearing, either in person or through a lawyer retained
9 at their own expense. Class Counsel will not represent any Settlement Class Members with respect to
10 such Objections.

11 **56. Settlement Proceeds Distribution Deadlines.**

12 a. Defendant shall fund the Gross Settlement Amount within ten (10) business
13 days after the Effective Date. If the Gross Settlement Amount increases pursuant to Paragraph 52, then
14 the amount to be paid by Defendant will proportionally increase.

15 b. Prior to disbursement of any funds, the Settlement Administrator will provide
16 a disbursement summary of the calculations for the Enhancement Payment to Plaintiff, payment of
17 Attorneys' Fees and Costs to Class Counsel, LWDA Payment, Administration Costs Payment, and
18 payment of Individual Settlement Payments to Settlement Class Members and PAGA Group Members
19 for review and approval by Class Counsel and Defendant's Counsel.

20 c. No later than ten (10) calendar days after Defendant fully funds the Gross
21 Settlement Amount, the Settlement Administrator shall distribute payments in accordance with this
22 Settlement Agreement and the Court's orders, as follows: (i) payment of the Enhancement Payment
23 to Plaintiff; (ii) payment of the LWDA Payment to the Labor and Workforce Development Agency
24 ("LWDA"); (iii) payment of Individual Settlement Payments to Settlement Class Members and PAGA
25 Group Members; (iv) payment of Attorneys' Fees and Costs to Class Counsel; and (v) payment of
26 Administration Costs to the Settlement Administrator.

27 d. Settlement checks will be valid for a period of one hundred and eighty (180)
28 calendar days from the date of issuance, and after this time period, any uncashed check(s) will be

1 cancelled and the funds associated with such cancelled checks will be transmitted to *cy pres* in
2 conformity with the requirements of California Code of Civil Procedure section 384.

3 e. The remittance of all Court ordered and approved payments, under this
4 Settlement Agreement, to the Settlement Administrator shall constitute the full and complete discharge
5 of the entire obligation of Defendant under this Settlement Agreement.

6 f. No person shall have any claim against the Settlement Administrator,
7 Defendant, Class Counsel, Defendant's Counsel, or any other agent designated by Plaintiff or
8 Defendant based upon the distribution of payments made in accordance with this Settlement
9 Agreement or further orders of the Court.

10 g. Defendant shall not be obligated to make any payments contemplated by this
11 Settlement Agreement prior to the Effective Date.

12 57. **Binding Effect.**

13 a. Subject to Final Approval, all Settlement Class Members shall be bound by this
14 Settlement Agreement, the contemplated Final Approval Order and Judgment, the release of
15 Settlement Class Members' Released Claims, and shall be enjoined from pursuing, or seeking to
16 reopen, Settlement Class Members' Released Claims against the Released Parties.

17 b. Subject to Final Approval, all Class Members, whether or not they submit a
18 request for exclusion from the settlement, employed by Defendant during the PAGA Period (the
19 "PAGA Group Members") shall be bound by this Settlement Agreement, the contemplated Final
20 Approval Order and Judgment, the release of PAGA Group Members' Released Claims, and shall be
21 enjoined from pursuing, or seeking to reopen, PAGA Group Members' Released Claims against the
22 Released Parties.

23 58. **Provisional Approval of Settlement.** After execution of this Settlement Agreement,
24 Plaintiff shall promptly file a motion in the Lawsuit requesting Preliminary Approval of the settlement
25 consistent with the terms of this Settlement Agreement. Class Counsel will submit to Defendant's
26 Counsel drafts of the Motion for Preliminary Approval and proposed Preliminary Approval Order for
27 review and approval. Defendant shall not oppose the Motion for Preliminary Approval of the
28 settlement so long as the motion and supporting papers are consistent with the terms of this Settlement

1 Agreement. By way of the motion, the Court will be requested to enter a Preliminary Approval Order
2 that:

- 3 a. Preliminarily approves this Settlement Agreement;
- 4 b. Conditionally certifies the Class, for purposes of settlement;
- 5 c. Preliminarily appoints Plaintiff as representative of the Class for settlement
6 purposes;
- 7 d. Preliminarily appoints CounselOne, PC as Class Counsel for the Class for
8 settlement purposes;
- 9 e. Approves and appoints CPT Group, Inc. as the Settlement Administrator to
10 administer the settlement as required by this Settlement Agreement;
- 11 f. Approves the form of the Class Notice and requires that it be sent to Class
12 Members by first class U.S. mail;
- 13 g. Approves the Notice Plan;
- 14 h. Schedules the Final Approval Hearing; and
- 15 i. Approves the procedure and deadlines (including the Response Deadline) for
16 Class Members to submit Requests for Exclusion, Objections, and Workweek Disputes.

17 59. **Non-Interference with Settlement Administration.** The Parties and their counsel
18 agree that they shall not seek to solicit or otherwise encourage Class Members to submit Requests for
19 Exclusion or Objections to the settlement or to appeal from the Final Approval Order and Judgment.

20 60. **Final Approval Order and Judgment.** Plaintiff will request, and Defendant will
21 concur in said request, that the Court enter, after the Final Approval Hearing, a Final Approval Order
22 and Judgment drafted by Plaintiff in the form that is consistent with this Settlement Agreement and
23 subject to prior review and approval by Defendant. Plaintiff will request that the Final Approval Order
24 and Judgment find that this settlement is fair, just, equitable, reasonable, adequate and in the best
25 interests of the Class, enter judgment in accordance with California Rules of Court 3.769, and require
26 the Parties to carry out the provisions of this Settlement Agreement.

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1 61. **Voiding of Settlement Agreement if Settlement Not Finalized or for Failure to**
2 **Satisfy Conditions.**

3 a. The Court may award less to Plaintiff, Class Counsel, Settlement
4 Administrator, and/or the LWDA than is provided for herein, without impacting the validity and
5 enforceability of this Settlement Agreement.

6 b. If for any reason the settlement set forth in this Settlement Agreement is
7 terminated as provided under this Paragraph or Paragraph 54 or does not otherwise become final:

8 i. The settlement shall be null and void and the orders and judgment to be
9 entered pursuant to this Settlement Agreement shall be vacated; and the Parties will be returned to the
10 status quo as of February 1, 2021, with respect to the Lawsuit and Plaintiff's class and representative
11 claims, as if the Parties had never entered into this Settlement Agreement.

12 ii. This Settlement Agreement and all negotiations, court orders and
13 proceedings relating thereto shall be without prejudice to the rights of any and all Parties hereto and
14 Class Members, whom shall be restored to their respective positions existing prior to the execution of
15 this Settlement Agreement, and evidence relating to this Settlement Agreement and all negotiations
16 shall not be admissible or discoverable in the litigation and/or Lawsuit or otherwise.

17 iii. Defendant will not have waived, and instead expressly reserves, its
18 rights to challenge the continuing propriety of class certification or representative adjudication for any
19 purpose.

20 iv. Plaintiff and Class Counsel will not have waived, and instead expressly
21 reserve, their rights to move for collective and/or class certification and seek representative
22 adjudication.

23 v. To the extent one exists, the Preliminary Approval Order shall be
24 vacated in its entirety and neither this Settlement Agreement, the Preliminary Approval Order, nor any
25 other document in any way relating to any of the foregoing, shall be relied upon, referred to, or used
26 in any way for any purpose in connection with any further proceedings in this or any related action,
27 including class certification proceedings.

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62. **No Publicity.** The Parties and their counsel will not initiate nor respond to public relations or media inquiries about the settlement except as required by the settlement approval process. In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the settlement of the Lawsuit in any manner that identifies Defendant, including but not limited to any postings on any websites maintained by Class Counsel.

63. **Notices.** All notices, requests, demands, and other communications required or permitted to be given pursuant to this Settlement Agreement to the Parties shall be in writing, and shall be delivered by first class U.S. mail through counsel, as follows:

For Plaintiff and the Class:

Anthony J. Orshansky
Jennifer L. Connor
Justin Kachadoorian
CounselOne, P.C.
9301 Wilshire Boulevard Suite 650
Beverly Hills, California 90210

For Defendant:

Chandra A. Beaton
Monnett De La Torre
LightGabler
760 Paseo Camarillo, Suite 300
Camarillo, California 93010

64. **Modification in Writing.** This Settlement Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by counsel for the Parties and approved by the Court. This Settlement Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

65. **Ongoing Cooperation.** Plaintiff and Defendant and each respective counsel shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Settlement Agreement. The executing of documents must take place prior to the Final Approval Hearing.

66. **Binding on Successors.** This Settlement Agreement shall be binding and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs, and legal representatives.

1 67. **Entire Agreement.** This Settlement Agreement constitutes the full, complete, and
2 entire understanding, agreement, and arrangement between the Parties with respect to the settlement
3 of the Lawsuit and Release of Claims. This Settlement Agreement supersedes any and all prior oral or
4 written understandings, agreements, and arrangements between the Parties with respect to the
5 settlement of the Lawsuit and Release of Claims. Except as to those set forth and included expressly
6 in this Settlement Agreement, there are no other agreements, covenants, promises, representations, or
7 arrangements between the Parties with respect to the settlement of the Lawsuit.

8 68. **Execution in Counterparts.** This Settlement Agreement may be signed in one or more
9 counterparts and electronic signatures are acceptable. All executed copies of this Settlement
10 Agreement, and photocopies thereof (including facsimile copies of the signature pages), shall have the
11 same force and effect and shall be as legally binding and enforceable as the original.

12 69. **Captions.** The captions and section numbers in this Settlement Agreement are inserted
13 for the reader's convenience and in no way define, limit, construe, or describe the scope or intent of
14 the provisions of this Settlement Agreement.

15 70. **Governing Law.** This Settlement Agreement shall be interpreted, construed, enforced,
16 and administered in accordance with the laws of the State of California, without regard to conflict of
17 law rules.

18 71. **Reservation of Jurisdiction.** Notwithstanding entry and filing of the Final Approval
19 Order and Judgment, the Court shall retain jurisdiction for purposes of interpreting and enforcing the
20 terms of this Settlement Agreement pursuant to Code of Civil Procedure section 664.6.

21 72. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms
22 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement shall not be
23 construed more strictly against one Party than another merely by virtue of the fact that it may have
24 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
25 negotiations between the Parties, all Parties have contributed to the preparation of this Settlement
26 Agreement.

27 73. **Representation by Counsel.** The Parties acknowledge that they have been represented
28 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement and

1 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
2 Plaintiff and Class Counsel warrant and represent, to their knowledge, that there are no liens on this
3 settlement.

4 74. **Warranties and Representations.** With respect to themselves, each of the Parties to
5 this Settlement Agreement and/or their agents or counsel represent, covenant, and warrant that (a) they
6 have full power and authority to enter into and consummate all transactions contemplated by this
7 Settlement Agreement and have duly authorized the execution, delivery, and performance of this
8 Settlement Agreement and (b) the person executing this Settlement Agreement has the full right,
9 power, and authority to enter into this Settlement Agreement on behalf of the Party for whom he/she/it
10 has executed this Settlement Agreement, and the full right, power, and authority to execute any and
11 all necessary instruments in connection herewith, and to fully bind such Party to the terms and
12 obligations of this Settlement Agreement.

13
14 **IT IS SO AGREED:**

15
16 Dated: 11 / 15 / 2021, 2021

Jose Rosaliano Velez
Plaintiff Jose Rosaliano Velez

17
18
19 Dated: 11 / 12, 2021

[Signature]
On Behalf of Defendant La Fortaleza, Inc.
Name: RAMIRO ortiz
Title: CFO

20
21
22 **APPROVED AS TO FORM:**

23
24 Dated: November 15, 2021

Anthony J. Orshansky
Anthony J. Orshansky, Esq.
Jennifer L. Connor, Esq.
Justin Kachadoorian, Esq.
CounselOne, PC
Attorneys for Plaintiff

25
26
27 *[Signatures continue on next page]*
28

1
2 Dated: November 15, 2021
3



Chandra A. Beaton, Esq.
Monnett De La Torre, Esq.
LightGabler
Attorneys for Defendant