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Attorneys for Plaintiff Amy Migdal

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

AMY MIGDAL, individually and on behalf of
 all similarly situated individuals,

Plaintiff,

vs.

PURPLE COMMUNICATIONS, INC., ZP
 BETTER TOGETHER, LLC, and DOES 1 to
 100,

Defendants.

CASE NO. S-CV-0046377

**DECLARATION OF MANNY STARR IN
 SUPPORT OF PLAINTIFFS' NOTICE OF
 MOTION AND MOTION FOR FINAL
 APPROVAL OF CLASS ACTION
 SETTLEMENT**

Date.: March 14, 2023

Time: 8:30 a.m.

Dept: 31

Complaint Filed: March 15, 2021

Trial Date: None Set

DECLARATION OF MANNY STARR

I, Manny Starr, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm of Frontier Law Center, and one of the attorneys of record for Plaintiff Amy Migdal in the above-titled action. I have personal knowledge of the

1 matters set forth herein, and if called upon as a witness to testify thereto, I could and would
2 competently do so.

3 2. The Settlement Agreement was the product of negotiation between highly able and
4 experienced attorneys on all sides who possessed the relevant data and extensive legal research
5 which they had carefully analyzed. Class counsel engaged in extensive factual investigation before
6 settling, including reviewing class data produced by Defendants. This allowed Plaintiffs to conduct
7 a full damage analysis.

8 3. I support the settlement as fair, reasonable, and adequate, and in the best interest of
9 the Class Members as a whole.

10 4. My qualifications are as follows: I received my J.D. from West Los Angeles School
11 of Law in 2017. During Law School, I assisted at the Law Office of Robert L. Starr, which
12 practices civil litigation, including, *inter alia*, employment class actions.

13 5. My primary practice is employment law. I have handled a number of wage and hour
14 matters including class actions, individual actions, and PAGA cases on the Plaintiff's side. My
15 practice encompasses cases in counties throughout the State of California, as well as the United
16 States District Courts for the Central, Eastern, Northern, and Southern Districts of California. I
17 have been named as Class Counsel in a number of cases, and have been granted final approval in
18 many of those.

19 6. Wage and Hour Class and PAGA actions I have been counsel for include: Wage and
20 Hour Class and PAGA actions I have been counsel for include:

- 21 a. *In Re: Arya Security Wage and Hour Cases*, Case No. JCCP4991: Coordinated
22 Class and PAGA action involving claims for, *inter alia*, meal and rest break
23 violations, failure to pay wages including overtime, and failure to indemnify work
24 related expenses; \$600,000 settlement; final approval granted;
- 25 b. *Joshua Albright, et al. v. Loma Linda Shared Services*, Case No. CIVDS1818361:
26 Class action and PAGA case involving failure to pay wages, meal and rest break
27 violations, and failure to indemnify work related expenses; \$600,000.00 settlement;
28 final approval granted;

- 1 c. *Tri Nguyen v First Alarm Security & Patrol, Inc.*, Case No. 18CV332369: class
2 action and PAGA case on behalf of security guards involving various wage and hour
3 issues; \$7,250,000 settlement; final approval granted;
- 4 d. *Ronnie McNeal v. Platinum Security, Inc.*, Case No. 19STCV05709: PAGA action
5 on behalf of security guards involving meal and rest break violations and failure to
6 pay wages in a timely manner; \$300,000 settlement; PAGA settlement approved;
- 7 e. *Adolph Cruz, et al v. Holder Construction Group, LLC*, Case No. 19CV341862:
8 PAGA action on behalf of construction workers involving off the clock work and
9 meal and rest break violations; \$500,000 settlement; PAGA settlement approved;
- 10 f. *Mervyn Cole v. Saucey, Inc.* Case No. BC707895: class action and PAGA case
11 involving misclassification of employees and other wage and hour issues; \$590,000
12 settlement; final approval granted;
- 13 g. *Kevin Hernandez v. Contemporary Services Corporation*, Case No. BC684206:
14 PAGA action on behalf of security guards involving various wage and hour issues;
15 \$795,000 settlement; PAGA settlement approved;
- 16 h. *Keosia Green v. American Guard Services, Inc.* Case No. BC688437: PAGA action
17 on behalf of security guards involving wage and hour issues; \$315,000 settlement;
18 PAGA settlement approved;
- 19 i. *James Rushing v. Security Intelligence Specialist Corporation*, Case No. 18-civ-
20 1808, class action and PAGA case on behalf of security guards for breaks and wage
21 statement violations; \$480,000 settlement; final approval granted;
- 22 j. *Veronica Espinoza v. Sharp HealthCare*, Case No. 37-2018-00034031-CU-OE-
23 CTL, class action and PAGA case on behalf of hospital employees relating to meal
24 and rest break violations, among other things; \$2,125,000 settlement; final approval
25 granted; and
- 26 k. *Anthony Gaines, et al. v. Triple Canopy, Inc.*, Case No. 19CV345169, class action
27 and PAGA case on behalf of approximately 550 security guards relating to meal and
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rest break violations and other wage and hour issues; \$2,300,000 settlement; final approval granted.

7. My firm has incurred costs of \$1,408.66 in this litigation. These costs are all litigation related, and include mediators fees, filing fees, postage, service fees, and a PAGA Notice fees to the LWDA.

8. While I believe in the merits of Plaintiff's case, the information and arguments provided by Defendants do raise concerns about the risk of proceeding with litigation. These risks include both failing to obtain certification of the issues, as well as the risk the Court may be persuaded by one of the defenses on the merits presented by Defendants. In addition, even if Plaintiff did prevail at trial, there is the risk of lengthy appeals.

9. Attached as **Exhibit A** is a true and correct copy of the Settlement Agreement preliminarily approved by this Court on November 15, 2022.

10. Plaintiffs are seeking \$42,500 for attorney fees, which will be split 60% to Diversity Law Group and \$40% to Frontier Law Center.

11. Our office took this case on a contingency fee basis. While every case carries some risk, this case was riskier than most in that it involved an open question of law as to the method of calculation of sick time pay.

I declare that the above is true and correct under penalty of perjury under the laws of the State of California.

Executed on 02/17/23 | 2:13 PST in Austin, TX.

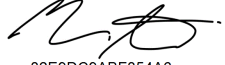
DocuSigned by:

82E9DC9ABF854A0...
Manny Starr

EXHIBIT A

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Together, LLC

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Attorneys for Plaintiff Amy Migdal

Additional Counsel Listed On Next Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF PLACER

AMY MIGDAL, individually and on
behalf of all similarly situated
individuals,

Plaintiff,

v.

PURPLE COMMUNICATIONS,
INC., ZP BETTER TOGETHER,
LLC, and DOES 1 to 100,

Defendants.

Case No. S-CV-0046377

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

Date Action Filed: March 15, 2021

1 ROBERT STARR (State Bar No. 183052)
2 THEODORE TANG (State Bar No. 313294)
3 MANNY STARR (State Bar No. 319778)
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1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action Settlement and Release (“Settlement” or
3 “Settlement Agreement”) is made and entered into by and between plaintiff Amy Migdal
4 (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others
5 similarly situated, and defendants Purple Communications, Inc. and ZP Better Together,
6 LLC (“Defendants”) (collectively with Plaintiff, the “Parties”).

7 **BACKGROUND**

8 This settlement arises from an action entitled *Amy Migdal v. Purple*
9 *Communications, Inc. and ZP Better Together, LLC*, Case No. S-CV-0046377, pending
10 in the Superior Court of California for the County of Placer. Plaintiff filed this action on
11 March 15, 2021 alleging that Defendants failed to properly calculate sick pay in
12 violation of California Labor Code section 246. In addition, Plaintiff claims that as a
13 result of this alleged underpayment, Defendants failed to pay all wages due at
14 termination and violated the Unfair Competition Law. Plaintiff originally asserted her
15 claims on behalf of a class of Defendants’ current and former non-exempt California
16 employees who earned sick pay since September 7, 2017. Plaintiff also seeks civil
17 penalties for the same alleged violations under the Private Attorneys General Act
18 (“PAGA”).

19 Since approximately November 2021, the Parties have informally been working
20 toward resolution of the case through private negotiations and exchange of information
21 regarding the putative class and the Parties’ respective legal and factual arguments. As a
22 result of these negotiations, the Parties reached this Settlement Agreement.

23 **DEFINITIONS**

24 The following definitions are applicable to this Settlement Agreement.
25 Definitions contained elsewhere in this Settlement Agreement will also be effective.
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27
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1 1. “Action” means *Amy Migdal v. Purple Communications and ZP Better*
2 *Together, LLC*, Case No. S-CV-0046377, pending in the Superior Court of California for
3 the County of Placer.

4 2. “Class Counsel” means Diversity Law Group, APC and Frontier Law
5 Center, APC.

6 3. “Defendants” or “Released Parties” means Defendants and all of their
7 present and former parents, subsidiaries, affiliates, and joint ventures, and all of their
8 shareholders, members, managers, officers, officials, directors, employees, agents,
9 servants, registered representatives, attorneys, insurers, successors, and assigns.

10 4. “Release” means a written agreement executed by and between Defendants
11 and an employee in which the employee agreed to discharge Defendants from all claims
12 “arising out of or relating directly or indirectly in any way to [their] employment or
13 termination of employment with the Company.”

14 5. “Class Member(s)” or “Settlement Class” means all individuals who
15 worked for Defendants as non-exempt employees in California since September 7, 2018
16 who (i) did not sign a Release, (ii) earned sick pay on or after September 7, 2018 and
17 (iii) whose employment with Defendants ended before April 8, 2022. Defendant
18 represents that there are 73 Class Members.

19 6. “Court” means the Superior Court of California for the County of San
20 Placer.

21 7. “Effective Date” means the later of: (i) the 61st day after the Court enters
22 an order granting final approval of the Settlement, provided no appeal or motion for
23 reconsideration or other efforts to obtain review have been filed; (ii) if any timely
24 appeals or motions for reconsideration or review are filed, the 61st day after final
25 resolution of any such appeals or motions for reconsideration or review have been
26 finally concluded. In this regard, it is the intention of the Parties that the Effective Date
27 of the Settlement shall not be a date before the Court’s order approving the Settlement
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has become completely final and there is no timely recourse by any person who seeks to object or otherwise contest the Settlement.

8. “Gross Settlement Amount” is the amount of One Hundred Twenty-Seven Thousand Five Hundred Dollars (\$127,500.00), which is the amount to be paid by Defendants pursuant to this Settlement Agreement. The Gross Settlement Amount is non-reversionary and includes: (a) all Individual Settlement Payments to Participating Class Members; (b) the Labor and Workforce Development Agency Payment; (c) the Class Representative Enhancement Payment; (d) Attorneys’ Fees and Costs to Class Counsel, and (e) Settlement Administration Costs to the Settlement Administrator. Except for the share of any payroll taxes due on Individual Settlement Payments to Participating Class Members (“Employer’s Payroll Taxes”), if any, which Defendants will pay separate from and in addition to the Gross Settlement Amount, Defendants will have no obligation to pay any amount in connection with this Settlement Agreement apart from the Gross Settlement Amount, except as set forth in Paragraph 37.

9. “Individual Settlement Payment” means a Participating Class Member’s share of the Net Settlement Amount.

10. “Net Settlement Amount” means the Gross Settlement Amount less deductions for the Labor and Workforce Development Agency Payment, Class Representative Enhancement Payment, Attorneys’ Fees and Costs, and Settlement Administration Costs.

11. “Notice of Class Action Settlement” means the Notice of Class Action Settlement, attached as Exhibit A, to be mailed to all members of the Settlement Class upon Preliminary Approval.

12. “Participating Class Members” means all Class Members who do not submit valid Requests for Exclusion.

13. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement Agreement.

14. “Released Claims” means all claims released by Plaintiff and Class Members, as defined below.

15. “Released Claims Period” means the period from September 7, 2018 through the date the Court grants Preliminary Approval of Settlement, or August 10, 2022, whichever is sooner.

16. “Response Deadline” means the deadline by which Class Members must postmark to the Settlement Administrator Requests for Exclusion or Objections to the Settlement. The Response Deadline will be thirty (30) calendar days from the initial mailing of the Notice of Class Action Settlement by the Settlement Administrator, unless the 30th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

17. “Settlement Administrator” means Phoenix Class Action Administration Solutions, or any other third-party class action settlement administrator approved by the Parties and the Court for the purposes of administering this Settlement. The Parties represent that they do not have a financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

TERMS OF THE AGREEMENT

Plaintiff, on behalf of herself and the Settlement Class, and Defendants agree as follows:

18. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after private negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

1 19. Non-Admission of Liability. The Parties enter into this Settlement to
2 resolve the dispute that has arisen between them and to avoid the burden, expense, and
3 risk of continued litigation. In entering into this Settlement, Defendants do not admit,
4 and specifically deny, that they violated any federal, state, or local law; violated any
5 regulations or guidelines promulgated pursuant to any statute or any other applicable
6 laws, regulations or legal requirements; breached any contract; violated or breached any
7 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
8 conduct with respect to the Class Members. Neither this Settlement, nor any of its terms
9 or provisions, nor any of the negotiations connected with it, will be construed as an
10 admission or concession by Defendants of any such violations or failures to comply
11 with any applicable law. Except as necessary in a proceeding to enforce the terms of
12 this Settlement, this Settlement and its terms and provisions will not be offered or
13 received as evidence in any action or proceeding to establish any liability or admission
14 on the part of Defendants or to establish the existence of any condition constituting a
15 violation of, or a non-compliance with, federal, state, local or other applicable law.

16 20. Class Certification. For settlement purposes only, the Parties agree to class
17 certification of the Settlement Class in accordance with the terms of this Settlement
18 Agreement. If, for any reason, the Settlement is not fully and finally approved and/or
19 the Effective Date does not occur, the stipulation of certification will be void *ab initio*,
20 and Defendants will not be deemed to have waived or limited any objections or defenses
21 to class certification or any other matter. The Parties further agree that nothing in this
22 Settlement Agreement will be construed as an admission or acknowledgement in this or
23 any other proceeding that either (i) class action certification is proper except as provided
24 in this paragraph, or (ii) Defendants are liable to Plaintiff or any Class Member other
25 than in accordance with the terms of this Settlement.

26 21. Waiver and Release. Plaintiff and all Class Members who do not submit a
27 valid and timely Request for Exclusion, including their agents, affiliates, spouses,
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1 domestic partners, representatives, guardians ad litem, heirs, executors, administrators,
2 successors, attorneys, and assigns, past, present and future, shall, for the Released
3 Claims Period, fully and finally waive, release, and forever discharge the Released
4 Parties from any and all claims (and for all resulting damages, restitution, penalties,
5 interest, costs, attorneys' fees, or other relief or liability) (i) asserted in the Action,
6 including in the Complaint filed on March 15, 2021 and based on the facts alleged
7 therein, or (ii) which could have been asserted based on the factual allegations in the
8 Action, including those concerning sick pay and the payment of final wages upon
9 termination, premised on Labor Code §§ 201, 202, 203, 246, or 248.5 ("Released
10 Claims"). The Released Claims include, but are not limited to, any claims, rights,
11 demands, liabilities, and causes of action of any kind or nature in law or in equity, under
12 any theory, whether contract, common law, constitutional, statutory or otherwise, of any
13 jurisdiction, foreign or domestic, whether known or unknown, anticipated or
14 unanticipated, including for damages, restitution, penalties, interest, costs, attorneys'
15 fees, expenses, equitable relief, injunctive relief, and any other relief.

16 This waiver and release will be final and binding on the Effective Date and
17 funding of the Gross Settlement Amount, and will have every preclusive effect
18 permitted by law.

19 Plaintiff will not file, and will not request any other party or entity to file on her
20 behalf, any claim, complaint, charge or request for damages or any other relief released
21 above, including with any local, state, or federal governmental or quasi-governmental
22 agency or any state, administrative, or federal court, or any licensing or accreditation
23 organization, against the Released Parties.

24 22. Release of Additional Claims and Rights by Plaintiff. As of the Effective
25 Date and funding of the Gross Settlement Amount, and as a condition of receiving any
26 portion of her Class Representative Enhancement Payment, Plaintiff agrees to the
27 additional following General Release: In consideration of Defendants' promises and
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1 agreements as set forth herein, Plaintiff hereby fully releases the Released Parties from
2 any and all Released Claims and also generally releases and discharges the Released
3 Parties from any and all claims, demands, obligations, causes of action, rights, or
4 liabilities of any kind which have been or could have been asserted against the Released
5 Parties through the date that this Agreement is fully executed. This general release
6 includes, but is not limited to, claims arising out of or relating to Plaintiff's alleged
7 employment and/or alleged joint employment by Defendants and/or the termination of
8 her alleged employment with Defendants, including but not limited to any and all claims
9 for violation of any section of the California Labor Code and/or Wage Orders; violation
10 of the Fair Labor Standards Act ("FLSA"); failure to pay wages, benefits, vacation pay,
11 severance pay, final pay, or other compensation of any sort; fraud; intentional or
12 negligent misrepresentation; breach of contract; promissory estoppel; wrongful
13 termination; retaliation; violation of public policy; breach of implied covenant of good
14 faith and fair dealing; defamation; unlawful effort to prevent employment; sexual
15 harassment; discrimination on the basis of race, color, sex, national origin, ancestry,
16 religion, age, disability, handicap, medical condition, marital status or any other
17 protected class; any claim under the Fair Credit Reporting Act, California Consumer
18 Credit Reporting Agencies Act, California Investigative Consumer Reporting Agencies
19 Act, or other laws regarding background checks; any claim under Title VII of the Civil
20 Rights Act of 1964 (Title VII, as amended), 42 U.S.C. §§ 2000, *et seq.*; the Americans
21 with Disabilities Act ("ADA"), the Age Discrimination in Employment Act ("ADEA"),
22 the California Fair Employment and Housing Act ("FEHA"), or California Government
23 Code §§ 12940 *et seq.*; violation of the Consolidated Omnibus Budget Reconciliation
24 Act of 1985 ("COBRA"); violation of the Occupational Safety and Health Act
25 ("OSHA") or any other health and/or safety laws, statutes or regulations; violation of
26 the Employment Retirement Income Security Act of 1974 ("ERISA"); violation of the
27 Internal Revenue Code; any other claim arising from employment or termination of
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1 employment; or other common law or tort matters and all other claims under federal,
2 state, or local law. This release specifically includes any and all claims, demands,
3 obligations and/or causes of action for damages, restitution, penalties, injunctive or
4 equitable relief, interest, and attorneys' fees and costs (except as provided by the
5 Settlement Agreement) relating to or in any way connected with the matters referred to
6 herein, whether or not known or suspected to exist, and whether or not specifically or
7 particularly described herein. Specifically, Plaintiff waives all rights and benefits
8 afforded by California Civil Code Section 1542, which provides:

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

13 23. Individual Settlement Payment Calculations. Individual Settlement
14 Payments will be calculated and apportioned from the Net Settlement Amount equally
15 among the Participating Class Members. To determine each Participating Class
16 Member's "Individual Settlement Payment," the Settlement Administrator will divide
17 the Net Settlement Amount equally by the number of Participating Class Members. The
18 Individual Settlement Payment. The Parties agree that the formula described herein is
19 reasonable and that the payments are designed to provide a fair settlement to each
20 Settlement Class Member in light of the uncertainties regarding the compensation
21 alleged to be owed and the calculation of such amounts.

22 24. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys'
23 Fees of not more than Thirty-Three and One Third percent (33 1/3%) of the Gross
24 Settlement Fund, or Forty-Two Thousand Five Hundred Dollars (\$42,500.00) in
25 attorneys' fees, and not to exceed Twenty Thousand dollars (\$20,000.00) in attorneys'
26 reasonable litigation costs (including any expert costs), and Defendants agree not to
27 oppose such application. These amounts include, without limitation, all time expended
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1 by Plaintiff's Counsel in defending and preparing the Settlement Agreement and
2 securing Preliminary and Final Approval (including any appeals therein), and there will
3 be no additional charge of any kind to either the Settlement Class Members or
4 Defendants for such work.

5 All Attorneys' Fees and Costs will be paid from the Gross Settlement Amount.
6 Plaintiff and Class Counsel will not have the right to revoke this Settlement in the event
7 that the Court does not approve the amount of Attorneys' Fees and Costs sought by
8 Class Counsel. If the Court reduces the requested attorneys' fees, costs and expenses,
9 any such reduction will be added to the Net Settlement Amount available to Class
10 Members.

11 25. Class Representative Enhancement Payment. Plaintiff will apply to the
12 Court for a Class Representative Enhancement Payment of not more than Ten Thousand
13 Dollars (\$10,000.00), without deductions, for her effort and work in prosecuting the
14 Action on behalf of Class Members, and Defendants agree not to oppose such
15 application. The Class Representative Enhancement Payment, which will be paid from
16 the Gross Settlement Amount, will be in addition to Plaintiff's right to an Individual
17 Settlement Payment. Plaintiff will be solely and legally responsible to pay any and all
18 applicable taxes on the payments made pursuant to this paragraph and will hold
19 Defendants harmless from any claim or liability for taxes, penalties, or interest arising
20 as a result of the payments. Plaintiff will not have the right to revoke this Settlement in
21 the event that the Court does not approve the amount sought by Plaintiff as a Class
22 Representative Enhancement Payment. If the Court reduces the requested Class
23 Representative Enhancement Payment, any such reduction will be added to the Net
24 Settlement Amount.

25 26. Labor and Workforce Development Agency Payment. Subject to Court
26 approval, the Parties agree that the amount of Ten Thousand Dollars (\$10,000) from the
27 Gross Settlement Amount will be paid in settlement of all individual and representative
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claims brought in the Action by or on behalf of Plaintiff and Class Members and aggrieved parties under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). Pursuant to PAGA, Seventy-Five Percent (75%) of this sum, or Seven Thousand and Five Hundred Dollars (\$7,500), will be paid to the Labor and Workforce Development Agency (“LWDA”) and Twenty-Five Percent (25%), or Two Thousand and Five Hundred Dollars (\$2,500), will remain in the Net Settlement Amount.

27. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and calculation and distribution of payments, up to a maximum of \$6,000.00. These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms, preparing, distributing, and tracking Notices of Class Action Settlement, confirming/auditing claims for payments for compliance with the Settlement, calculating and distributing all payments to be made pursuant to the Settlement, calculating and at Defendants’ option making the payments with respect to the Employer’s share of Payroll Taxes, if any, and providing reports and declarations.

28. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, and (iii) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the Notice of Class Action Settlement to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice of Class Action Settlement. Class Counsel will provide Defendants’ counsel reasonable opportunity to

1 review and provide comments regarding the Motion for Preliminary Approval of the
2 Settlement Agreement before it is filed.

3 29. Delivery of the Class List. “Class List” means a complete list of all Class
4 Members that Defendants will diligently and in good faith request and compile from its
5 records. The Class List will include the following information from Defendants’
6 records: each Class Member’s full name; most recent mailing address and telephone
7 number. Within seven (7) days of Preliminary Approval, Defendants will provide the
8 Class List to the Settlement Administrator; Plaintiff’s counsel will not receive a copy of
9 the list. However, within seven (7) days of receipt of the Class List from Defendants,
10 the Settlement Administrator shall provide to Class Counsel and Defendants’ counsel a
11 copy of the administration spreadsheet, with identifying information redacted except for
12 that of Plaintiff, so that the Parties can review the payment thereto to ensure accuracy.
13 The Settlement Administrator shall not use the Class List or any information contained
14 therein for any purpose other than to administer the Settlement in accordance with this
15 Agreement. Upon completion of the administration of the Settlement, the Settlement
16 Administrator shall destroy the Class List and any information contained therein or
17 return it and all copies to Defendants.

18 30. Notices of Class Action Settlement. Within seven (7) calendar days after
19 providing Class Counsel and Defendants’ counsel the redacted administration
20 spreadsheet, assuming the Parties have no changes to said spreadsheet, the Settlement
21 Administrator will mail a Notice of Class Action Settlement to all Class Members via
22 regular First-Class U.S. Mail, using the most current, known mailing addresses
23 identified in the Class List. The Notice of Class Action Settlement will be in the form
24 attached as Exhibit A, or as provided by Court order, and will include, but not be limited
25 to, information regarding the nature of the Action; a summary of the substance of the
26 Settlement, including Defendant’s denial of liability; the definition of the Settlement
27 Class; the procedure and time period for objecting to the Settlement and participating in
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1 the Final Approval hearing; how settlement payments will be calculated; a statement
2 that the Court has preliminarily approved the Settlement; a statement that Class
3 Members will release the settled claims unless they opt out; and information regarding
4 the opt-out procedure.

5 31. Confirmation of Contact Information. Prior to mailing, the Settlement
6 Administrator will perform a search based on the National Change of Address Database
7 for information to update and correct for any known or identifiable address changes.
8 Any Notices of Class Action Settlement returned to the Settlement Administrator as
9 non-deliverable on or before the Response Deadline will be sent promptly via regular
10 First-Class U.S. Mail to the forwarding address affixed thereto, and the Settlement
11 Administrator will indicate the date of such re-mailing on the Notice of Class Action
12 Settlement. If no forwarding address is provided, the Settlement Administrator will
13 promptly attempt to determine the correct address using an Accurant search/skip-trace,
14 and will then perform a single re-mailing. With regard to any Class Member whose
15 Notice of Class Action Settlement is returned as non-deliverable, and for whom the
16 Settlement Administrator is unable to determine a reliable address using reasonable and
17 customary methods, their Individual Settlement Payment will be provided by the
18 Settlement Administrator as part of the funds that will escheat to the State of California
19 Unclaimed Wages Fund as described in Paragraph 47 below.

20 32. Requests for Exclusion. Any Class Member who does not affirmatively opt
21 out of the Settlement Agreement by submitting a timely and valid Request for Exclusion
22 will be bound by all of the Settlement Agreement's terms, including those pertaining to
23 the Released Claims, as well as any Judgment that may be entered by the Court if it
24 grants final approval of the Settlement. Any Class Member wishing to opt-out from the
25 Settlement Agreement must sign and postmark a written "Request for Exclusion" to the
26 Settlement Administrator within the Response Deadline. The Request for Exclusion
27 must: (i) set forth the name, address, telephone number and the last four digits of the
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1 Social Security Number of the Class Member requesting exclusion; (ii) be signed by the
2 Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that
3 the Class Member does not wish to be included in the Settlement; and (v) be postmarked
4 on or before the Response Deadline. The postmark date will be the exclusive means to
5 determine whether a Request for Exclusion has been timely submitted. The Parties and
6 their attorneys and the Named Plaintiff will not solicit or encourage any Class Member,
7 directly or indirectly, to opt out of the Settlement Agreement. Any such action or
8 attempt to do so will be deemed a material breach of the Agreement.

9 33. Defective Submissions. If a Class Member's Request for Exclusion is
10 defective as to the requirements listed herein, that Class Member will be given an
11 opportunity to cure the defect(s). The Settlement Administrator will attempt to contact
12 the Class Member by telephone and mail the Class Member a cure letter within
13 three (3) business days of receiving the defective submission to advise the Class
14 Member that his or her submission is defective and that the defect must be cured to
15 render the Request for Exclusion valid. The Class Member will have until (i) the
16 Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter,
17 whichever date is later, to postmark a revised Request for Exclusion. If the revised
18 Request for Exclusion is not postmarked within that period, it will be deemed untimely.

19 34. Objection Procedures. To object to the Settlement Agreement
20 ("Objection"), a Class Member must mail a written Objection to the Settlement
21 Agreement to the Settlement Administrator before the Response Deadline or file it with
22 the Court and serve it on counsel for both parties on or before the Response Deadline.
23 The Objection must include: (a) the objector's full name, signature, address, and
24 telephone number, and (b) a written statement of all grounds for the Objection. The
25 postmark date of the Objection will be deemed the exclusive means for determining that
26 the Objection is timely. Class Members who fail to object in the manner specified
27 above will be deemed to have waived all Objections to the Settlement and will be
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1 foreclosed from making any Objections, whether by appeal or otherwise, to the
2 Settlement Agreement. Only Class Members who file and serve timely Objections will
3 have a right to appear at the Final Approval Hearing in order to have their Objections
4 heard by the Court but a Class Member who mails a timely Objection as described
5 above need not appear to have their Objection considered by the Court. At no time will
6 any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
7 to submit Objections to the Settlement Agreement or appeal from the Order and
8 Judgment. Class Counsel will not represent any Class Members with respect to any
9 such Objections to this Settlement.

10 35. Reports Regarding Settlement Administration. The Settlement
11 Administrator will provide Defendants' counsel and Class Counsel a weekly report that
12 certifies the number of Class Members who have submitted valid Requests for
13 Exclusion, Objections, and disputes regarding dates they performed work. Additionally,
14 the Settlement Administrator will provide to counsel for both Parties any updated
15 reports regarding the administration of the Settlement Agreement as needed or requested
16 and will immediately forward to the Parties any objections mailed to the Claims
17 Administrator.

18 36. Limited Right to Cancel & Escalation Clause. If five percent (5%) or more
19 of the Class Members submit valid and timely Requests for Exclusion, Defendants shall
20 have the absolute right, in their sole discretion, and notwithstanding any other
21 provisions of the Settlement Agreement, to withdraw from, and cancel, without penalty
22 whatsoever, the Settlement Agreement in its entirety. If Defendants exercise the right to
23 cancel, they shall pay the cost of the Third-Party Administrator incurred for
24 administering the Settlement up to that date. If this right is exercised by Defendants, the
25 Settlement Agreement will be null and void for all purposes and may not be used or
26 introduced in further litigation. The right can be exercised only by a writing stating
27 clearly that Defendants are canceling, and withdrawing from, the Settlement Agreement,
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1 which is sent by Defendants' counsel to Class Counsel by mail or email no later than
2 five (5) business days after the Response Deadline. If the right provided in this
3 paragraph is not so exercised, it shall be waived and cannot later be exercised.
4 Defendants represent that 73 individuals comprise the Settlement Class. Plaintiff relied
5 on this representation in negotiating the Settlement. Should the number of individuals
6 in the Settlement Class increase by more than 5%, then Defendants shall increase the
7 Gross Settlement Amount by a proportionate amount. For example, if the number of
8 individuals in the Settlement Class increases 6% above 73, then Defendants shall
9 increase the Gross Settlement Amount by 1%.

10 37. Final Settlement Approval Hearing and Entry of Judgment. Upon
11 expiration of the deadlines to postmark Requests for Exclusion or Objections to the
12 Settlement Agreement, and with the Court's permission, a Final Approval/Settlement
13 Fairness Hearing will be conducted to determine the Final Approval of the Settlement
14 Agreement along with the amounts properly payable for: (i) Individual Settlement
15 Payments; (ii) the LWDA Payment; (ii) the Class Representative Enhancement
16 Payment; (iii) Attorneys' Fees and Costs; and (iv) all Settlement Administration Costs.
17 Class Counsel will be responsible for drafting all documents necessary to obtain final
18 approval, and will provide Defendants' counsel reasonable opportunity to review and
19 provide comments regarding such documents before they are filed. Class Counsel will
20 also be responsible for drafting the attorneys' fees and costs application. Class Counsel
21 will serve a copy of this Settlement Agreement and the Motion for Preliminary Approval
22 on the LWDA pursuant to Labor Code section 2699(l)(2).

23 38. All Terms Subject to Final Court Approval. All amounts and procedures
24 described in this Settlement Agreement herein will be subject to final Court approval.

25 39. Invalidity of Any Provision. Before declaring any provision of this
26 Settlement Agreement invalid, the Court will first attempt to construe the provision as
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1 valid to the fullest extent possible consistent with applicable precedents so as to define
2 all provisions of this Settlement Agreement as valid and enforceable.

3 40. Judgment and Continued Jurisdiction. Contemporaneous with Plaintiff
4 filing the motion for final approval of the settlement, the Parties will present an agreed
5 form of the Proposed Judgment to the Court for its consideration. The Court, in its
6 discretion, may enter a Judgment approved by it. After entry of the Judgment, the Court
7 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation
8 and enforcement of the terms of the Settlement, (ii) Settlement administration matters,
9 and (iii) such post-Judgment matters as may be appropriate under court rules or as set
10 forth in this Settlement Agreement pursuant to California Code of Civil Procedure
11 section 664.6. In the event that a motion to enforce this Agreement is required to be
12 filed due to a party's failure to comply with the terms herein, the prevailing party shall
13 be awarded reasonable attorneys' fees and costs, which shall be in addition to any
14 amounts to be paid under this settlement.

15 41. Funding of the Gross Settlement Amount. Within ten (10) days after the
16 Effective Date, Defendants will deposit the Gross Settlement Amount into a settlement
17 fund to be established by the Settlement Administrator by check, Automated Clearing
18 House (ACH) transfer, or wire transfer.

19 42. Distribution and Timing of Individual Settlement Payments. Within seven
20 (7) days of the receipt of the Gross Settlement Amount from Defendants, the Settlement
21 Administrator shall provide Class Counsel and Defendants' counsel the administration
22 spreadsheet, with identifying information redacted save for that of Plaintiff, regarding
23 the final calculations for purposes of distributing the Gross Settlement Amount. The
24 Parties must submit any requested changes to the spreadsheet, or confirm that they do
25 not have any requested changes, within seven (7) days of receipt. Within fourteen (14)
26 days of both Parties confirming that they do not have requested changes to the
27 spreadsheet, the Settlement Administrator will issue payments to: (i) Participating Class
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1 Members; (ii) the LWDA; (iii) Plaintiff for the Class Representative Enhancement
2 payment; and (iv) Class Counsel for attorneys' fees and costs. The Parties and the
3 Settlement Administrator shall cooperate in finalizing the final calculations as contained
4 in the spreadsheet prior to the distribution of funds from the Gross Settlement Amount
5 to comply with the time specifications alleged herein. The Settlement Administrator
6 will also issue a payment to itself for Court-approved services performed in connection
7 with the Settlement upon providing the certificate of completion described in
8 Paragraph 46. At Defendants' discretion, the Settlement Administrator will also timely
9 distribute the Employer's Payroll Taxes, if any, to the appropriate government
10 authorities.

11 43. Unclaimed Funds. Participating Class Members will also be mailed checks
12 for their Individual Settlement Payments within fourteen (14) days of the Settlement
13 Administrator providing the administration spreadsheet for the Parties' review, assuming
14 the Parties have no changes thereto and subject to the cooperation provisions in
15 Paragraph 44, except that checks will not be sent to Class Members whose Notice of
16 Class Action Settlement are returned as non-deliverable and for whom the Settlement
17 Administrator is unable to determine a reliable address using reasonable and customary
18 methods. Rather, the Individual Settlement Payments corresponding to Class Members
19 who cannot be located, if any, will be held by the administrator to be submitted to the
20 State of California Unclaimed Wages Fund at the end of the check cashing deadline of
21 180 days. Checks will remain negotiable for 180 days. If any Class Member does not
22 cash his or her check within 180 days, the check will be void. This limitation shall be
23 printed on the face of each check. The voidance of checks shall have no effect on the
24 Class Members' release of claims, obligations, representations, or warranties as
25 provided herein, which shall remain in full effect.

26 The value of any checks uncashed by the 180-day deadline will be tendered by
27 the Settlement Administrator via proper escheatment procedures to the State of
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1 California Unclaimed Wages Fund in the name of and for the benefit of such
2 Participating Class Members. Settlement Class Members who may be entitled to an
3 Individual Settlement Payment but who were not located before the Notice of Class
4 Action Settlement and/or the initial Distribution of Individual Settlement Payments,
5 may request their payment from the State of California Unclaimed Wages Fund.

6 44. Certification of Completion. Upon completion of administration of the
7 Settlement, within ten (10) days after the 180-day period in Paragraph 45, the
8 Settlement Administrator will provide a written declaration under oath to certify such
9 completion to the Court and counsel for all Parties and to specify that monies, if any,
10 have been provided by the Settlement Administrator via proper escheatment procedures
11 to the State of California Unclaimed Wages Fund, in the name of and for the benefit of
12 such Participating Class Members.

13 45. No Credit Towards Benefit Plans. The Individual Settlement Payments
14 made to Participating Class Members under this Settlement, as well as any other
15 payments made pursuant to this Settlement, will not be utilized to calculate any
16 additional benefits under any benefit plans for which any Class Members may be
17 eligible, including, but not limited to: (i) profit-sharing plans, (ii) bonus plans,
18 (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick leave plans,
19 (vii) PTO plans, and (viii) any other benefit plan. Rather, it is the Parties' intention that
20 this Settlement Agreement will not affect any rights, contributions, or amounts to which
21 any Class Members may be entitled under any benefit plans.

22 46. Tax Treatment of Individual Settlement Payments. All Individual
23 Settlement Payments will be allocated as penalties and interest for which IRS Forms
24 1099-MISC will be issued. The Settlement Administrator will issue all 1099-MISC
25 forms. In the event the Court is not willing to approve the Settlement with the tax
26 allocation proposed by the Parties, this shall not be a basis for any Party to cancel or
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1 withdraw from the Settlement; rather, the parties will work in good faith to propose
2 another tax allocation that might be acceptable to the Court.

3 47. Administration of Taxes by the Settlement Administrator. The Settlement
4 Administrator will be responsible for issuing to Plaintiff, Participating Class Members,
5 and Class Counsel any 1099, and/or other tax forms as may be required by law for all
6 amounts paid pursuant to this Settlement. The Settlement Administrator will also be
7 responsible for forwarding the Class Member's share of all payroll taxes and penalties
8 to the appropriate government authorities. In addition, at Defendants' discretion, the
9 Settlement Administrator shall be responsible for distributing the Employer's Payroll
10 Taxes in the proper amounts to the appropriate government authorities.

11 48. Tax Liability. Plaintiff and Participating Class Members understand and
12 agree that except for the Employer's Payroll Taxes, Plaintiff and Participating Class
13 Members will be solely responsible for the payment of any and all taxes and penalties
14 assessed on the payments as described herein. Defendants make no representation as to
15 the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and
16 Participating Class Members are not relying on any statement, representation, or
17 calculation by Defendants or by the Settlement Administrator in this regard.

18 49. Confidentiality. The Parties and their counsel agree that they will not issue
19 any media releases, alerts or notices, initiate or encourage any contact with the media,
20 engage in any advertising, distribute any marketing materials, or make any
21 announcements through any form of media about the fact, amount, negotiation, or terms
22 of the Settlement. Nothing in this paragraph shall prevent Defendants from disclosing
23 and discussing information concerning the Settlement, the settlement amount, or the
24 circumstances surrounding or giving rise to the Settlement, prior to the filing of the
25 preliminary approval motion to the extent that Defendants believe that doing so is
26 required under applicable laws, rules, or regulations, including in public filings, in
27 communicating with investors, or in its earnings conference calls. Nothing in this
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1 paragraph shall restrict Plaintiff's counsel from communicating with Class Members
2 about the Settlement in their role as Class Counsel after Preliminary Approval. Nothing
3 in this paragraph shall restrict Plaintiff's counsel from responding to questions or
4 unsolicited media inquiries about the Settlement except that they may only disclose that
5 "this litigation has been resolved to the satisfaction of all parties" and then refer media
6 to court filings.

7 50. Confidential Documents. Within 60 days of the expiration of the Check
8 Cashing Deadline and upon written request, each Party shall return, or confirm the
9 destruction of, any documents or information that another Party designated as
10 confidential pursuant to an applicable agreement or protective order.

11 51. No Prior Assignments. The Parties and their counsel represent, covenant,
12 and warrant that they have not directly or indirectly assigned, transferred, encumbered,
13 or purported to assign, transfer, or encumber to any person or entity any portion of any
14 liability, claim, demand, action, cause of action or right herein released and discharged.

15 52. Nullification of Settlement Agreement. In the event that: (i) the Court does
16 not finally approve the Settlement as provided herein; (ii) the Court modifies any
17 material aspect of this Agreement or the proposed Preliminary Approval Order or Final
18 Approval Order and Judgment, including but not limited to any judicial findings
19 included therein, or (iii) the Settlement does not become final for any other reason, then
20 Plaintiff or Defendants may terminate this Agreement and the Settlement, and any
21 documents generated to bring it into effect, will be null and void. The Parties
22 acknowledge and agree that any modification to the terms of this Agreement relating to
23 the scope of the release, or to Defendants' financial obligations, shall be deemed a
24 material modification constituting grounds for cancellation or termination of the
25 Agreement and the Settlement. In the event that the Settlement is terminated or
26 cancelled or fails to become effective, any order or judgment entered by the Court in
27 furtherance of this Settlement Agreement will be treated as void from the beginning, and
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1 the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of
2 the date and time immediately before the execution of this Agreement and they shall
3 proceed in all respects as if this Agreement had not been executed, and without
4 prejudice in any way from the negotiation, fact, or terms of this Settlement.

5 Within fifteen (15) days of the Settlement Administrator receiving notice from
6 any Party of such termination or failure, (i) the Settlement Administrator shall return the
7 balance of the settlement fund, including any interest, to Defendants, and (ii) the
8 Settlement Administrator shall provide the Parties with a report of all Administration
9 Costs incurred. The Party terminating the Agreement will be responsible for paying any
10 Administration Costs. If the Parties mutually terminate the Agreement, Plaintiff and
11 Defendants each will be responsible for paying fifty percent (50%) of any
12 Administration Costs.

13 53. Exhibits Incorporated by Reference. The terms of this Settlement
14 Agreement include the terms set forth in any attached Exhibits, which are incorporated
15 by reference as though fully set forth herein. Any Exhibits to this Settlement Agreement
16 are an integral part of the Settlement.

17 54. Entire Agreement. This Settlement Agreement and any attached Exhibits
18 constitute the entirety of the Parties' settlement terms. No other prior or
19 contemporaneous written or oral agreements may be deemed binding on the Parties.

20 55. Amendment or Modification. This Settlement Agreement may be amended
21 or modified only by a written instrument signed by all Parties or their successors-in-
22 interest.

23 56. Binding on Successors and Assigns. This Settlement Agreement will be
24 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto,
25 as previously defined.

1 57. California Law Governs. All terms of this Settlement Agreement and
2 Exhibits hereto will be governed by and interpreted according to the laws of the State of
3 California.

4 58. Execution and Counterparts. This Settlement Agreement is subject only to
5 the execution of all Parties. However, the Settlement may be executed in one or more
6 counterparts. All executed counterparts and each of them, including facsimile and PDF
7 or other scanned copies of the signature page, will be deemed to be one and the same
8 instrument for all purposes in effecting and enforcing this Settlement Agreement.

9 59. Waiver of Certain Appeals. The Parties agree to waive appeals; except,
10 however, that either party may appeal any court order that materially alters the
11 Settlement Agreement's terms.

12 60. Waiver. No waiver of any condition or covenant contained in this
13 Settlement or failure to exercise a right or remedy by any of the Parties hereto will be
14 considered to imply or constitute a further waiver by such party of the same or any other
15 condition, covenant, right or remedy.

16 61. Mutual Preparation. The Parties have had a full opportunity to negotiate
17 the terms and conditions of this Settlement. Accordingly, this Settlement will not be
18 construed more strictly against one party than another merely by virtue of the fact that it
19 may have been prepared by counsel for one of the Parties, it being recognized that,
20 because of the arms-length negotiations between the Parties, all Parties have contributed
21 to the preparation of this Settlement.

22 62. Representation By Counsel. The Parties acknowledge that they have been
23 represented by counsel throughout all negotiations that preceded the execution of this
24 Settlement, and that this Settlement has been executed with the consent and advice of
25 counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no
26 liens on the Settlement Agreement.

1 63. Cooperation and Execution of Necessary Documents. All Parties agree to
2 cooperate in the administration of the settlement and to make all reasonable efforts to
3 control and minimize the costs and expenses incurred in administration of the
4 Settlement, and will cooperate in good faith and execute all documents to the extent
5 reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties
6 are unable to reach agreement on the form or content of any document needed to
7 implement the Settlement, or on any supplemental provisions that may become
8 necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
9 of the Court to resolve such disagreement.

10 64. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
11 warrant and represent they are expressly authorized by the Parties whom they represent
12 to negotiate this Settlement Agreement and to take all appropriate action required or
13 permitted to be taken by such Parties pursuant to this Settlement Agreement to
14 effectuate its terms and to execute any other documents required to effectuate the terms
15 of this Settlement Agreement.

16 65. Binding Agreement. The Parties warrant that they understand and have full
17 authority to enter into this Settlement, and further intend that this Settlement will be
18 fully enforceable and binding on all parties, and agree that it will be admissible and
19 subject to disclosure in any proceeding to enforce its terms, notwithstanding any
20 mediation confidentiality provisions that otherwise might apply under federal or state
21 law.

22 ///

23 ///

24 ///

25 ///

SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____, 2022

By _____
Amy Migdal

DEFENDANTS

Dated: August 31, 2022

By  _____
Sherri Turpin
ZP Better Together, LLC

APPROVED AS TO FORM

DIVERSITY LAW GROUP, APC

Dated: October 21, 2022, 2022

By  _____
Max Gavron
Attorneys for Plaintiff

**AKIN GUMP STRAUSS HAUER &
FELD LLP**

Dated: September 1, 2022

By  _____
Gregory W. Knopp
Attorneys for Defendant

SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 10/21/2022, 2022

By  _____
Amy Migdal

DEFENDANTS

Dated: August 31, 2022

By  _____
Sherri Turpin
ZP Better Together, LLC

APPROVED AS TO FORM

DIVERSITY LAW GROUP, APC

Dated: _____, 2022

By _____
Max Gavron
Attorneys for Plaintiff

**AKIN GUMP STRAUSS HAUER &
FELD LLP**

Dated: September 1, 2022

By  _____
Gregory W. Knopp
Attorneys for Defendant