

HAYES PAWLENKO LLP

Matthew B. Hayes (SBN 220639)
Kye D. Pawlenko (SBN 221475)
mhayes@helpcounsel.com
kpawlenko@helpcounsel.com
1414 Fair Oaks Avenue, Unit 2B
South Pasadena, CA 91030
Tel: 626.808.4357
Fax: 626.921.4932

Attorneys for Plaintiff
LISA SWAIN

LEWIS BRISBOIS BISGAARD & SMITH LLP

JEFFREY S. RANEN, SB# 224285
E-Mail: Jeffrey.Ranen@lewisbrisbois.com
CASEY N. ENGSTROM, SB# 335058
E-Mail: Casey.Engstrom@lewisbrisbois.com
633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: 213.250.1800
Facsimile: 213.250.7900

Attorneys for Defendant
ANDERS GROUP, LLC

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LISA SWAIN, an individual on
behalf of herself and others
similarly situated,

Plaintiff,

v.

ANDERS GROUP, LLC; and DOES
1 to 10 inclusive,

Defendants.

Case No. 1:21-CV-00197-DAD-SKO

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT**

1 **JOINT STIPULATION AND SETTLEMENT AGREEMENT**

2 Subject to its terms and conditions and the approval of the Court, this
3
4 Joint Stipulation and Settlement Agreement (hereinafter the “Settlement
5 Agreement” or “Agreement”) is made and entered into by and among
6 Plaintiff Lisa Swain (hereinafter “Plaintiff”), individually and on behalf of
7 the Settlement Class, as defined herein, and Defendant Anders Group, LLC
8 (hereinafter “Defendant”). Plaintiff and Defendant are jointly referred to
9 in this Settlement Agreement as the “Parties,” and each of them as a
10 “Party.”

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14 1. **DEFINITIONS**

15 1.1 The term “**Agreement**” means this Settlement Agreement.

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17 1.2 The term “**Aggrieved Employees**” means all non-exempt employees
18 employed by Defendant in California at any time between February
19 17, 2020 and February 13, 2022.

20
21 1.3 The term “**Attorneys’ Fees and Costs**” means the amount of
22 attorneys’ fees and expenses to be requested by Class Counsel, subject
23 to Court approval.

24
25 1.4 The term “**Class Counsel**” means the following counsel who, subject
26 to Court approval, shall act as counsel for the Settlement Class:
27 Hayes Pawlenko LLP.
28

1 1.5 The term “***Class Member***” means all non-exempt employees
2 employed by Defendant in California who, at any time between
3 February 17, 2017 and February 13, 2022, worked one or more
4 workweeks in which they were paid overtime and received per diem
5 pay.
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8 1.6 The term “***Complaint***” means the First Amended Complaint filed on
9 May 4, 2021, styled as *Lisa Swain v. Anders Group, LLC*, Case No.
10 1:21-CV-00197-DAD-SKO in the United States District Court for the
11 Eastern District of California.
12

13
14 1.7 The term “***Court***” means the United States District Court for the
15 Eastern District of California, and any appellate court which may
16 review any orders entered by the Court related to this Settlement.
17

18 1.8 The term “***Execution***” refers to the signing of this Agreement by all
19 signatories hereto.
20

21 1.9 “***Final Approval Hearing***” means a hearing for the purpose of: (i)
22 determining the fairness, adequacy and reasonableness of the
23 Settlement, including but not limited to with respect to allocations for
24 attorneys’ fees and costs, pursuant to class action procedures and
25 requirements; (ii) determining the good faith of the Settlement; and
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27 (iii) entering Final Judgment.
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1 1.10 ***“Final Effective Date”*** refers to the date by which the last of the
2 following has occurred: (1) in the event no appeal, writ, or other
3 appellate proceeding opposing the Court’s Final Judgment is filed, the
4 date on which the time for filing any appeal, writ, or other appellate
5 proceeding opposing the Court’s Final Judgment has elapsed without
6 any appeal, writ, or other appellate proceeding having been filed; or
7 (2) in the event any appeal, writ, or other appellate proceedings
8 opposing the Court’s Final Judgment has been filed, the date on
9 which such appeal, writ, or other appellate proceedings opposing the
10 Court’s Judgment has been finally and conclusively dismissed with
11 no right to pursue further remedies or relief.
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17 1.11 The term ***“Final Judgment”*** refers to the final judgment entered by
18 the Court.
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20 1.12 The term ***“Gross Settlement Amount”*** means the non-reversionary
21 gross sum of Three Hundred Sixty-Eight Thousand Five Hundred
22 Dollars And No Cents (\$368,500.00), which shall be the sum paid by
23 Defendant to settle this Litigation. The combined total of any
24 Attorneys’ Fees and Costs approved by the Court, any Service
25 Enhancement approved by the Court to the Named Plaintiff,
26 Settlement Administration Costs approved by the Court, the amounts
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1 paid to the Labor and Workforce Development Agency (“LWDA”) and
2 Aggrieved Employees, and the amounts paid to Settlement Class
3 Members shall all come out of the Gross Settlement Amount and shall
4 not exceed the Gross Settlement Amount. The employer’s share of
5 payroll taxes shall be paid by Defendant separate from and in
6 addition to the Gross Settlement Amount.
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9 1.13 The term “**Litigation**” means the case styled *Lisa Swain v. Anders*
10 *Group, LLC*, Case No. 1:21-CV-00197-DAD-SKO, in the United
11 States District Court for the Eastern District of California.
12

13
14 1.14 The term “**Named Plaintiff**” means the named plaintiff in the
15 Litigation, Lisa Swain. The Named Plaintiff will seek to be
16 designated as the Settlement Class Representative for the Settlement
17 Class.
18

19 1.15 The term “**Net Settlement Amount**” means the Gross Settlement
20 Amount minus the combined total of Attorneys’ Fees and Costs
21 approved by the Court, Settlement Administration Costs approved by
22 the Court, the Service Enhancement approved by the Court, and the
23 payment to the LWDA as approved by the Court.
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26 1.16 The term “**Notice**” means a document which has been agreed to by
27 the Parties and approved by the Court and which the Settlement
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1 Administrator will mail to each Settlement Class Member explaining
2 the terms of the Settlement, their respective overtime hours worked
3 during the Class Period, their estimated share of the Net Settlement
4 Amount, the opt-out procedure, the objection procedure, and the
5 procedure related to disputing the stated number of overtime hours
6 worked during the Class Period.
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10 1.17 The term “*Notice and Administration Costs*” or “*Settlement*
11 *Administration Costs*” means all costs incurred by the Settlement
12 Administrator, including but not limited to the cost to: compare the
13 class list against the National Change of Address (“NCOA”) database
14 maintained by the United States Postal Service; typeset, print, and
15 mail the Notice to all Class Members; perform skip-tracing of
16 returned mailings; calculating, tabulating, and mailing out payments
17 to Class Members and Aggrieved Employees; payment of postage
18 required to comply with this Agreement; responding to Class Member
19 inquiries and addressing any challenges to the number of overtime
20 hours worked; and all other expenses, including tax reporting and
21 fees to be paid by the Settlement Administrator, necessary to
22 administer the Settlement in accordance with this Agreement.
23 Settlement Administration Costs shall not exceed \$20,000.00.
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1 1.18 The term “***Opt-Out/Objection Period***” means the sixty (60) day-
2 time-period for Settlement Class members to submit an Opt-Out
3 Letter, Objection to the Settlement, or to dispute the number of
4 overtime hours worked listed on the Class Notice.
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7 1.19 The term “***Opt-Out Letter***” refers to a written request to “opt-out” or
8 “exclude” oneself from the Settlement sent by any Class Member who
9 elects to be excluded from the Settlement Class. A Class Member
10 must submit a valid and timely Opt-Out Letter to the Settlement
11 Administrator to exclude himself or herself from the Settlement.
12 Those who submit a valid and timely Opt-Out Letter will no longer be
13 considered part of the Settlement Class after their valid and timely
14 Opt-Out Letter is received by the Settlement Administrator and will
15 have no standing to object to the Settlement.
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19 1.20 “***Order Granting Final Approval of Class Action Settlement***”
20 shall mean the order and judgment to be entered by the Court titled
21 “Order Granting Motion for Final Approval of Class Action
22 Settlement” and “Judgment.”
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25 1.21 The term “***PAGA Payment***” means the Thirty-Five Thousand Dollars
26 (\$35,000.00) of the Gross Settlement Amount that the Parties have
27 allocated to the settlement of Plaintiff’s representative claim under
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1 the Labor Code Private Attorneys' General Act ("PAGA"), 75% of
2 which shall be paid to the LWDA and 25% of which shall be part of
3 the Net Settlement Amount.
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5 1.22 The term "***Participating Settlement Class Member***" means any
6 member of the Settlement Class who has not submitted a valid and
7 timely Opt-Out Letter to the Settlement Administrator to exclude
8 himself or herself from the Settlement.
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11 1.23 The term "***Parties***" means the Named Plaintiff, the Settlement Class,
12 and Defendant.
13

14 1.24 The term "***Released Claims***" means all claims that have been
15 alleged or could have been alleged based on the facts alleged in the
16 operative complaint, which arose during the Settlement Class Period,
17 including but not limited to, failure to pay wages/overtime, failure to
18 provide accurate itemized wage statements, failure to pay all wages
19 due upon separation of employment, waiting time penalties, violation
20 of Business and Professions Code section 17200, PAGA penalties
21 arising from the violations alleged, violations of Labor Code sections
22 200, 201, 201.3, 202, 203, 204, 226, 226(a), 510, 558, 1194, 2698 et
23 seq, Code of Civil Procedure section 1021.5, and applicable IWC Wage
24 Orders.
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1 1.25 The term “*Service Enhancement*” means the amount of money to
2 be requested by Class Counsel on behalf of Named Plaintiff Lisa
3 Swain, subject to Court approval, to compensate Named Plaintiff for
4 the efforts and risks undertaken on behalf of the Settlement Class.
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7 1.26 The term “*Settlement*” means the compromise and settlement of the
8 Litigation, as contemplated by this Agreement.
9

10 1.27 The term “*Settlement Administrator*” means CPT Group, Inc.
11 (hereinafter “CPT”), the entity agreed to by the Parties, subject to
12 Court approval, which will perform the duties of, among other things:
13 (i) mailing the Notice in English to Class Members; (ii) performing an
14 NCOA search and skip-tracing; (iii) tracking and addressing Opt-Out
15 Letters, Objections, and overtime hours disputes; (iv) notifying the
16 Parties regarding submitted Opt-Out Letters, Objections, and
17 overtime hours disputes consistent with this Agreement; (v) issuing
18 payments consistent with this Agreement; and, (vi) determining any
19 appropriate tax withholdings from the wage portion of payments to
20 Settlement Class Members, making the appropriate payments based
21 on withholdings and the employer’s share of payroll taxes, and
22 issuing any required tax paperwork.
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1 1.28 The term “*Settlement Class*” means the Class to be certified for
2 settlement purposes, in accordance with this Agreement.
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4 1.29 The term “*Settlement Class Member*” means any member of the
5 Settlement Class.
6

7 1.30 The term “*Settlement Class Period*” means the period of time from
8 February 17, 2017 through February 13, 2022.
9

10 1.31 The term “*Settlement Class Representative*” means Named
11 Plaintiff Lisa Swain, who shall request to be appointed by the Court
12 as the class representative for purposes of the Settlement Class.
13

14 1.32 The term “*Settlement Disbursement Payment*” means the
15 disbursements made by the Settlement Administrator to Settlement
16 Class Members, Class Counsel, the Settlement Class Representative,
17 and the Settlement Administrator.
18

19 **2. RECITALS**
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21 2.1 On February 16, 2021, Plaintiff initiated this Litigation against
22 Defendant on behalf of a proposed class of non-exempt employees
23 employed by Defendant in California who worked overtime and
24 received per diem pay. The operative Complaint states causes of
25 action for failure to pay overtime in violation of both the California
26 Labor Code and the Fair Labor Standards Act (“FLSA”); failure to
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1 timely pay final wages; violation of the Business & Professions Code
2 § 17200, *et seq.* (“UCL”); and seeks civil penalties under PAGA.
3 Defendant answered the Complaint with a general denial and
4 asserted numerous affirmative defenses.
5

6
7 2.2 On October 6, 2021, following the Ninth Circuit’s ruling in *Clarke v.*
8 *AMN Services, LLC*, 987 F.3d 848 (9th Cir. 2021), and after an
9 exchange and analysis of documents and data, the Parties attended a
10 private mediation with Lisa Klerman, an experience wage-and-hour
11 mediator. After a full-day mediation, the Parties reached an
12 agreement in principle on the material terms of a classwide
13 settlement and memorialized the agreement in a Memorandum of
14 Understanding.
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18 2.3 Named Plaintiff and her counsel believe this Litigation is meritorious
19 based on applicable law or an extension thereof. Class Counsel
20 represents that they have conducted a thorough investigation into the
21 facts of this case and have diligently pursued an investigation of the
22 claims against Defendant. Based on their own independent
23 investigation and evaluation, Class Counsel are of the opinion that
24 the Settlement is fair, reasonable, and adequate and is in the best
25 interest of the Class Members in light of all known facts and
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1 circumstances, including the risk of significant delay, the defenses
2 asserted by Defendant, class certification risk, trial risk, and
3 appellate risk.
4

5 2.4 Defendant has also actively investigated the facts surrounding the
6 claims brought by Plaintiff on behalf of the putative class and
7 continues to deny any liability or wrongdoing of any kind associated
8 with the claims alleged. Defendant further asserts that it has
9 complied with all applicable provisions of California and federal
10 statutory law and had a good faith belief based on existing law that
11 its practices were and are in compliance. The Parties hereby
12 acknowledge and agree that neither this Agreement, nor any
13 document referred to or contemplated herein, nor any action taken to
14 carry out this Agreement, is, may be construed as, or may be used as
15 an admission, concession or indication by or against Defendant of any
16 fault, wrongdoing or liability whatsoever.
17

18 2.5 The entry of Final Judgment in this Litigation shall resolve all claims
19 that were alleged in the operative Complaint filed in the Litigation,
20 or which could have been alleged based upon the facts set forth in the
21 operative Complaint, with the exception of any claims which might
22 be retained by Settlement Class Members who exclude themselves
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1 from the Settlement. The Parties agree to cooperate and take all
2 steps necessary and appropriate to obtain preliminary and final
3 approval of this Settlement, and to effectuate its terms.
4

5 2.6 Each of the forgoing Recitals is incorporated into this Agreement as
6 if fully set forth in the body of the Agreement.
7

8 **3. CERTIFICATION OF SETTLEMENT CLASS**
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10 3.1 The Settlement Class shall consist of all non-exempt employees
11 employed by Defendant in California who, at any time between
12 February 17, 2017 and February 13, 2022, worked one or more
13 workweeks in which they were paid overtime and received per diem
14 pay.
15

16 3.2 The Parties and Class Counsel agree that, if approved, certification
17 of the Settlement Class is a conditional certification for settlement
18 purposes only, and that if, for any reason, the Court does not grant
19 final approval of the Settlement, or if final approval is not given
20 following the appeal of any order by the Court, or if for any reason the
21 Settlement Effective Date does not occur, the certification of the
22 Settlement Class for settlement purposes shall be deemed null and
23 void without further action by the Court or any of the Parties, each
24 Party shall retain all of their respective rights and shall be returned
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1 to their relative legal positions as they existed prior to execution of
2 this Agreement, and neither this Agreement, nor any of its
3 accompanying exhibits or any orders entered by the Court in
4 connection with this Agreement shall be admissible or used for any
5 purpose in this Litigation or any other legal proceeding, except for the
6 enforcement of same.
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10 3.3 The Parties and Class Counsel agree that, if approved, certification
11 of the Settlement Class for settlement purposes is in no way an
12 admission by Defendant that class certification is proper in any other
13 wage and hour litigation, or any other litigation, against Defendant.
14

15 **4. TERMS OF SETTLEMENT**

16
17 4.1 Subject to the other terms and conditions contained in this
18 Agreement, and in consideration of the contemplated pleadings,
19 releases and dismissals set forth in this Agreement, and subject to
20 Court approval, Defendant agrees to pay a non-reversionary Gross
21 Settlement Amount of Three Hundred Sixty-Eight Thousand Five
22 Hundred Dollars And No Cents (\$368,500.00), exclusive of payroll
23 taxes owed on the "wage" portion of the Gross Settlement Amount,
24 which Defendant shall pay separately.
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1 4.2 Defendant will provide the Settlement Administrator with the
2 number of overtime hours worked by each Class Member during the
3 Settlement Class Period within 14 calendar days of preliminary
4 approval of the settlement.
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7 4.3 Each Settlement Class Member shall be awarded a pro-rata share
8 based upon a percentage equal to the number of each Class Member's
9 overtime hours worked during the Settlement Class Period divided
10 by the total of all Settlement Class Members' overtime hours worked
11 during the Settlement Class Period. Each Settlement Class
12 Member's respective share of the Net Settlement Amount shall be
13 calculated by multiplying the Net Settlement Amount by a fraction,
14 the numerator of which is the individual class member's overtime
15 hours worked during the Settlement Class Period, and the
16 denominator of which is the total of all aggregate overtime hours
17 worked during the Settlement Class Period by all members of the
18 Settlement Class during the Settlement Class Period. The resulting
19 number shall be the amount that each member of the Settlement
20 Class is eligible to receive (their "Eligible Share").
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26 4.4 Except for those Class Members who opt-out of the Settlement, all
27 Settlement Class Members shall automatically receive their Eligible
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1 Share without having to submit a claim form.

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3 4.5 Any portion of a Class Member's Eligible Share that is not distributed
4 to that Class Member because that Class Member elected to "opt-out"
5 of the Settlement shall be re-distributed on a *pro rata* basis to all
6 Participating Settlement Class Members.

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8 4.6 Class Counsel may request, subject to Court approval, that the
9 Settlement Class Representative be paid a maximum Service
10 Enhancement of up to Five Thousand Dollars and No Cents
11 (\$5,000.00), which shall be paid from the Gross Settlement Amount.
12 This request shall not be opposed by Defendant. In the event the
13 Court does not award the full requested Service Enhancement, the
14 remainder shall be re-distributed on a *pro rata* basis to all
15 Participating Settlement Class Members. The Service Enhancement
16 shall be paid to Plaintiff in addition to her *pro rata* Eligible Share of
17 the Net Settlement Amount.

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19 4.7 Class Counsel may apply to the Court for an award of Attorneys' Fees
20 and Costs, which shall be paid from the Gross Settlement Amount.
21 Defendant will not oppose Class Counsel's application for an award
22 of Attorneys' Fees in an amount equal to one-fourth (25%) of the Gross
23 Settlement Amount comprising Ninety-Two Thousand One Hundred
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1 Twenty-Five Dollars and No Cents (\$92,125.00), plus Costs not to
2 exceed Fifteen Thousand Dollars and No Cents (\$15,000.00). In the
3 event the Court does not award the full requested Attorneys' Fees or
4 Costs, the remainder(s) shall be re-distributed on a *pro rata* basis to
5 all Participating Settlement Class Members.
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8 4.8 The Parties agree that, subject to Court approval, payment to the
9 Settlement Administrator shall not exceed Twenty Thousand Dollars
10 and No Cents (\$20,000.00). The Settlement Administration Costs
11 shall be paid from the Gross Settlement Amount and any amounts
12 that are not used to pay the Settlement Administrator shall be re-
13 distributed on a *pro rata* basis to all Participating Settlement Class
14 Members.
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18 4.9 The Parties agree that, subject to Court approval, Thirty-Five
19 Thousand Dollars and No Cents (\$35,000.00) of the Gross Settlement
20 Amount shall be allocated to the PAGA Payment. Seventy-Five
21 percent of the PAGA Payment (\$26,250.00) shall be paid to the
22 LWDA. Twenty-Five Percent of the PAGA Payment (\$8,750) shall be
23 distributed on a *pro rata* basis (based on each Aggrieved Employee's
24 number of workweeks between February 17, 2020 and February 13,
25 2022) to all Aggrieved Employees and shall be reported on an IRS
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1 Form 1099.

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3 4.10 Of the Net Settlement Amount remaining and to be distributed *pro*
4 *rata* based on overtime hours worked, ten percent (10%) shall be
5 allocated to wages, and ninety percent (90%) shall be allocated to
6 interest and penalties, such that ten percent (10%) shall be
7 characterized as W-2 income and ninety percent (90%) shall be
8 characterized as 1099 income. Defendant's share of any employer-
9 side payroll taxes allocated to the payment of "wages" will be
10 calculated based on the portion allocated to the payment of wages and
11 paid by Defendant separate and apart from the Gross Settlement
12 Amount. The Settlement Administrator will be responsible for
13 calculating and paying the payroll taxes and withholdings owed, after
14 informing Defendant of the specific amount required to be paid for the
15 corporate payroll tax obligation.
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18 4.11 Within ten (10) business days after the Final Effective Date,
19 Defendant will provide the Settlement Administrator with sufficient
20 funds via wire transfer to pay the Gross Settlement Amount plus
21 Defendant's share or payroll taxes. No later than ten (10) calendar
22 days after Defendant provides the Settlement Administrator with
23 sufficient funds via wire transfer to pay the Gross Settlement
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1 Amount, the Settlement Administrator shall disburse the Settlement
2 Disbursement Payments, as specified in this Agreement and
3 approved by the Court.
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5 4.12 Checks issued to Participating Settlement Class Members and
6 Aggrieved Employees pursuant to this Agreement shall remain
7 negotiable for a period of one-hundred eighty (180) days from the date
8 of mailing by the Settlement Administrator. Thereafter, the
9 Settlement Administrator shall void any such check. After that time,
10 all un-cashed funds that remain in the account monitored by the
11 Settlement Administrator shall be sent by the Settlement
12 Administrator to the California State Controller's Office pursuant to
13 the procedures of the State of California's Unclaimed Property Law.
14

15 4.13 Within ten (10) business days after the Final Effective Date, Named
16 Plaintiff Lisa Swain, in her individual capacity and with respect to
17 her individual FLSA claim only, will dismiss without prejudice the
18 FLSA claim in the Complaint.
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20 5. NOTICE OF THE SETTLEMENT

21 5.1 Within fourteen (14) calendar days after the Court grants preliminary
22 approval of this Settlement, Defendant shall provide to the
23 Settlement Administrator a listing of all Class Members, including
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1 the following information/data, in a Microsoft Excel spreadsheet: 1)
2 full name; 2) last known home mailing address; 3) telephone number
3 (*if available*); 4) Social Security Number; 5) the number of overtime
4 hours worked during the Settlement Class Period; and 6) the number
5 of weeks worked, if any, between February 17, 2020 and February 13,
6 2022; in order for the Settlement Administrator to be able to calculate
7 each Settlement Class Member's respective Eligible Share of the
8 Settlement (the "*Class List*").
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12 5.2 Subject to Court approval, the Notice shall be sent by the Settlement
13 Administrator to all Class Members by first class mail within five (5)
14 business days of receipt of the Class List. The Notice shall describe
15 their respective overtime hours worked during the Settlement Class
16 Period, their respective estimated Eligible Share of the Settlement,
17 the opt-out process, the objection process, the process by which the
18 stated number of overtime hours worked during the Settlement Class
19 Period can be disputed, all pertinent deadlines for responding to the
20 Notice, and the date set by the Court for a hearing on Final Approval
21 of the Settlement. The Parties shall cooperate to prepare a mutually
22 agreeable proposed Notice, to be submitted for Court approval.
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28 5.3 Prior to mailing the Notice, the Settlement Administrator shall

1 process the Class List against the National Change of Address
2 (“NCOA”) Database maintained by the United States Postal Service
3 (“USPS”). It shall be conclusively presumed that if the Notice is not
4 returned as “undeliverable,” the Settlement Class Member received
5 the Notice Packet. With respect to Notice Packets that are returned
6 as undeliverable, if a forwarding address is provided by the USPS,
7 the Settlement Administrator shall re-mail the Notice within three
8 (3) business days. If a Notice is “undeliverable” and no forwarding
9 address is provided, the Settlement Administrator shall employ a
10 more substantive skip-tracing procedure in order to obtain updated
11 address information and shall re-mail the Notice to those Settlement
12 Class Members for whom a new address is located. All re-mailings to
13 skip-traced Settlement Class Members shall be performed
14 periodically during the claims filing period and must be completed no
15 later than ten (10) calendar days prior to the Opt-Out/Objection
16 Period deadline. If the Notice is returned after skip-tracing and re-
17 mailing occurs, there shall be no further skip-tracing but the
18 Settlement Class Member shall still be bound by the terms of this
19 Settlement.
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1 **6. OPT-OUT AND OBJECTION PROCESS**

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3 6.1 The Notice shall set a date of sixty (60) calendar days from the
4 original mailing date as the deadline by which members of the
5 Settlement Class may submit an Opt-Out Letter, objection to the
6 Settlement, or a dispute related to the stated number of overtime
7 hours worked during the Settlement Class Period. No opt-out
8 requests or objections will be honored if postmarked after this
9 deadline. All Opt-Out Letters and objections shall be sent to the
10 Settlement Administrator only. The Settlement Administrator shall
11 promptly forward any objections to Class Counsel and counsel for
12 Defendant. If a Settlement Class Member mistakenly sends an Opt-
13 Out Letter or objection to Class Counsel, or to counsel for Defendant,
14 the respective party will forward the documents, including the
15 mailing envelope evidencing the postmark date, to the Settlement
16 Administrator as soon as possible.

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22 6.2 A Settlement Class Member who wishes to opt-out of this Settlement,
23 and of the release of claims pursuant to this Settlement, shall mail a
24 signed, written "Opt-Out Letter" directly to the Settlement
25 Administrator within the Opt-Out/Objection Period. The Opt-Out
26 Letter must be signed and include the Settlement Class Member's full
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1 legal name, home address, telephone number, and last four digits of
2 their social security number, and express an intention to opt-out of
3 the Settlement. The Parties to this Agreement and their counsel
4 agree that they will not solicit or encourage Settlement Class
5 Members to opt-out or to object to this Settlement Agreement.
6
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8 6.3 A Settlement Class Member who submits an Opt-Out Letter is not
9 eligible to recover a share of the Net Settlement Amount. Further, a
10 Settlement Class Member who submits an Opt-Out Letter shall have
11 no standing to object to the Settlement.
12
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14 6.4 The Settlement Administrator shall maintain a list of persons who
15 have opted out. The Settlement Administrator shall retain the
16 originals of all Opt-Out Letters received (including the envelopes with
17 the postmarks) and shall make copies of the originals available upon
18 request.
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21 6.5 A Settlement Class Member who has not opted-out of the Settlement
22 who wishes to object to the Settlement must notify the Settlement
23 Administrator of their objection, in writing, within the Opt-
24 Out/Objection Period. The Settlement Administrator shall promptly
25 forward any objections received to Class Counsel and counsel for
26 Defendant. The objection must state the Settlement Class Member's
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1 (i) full legal name, home address, telephone number, and the last four
2 digits of their social security number (for identity verification
3 purposes); and (ii) express their intention to object to the Settlement
4 and the reasons for the objection. Any Settlement Class Member who
5 “opts-out” of the Settlement shall not have standing to “object” to the
6 Settlement.
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10 **7. WAIVER AND RELEASE**

11 7.1 Subject to the Court’s final approval of the Settlement and upon the
12 Settlement Administrator’s disbursement of the Settlement
13 Disbursement Payments, Participating Settlement Class Members
14 will be deemed to have, and by operation of the Order of Final
15 Approval will have, expressly and irrevocably released, acquitted,
16 and forever discharged Defendant, Defendant’s affiliated companies,
17 customers, and clients, and their respective parent companies,
18 subsidiaries, affiliates, shareholders, members, agents (including,
19 without limitation, any investment bankers, accountants, insurers,
20 reinsurers, attorneys and any past, present or future officers,
21 directors and employees) predecessors, successors, and assigns, from
22 all Released Claims.
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1 7.2 As a material term of this Agreement, Named Plaintiff Lisa Swain,
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3 in her individual capacity and with respect to her individual claims
4
5 only, hereby agrees to also generally release Defendant and any
6
7 parent, subsidiary, affiliate, predecessor or successor, including but
8
9 not limited to all agents, employees, officers, directors, attorneys, and
10
11 healthcare facility clients thereof, from all claims, demands, rights,
12
13 liabilities and causes of action of any and every nature and
14
15 description whatsoever, known or unknown, asserted or that might
16
17 have been asserted, including a waiver of California Civil Code §1542.
18
19 With respect to the General Release, Named Plaintiff Lisa Swain
20
21 stipulates and agrees that, upon the execution of this Agreement, she
22
23 shall be deemed to have, and by operation of the Final Judgment shall
24
25 have, expressly waived and relinquished, to the fullest extent
26
27 permitted by law, the provisions, rights and benefits of Section 1542
28
of the California Civil Code, or any other similar provision under state
or federal law as to the generally released claims. Section 1542
provides 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.**

8. VOIDING THE AGREEMENT

8.1 In the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement shall be deemed null, void and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any wage and hour, or other litigation against Defendant.

8.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by Class Counsel are reduced, that finding shall not be a basis for rendering the entire Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs.

8.3 In the event that more than 10% of Class Members opt out of the Settlement, Defendant shall retain the right, in its sole discretion, to nullify and terminate the Settlement within 14 calendar days after expiration of the opt-out period.

1 **9. MISCELLANEOUS PROVISIONS**

2
3 9.1 Construction. The Parties agree that the terms and conditions of this
4 Agreement are the result of lengthy, intensive arms-length
5 negotiations between the Parties and that this Agreement shall not
6 be construed in favor of or against any party by reason of the extent
7 to which any party or her or his counsel participated in the drafting
8 of this Agreement.
9

10
11 9.2 Captions and Interpretations. Paragraph titles or captions contained
12 in this Agreement are a matter of convenience and for reference, and
13 in no way define, limit, extend, or describe the scope of this
14 Settlement or any provision. Each term of this Agreement is
15 contractual and not merely a recital.
16

17
18 9.3 Modification. This Settlement may not be changed, altered, or
19 modified, except in a writing signed by the Parties, or their counsel,
20 and approved by the Court. Notwithstanding the forgoing, the
21 Parties agree that any dates contained in this Agreement may be
22 modified by agreement of the Parties without Court approval if the
23 Parties agree and cause exists for such modification. This Settlement
24 may not be discharged except by performance in accordance with its
25 terms or by a writing signed by the Parties.
26
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1 9.4 Integration Clause. This Agreement and any other documents
2 delivered pursuant hereto contain the entire agreement between the
3 Parties relating to the resolution of the Litigation, and all prior or
4 contemporaneous agreements, understandings, representations, and
5 statements, whether oral or written and whether by a Party or such
6 Party's legal counsel, are merged in this Agreement. No rights under
7 this Settlement may be waived except in writing and signed by the
8 Party against whom such waiver is to be enforced.
9

10
11
12 9.5 Binding on Assigns. This Settlement shall be binding upon, and inure
13 to the benefit of, the Parties and their respective heirs, trustees,
14 executors, administrators, successors, and assigns.
15

16
17 9.6 Class Counsel and Settlement Class Representative Signatories. It
18 is agreed that because the Settlement Class Members are so
19 numerous, it is impossible or impractical to have each Settlement
20 Class Member execute this Settlement. The Notice will provide all
21 Settlement Class Members with a summary of the Settlement and
22 will advise all Settlement Class Members of the binding nature of the
23 release. Excepting only those Settlement Class Members who timely
24 submit an Opt-Out Letter, the Notice shall have the same force and
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1 effect as if this Settlement were executed by each Settlement Class
2 Member.
3

4 9.7 Counterparts and Electronic Signatures. This Agreement may be
5 executed by facsimile signature, pdf signature, or signature in
6 compliance with the Uniform Electronic Transaction Act, and in any
7 number of counterparts, and when each party has signed and
8 delivered at least one such counterpart, each counterpart shall be
9 deemed an original, and, when taken together with other signed
10 counterparts, shall constitute one and the same Agreement, which
11 shall be binding upon and effective as to all Parties.
12
13

14
15 9.8 Applicable Law. This Agreement shall be governed by California
16 substantive law.
17

18 9.9 Enforcement of the Settlement Agreement. In the event that one or
19 more of the Parties to this Settlement Agreement institutes any legal
20 action, arbitration, or other proceeding against any other party or
21 Parties to enforce the provisions of this Settlement Agreement or to
22 declare rights and/or obligations under this Settlement Agreement,
23 the successful Party or Parties shall be entitled to recover from the
24 unsuccessful Party or Parties reasonable attorneys' fees and costs,
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1 including expert witness fees incurred in connection with any
2 enforcement actions.
3

4 9.10 No Press Releases. The Parties agree that no party shall issue any
5 press release to the news media, or communicate in any way with any
6 news media, concerning the Settlement or the Litigation.
7

8 **IT IS SO STIPULATED.**
9

10 **Individually and on behalf of the Class**
11

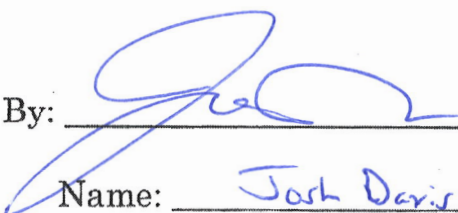
12 Dated: 12/15/2021
13


Lisa Swain (Dec 15, 2021 10:27 PST)

Lisa Swain
14
15

16 Dated: 12/15/2021

Anders Group, LLC

17
18
19 By: 

20 Name: Josh Davis

21 Title: President
22
23
24
25
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27
28

1 **APPROVED AS TO FORM AND CONTENT:**
2
3

4 **On Behalf of Plaintiff and the Class**

5 Dated: 1/4/2022
6

HAYES PAWLENKO LLP

7
8 By: Matthew B. Hayes
9

10
11 **On Behalf of Defendant**

12 Dated: 1/4/2022
13

LEWIS BRISBOIS BISGAARD & SMITH LLP

14
15 By: Casper
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