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FRESENIUS USA MANUFACTURING, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MICHAEL FENSKE, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

FRESENIUS USA MANUFACTURING, INC.;
and DOES 1 through 20, inclusive,

Defendants.

Case No. CIVSB2105447

*Assigned for All Purposes to:
Judge David Cohn
Dept. S-26*

JOINT STIPULATION OF SETTLEMENT

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiff Michael Fenske (“Plaintiff”) and
7 the Class Members, on the one hand, and Defendant Fresenius USA Manufacturing, Inc. (“Fresenius”
8 or “Defendant”), on the other hand. Named Plaintiff and Defendant collectively are referred to in this
9 Agreement as “the Parties.”

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay the settlement amount of Three Hundred Thousand
12 Dollars (\$300,000.00) as provided in Section 3.06(a) below (“Gross Settlement Amount”) pursuant
13 to the terms and conditions of this Agreement and for the consideration set forth herein, including
14 but not limited to, a release of all claims by Named Plaintiff and the Class Members as set forth
15 herein.

16 ARTICLE I

17 DEFINITIONS

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. “Action” means the actions described as follows: *Michael Fenske, individually and*
21 *on behalf of all others similarly situated v. Fresenius USA Manufacturing, Inc.*; and DOES 1 through
22 20, inclusive,” Case Nos. CIVSB2105447 & CIVSB2115114, in the Superior Court of the State of
23 California for the County of San Bernardino.

24 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
25 Exhibit(s).

c. “Class” means all non-exempt, hourly California employees of Defendant Fresenius USA Manufacturing, Inc., that worked for Defendant in California at any time during the Class Period, excluding drivers subject to Department of Transportation regulations.

d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

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e. “Class List” means a list based on Defendant’s business records that identifies each Class Member’s name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, dates of employment, and the number of Qualifying Workweeks worked during the Class Period.

f. “Class Member(s)” means all members of the Class.

g. “Class Period” means August 14, 2016 to the earlier of October 15, 2022, or when the Qualifying Workweeks for the class reaches 16,500 workweeks.

h. “Court” means the California Superior Court for the County of San Bernardino, where the Action is currently pending.

i. “Date of Finality” means the later of the following: (1) the date the Final Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or other judicial review is taken from the Court’s overruling of objections to the settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes final.

j. “Defendant” means Defendant Fresenius USA Manufacturing, Inc.

k. “Defense Counsel” means counsel for Defendant:

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l. “Disposition” means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

m. “Final Order Approving Settlement of Class Action” or “Final Order” means the final formal court order signed by the Court following the Final Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

n. “Gross Settlement Amount” means Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) to be paid by Defendant as provided by this Agreement to settle this Action. All payments to the Class, administration costs, attorney’s fees and costs, and Incentive Awards, pursuant to Section 3.06(a) below, shall be paid out of the Gross Settlement Amount. The employer’s share of payroll taxes arising from the payments made under this settlement shall be paid by Defendant separate from and in addition to the Gross Settlement Amount. No part of the Gross Settlement Amount shall revert to Defendant.

o. “Incentive Awards” means a monetary amount of up to Seven Thousand-Five Hundred Dollars (\$7,500.00) for the Named Plaintiff, subject to Court approval, in recognition of his effort and work in prosecuting the Action on behalf of Class Members, and for his general release of claims.

p. “Individual Settlement Payment(s)” means each Participating Class Member’s respective share of the Net Settlement Amount. Individual Settlement Payments will be determined by the calculations provided in this Agreement.

q. “LWDA” means The State of California Labor and Workforce Development Agency.

r. “LWDA Payment” means 75% of the \$25,000 allocated to the settlement of PAGA claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.06(e) of this Agreement, as provided for below.

1 s. “Motion for Final Approval” means Plaintiff’s submission of a written motion,
2 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
3 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
4 to enter a Final Order in this Action.

5 t. “Motion for Preliminary Approval” means Plaintiff’s submission of a written motion,
6 including any evidence as may be required for the Court to grant preliminary approval of the
7 Settlement as required by Rule 3.769 of the California Rules of Court.

8 u. “Named Plaintiff” means Michael Fenske.

9 v. “Net Settlement Amount” means the Gross Settlement Amount less Court-approved
10 administration costs, Class Counsels’ attorney’s fees and costs, Incentive Awards, and LWDA
11 Payment, pursuant to Section 3.06(a)-(f) below.

12 w. “Non-Participating Class Member(s)” means any Class Member(s) who submit to the
13 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
14 to Section 3.04(b) below.

15 x. “Notice Packet” means the Notice of Proposed Class Action Settlement in a form
16 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

17 y. “PAGA” means the California Private Attorneys General Act of 2004, which is
18 codified in California Labor Code §§ 2698 *et seq.*

19 z. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount
20 allocated to the resolution of PAGA Group Members’ claims arising under PAGA. The Parties have
21 agreed that the PAGA Settlement Amount is Twenty-Five Thousand Dollars (\$25,000), subject to
22 Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment,
23 and the remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
24 Members.

25 aa. “PAGA Group Members” means all Class Members employed by Defendant at any
26 time between August 14, 2019 and the end of the class period (“PAGA Period”).

1 bb. “Participating Class Member(s)” is defined as a Class Member who does not timely
2 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
3 Settlement Amount automatically without the need to return a claim form. Each Participating Class
4 Member will be paid his/her Individual Settlement Payment.

5 cc. “Preliminary Approval Date” means the date the Court preliminarily approves the
6 Settlement embodied in this Agreement.

7 dd. “Qualified Settlement Fund” or “QSF” means a fund within the meaning of Treasury
8 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
9 Administrator for the benefit of Participating Class Members.

10 ee. “Qualifying Workweeks” means the number of weeks that Class Members worked
11 for Defendant as non-exempt employees during the Class Period.

12 ff. “Released Parties” means Defendant and its predecessors and successors, as well as
13 its current, former and future parents, subsidiaries, affiliates, fiduciaries, insurers, agents, employees,
14 assigns, subrogees, privies, officers, officials, directors, administrators, attorneys, contractors, and
15 shareholders.

16 gg. “Response Deadline” means the deadline by which Class Members must postmark or
17 fax to the Settlement Administrator requests for exclusion or written notices of objection. The
18 Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by
19 the Settlement Administrator, unless the sixtieth (60th) calendar day falls on a Sunday or federal
20 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
21 Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-
22 mailing.

23 hh. “Settlement Administration Costs” means all costs incurred by the Settlement
24 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
25 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
26 Payment checks and related tax reporting forms, administration of unclaimed checks, and generation
27 of checks to Class Counsel for attorneys’ fees and costs, to the Named Plaintiff for their Incentive
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1 Awards, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross
2 Settlement Amount.

3 ii. “Settlement Administrator” means CPT Group Class Action Administrators, which
4 the Parties have agreed will be responsible for the administration of the Individual Settlement
5 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
6 this Agreement.

7 **ARTICLE II**

8 **CONTINGENT NATURE OF THE AGREEMENT**

9 **Section 2.01: Stipulation of Class Certification for Settlement Purposes**

10 Because the Parties have stipulated to the certification of the Class with respect to all causes
11 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and
12 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis.
13 This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality
14 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement
15 to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification
16 of the Class with respect to all causes of action alleged in the Action. Defendant does not consent to
17 certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date
18 of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the
19 Class as to Defendant will be vacated and Named Plaintiff, Defendant, and the Class will be returned
20 to their positions with respect to the Action as if the Agreement had not been entered into. In the
21 event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving
22 certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall
23 not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in
24 this Agreement, the fact that Defendant did not oppose the certification of a Class under this
25 Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used
26 or cited thereafter by any person or entity, including in any manner whatsoever, including without
27 limitation any contested proceeding relating to the certification of any class. If the Date of Finality

1 does not occur, this Agreement shall be deemed null and void, shall be of no force or effect
2 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly
3 reserves the right to challenge the propriety of class certification in the Action for any purpose, if the
4 Date of Finality does not occur.

5 The Parties and their respective counsel shall take all steps that may be requested by the Court
6 relating to the approval and implementation of this Agreement and shall otherwise use their
7 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
8 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
9 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
10 resolution, the Parties agree to seek the assistance of mediator to resolve the dispute.

11 **Section 2.02: Defendant's Denial of All Claims**

12 Defendant denies all claims as to liability, damages, penalties, interest, fees, restitution,
13 injunctive relief and all other forms of relief as well as the class and representative allegations
14 asserted in the Action. Defendant has agreed to resolve the Action via this Agreement, but to the
15 extent this Agreement is deemed void or the Date of Finality does not occur, Defendant does not
16 waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the
17 Action upon all procedural and factual grounds, including, without limitation, the ability to challenge
18 class treatment on any grounds, as well as asserting any and all other potential defenses or privileges.
19 The Named Plaintiff and Class Counsel agree that Defendant retains and reserves these rights, and
20 agree not to argue or present any argument, and hereby waive any argument that, based on this
21 Agreement, Defendant cannot challenge claims and allegations in the Action upon any procedural or
22 factual grounds, including, without limitation, challenging class treatment on any grounds or
23 asserting any and all other potential defenses or privileges. Similarly, to the extent this Agreement
24 is deemed void or the Date of Finality does not occur, Defendant hereby waives any argument that
25 based on this Agreement, Named Plaintiff is limited in any way in his ability to establish claims for
26 class certification, liability or damages.

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ARTICLE III

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT

The procedure for obtaining Court approval of and implementing this Agreement shall be as follows:

Section 3.01: Motion for Conditional Class Certification and Preliminary Approval

Named Plaintiff will bring a motion before the Court for an order conditionally certifying the Class to include all claims pled in the Action based on the preliminary approval of this Agreement. The date that the Court grants preliminary approval of this Agreement will be the “Preliminary Approval Date.”

Section 3.02: The Settlement Administrator

The Parties have chosen CPT Group Class Action Administrators (“CPT”) to administer this Settlement and to act as the Settlement Administrator, including but not limited to distributing and responding to inquiries about the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks and distributing them to Participating Class Members, establishing and maintaining the QSF, and issuing the payment to Class Counsel for attorneys’ fees and costs, the Incentive Award checks to the Named Plaintiff, and the employer payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms and conditions of this Agreement.

All costs of administering the Settlement, including but not limited to all costs and fees associated with preparing, issuing and mailing any and all notices to Class Members and/or Participating Class Members, all costs and fees associated with computing, processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency, all costs and fees associated with preparing any other checks, notices, reports, or filings to be prepared in the course of administering disbursements from the Net Settlement Amount, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its

duties under this Agreement (“Settlement Administration Costs”), shall be paid to the Settlement Administrator from the Gross Settlement Amount.

Section 3.03: Notice to Class Members

No later than ten (10) calendar days after the Preliminary Approval Date, Defendant will provide the Settlement Administrator with a “Class List” in electronic format based on its business records, identifying the names of the Class Members, their last known home addresses, Social Security numbers or, as applicable, other taxpayer identification number, their dates of employment and weeks worked during the Class Period.

Within ten (10) calendar days of receiving a Class List from Defendant, the Settlement Administrator will send Class Members, by first-class mail, at their last known address, the Court approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses against the National Change of Address database and shall update any addresses before mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within five (5) calendar days of receiving notice that a Notice Packet was undeliverable. If a Class Member’s notice is re-mailed, the Class Member shall have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class Members shall not be required to submit claim forms in order to receive a proportional share of the Net Settlement Amount.

If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on LexisNexis or comparable databases based on set criteria and, if another address is

1 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
2 that reasonable means be used to locate Class Members and that the Settlement Administrator be
3 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
4 Individual Settlement Payments to all Participating Class Members.

5 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
6 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
7 status report provided to the Parties.

8 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
9 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
10 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
11 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
12 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
13 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
14 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
15 procedures set forth in Section 3.06(g) below.

16 No later than thirty (30) calendar days prior to the Final Fairness and Approval Hearing, the
17 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
18 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
19 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
20 exclusion and objections that the Settlement Administrator received.

21 **Section 3.04: Responses to Notice**

22 **a. Class Member Disputes**

23 If any Class Member disagrees with Defendant's records as to his or her Qualifying
24 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
25 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
26 and submit such writing to the Settlement Administrator by the Response Deadline, along with any
27 supporting documentation. The Notice will also provide a method for the Class Member to challenge
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1 the employment data on which his or her Individual Settlement Payment is based. The Settlement
2 Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith
3 to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the
4 final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on
5 the information provided to it.

6 **b. Requests for Exclusion from Class**

7 In order for any Class Member to validly exclude himself or herself from the Class and this
8 Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class
9 Member or his or her authorized representative, and must be sent to the Settlement Administrator,
10 postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement
11 Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall
12 contain instructions on how to validly exclude himself or herself from the Class and this Settlement
13 (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial
14 mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be
15 conclusively determined according to the records of the Settlement Administrator. Any Class
16 Member who timely and validly requests exclusion from the Class and this Settlement will not be
17 entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this
18 Agreement, and will not have any right to object, appeal, or comment thereon.

19 Any Class Member who fails to timely submit a request for exclusion shall automatically be
20 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
21 determined by the Court's Final Order Approving Settlement of Class Action, and by the other
22 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action
23 and/or released in this Agreement will be extinguished. No later than thirty (30) calendar days before
24 the Final Fairness and Approval Hearing, the Settlement Administrator shall provide Defense
25 Counsel and Class Counsel with a complete list of all Class Members who have timely requested
26 exclusion from the Settlement.

1 **c. Objections to Settlement**

2 For any Class Member to object to this Agreement, or any term of it, the person making the
3 objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the
4 Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)
5 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
6 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
7 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and
8 the date the signed objection was postmarked, shall be conclusively determined according to the
9 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
10 receives to Defense Counsel and Class Counsel within five (5) calendar days of receipt. Class
11 Members may also appear at the final approval hearing to object. The Court retains final authority
12 with respect to the consideration and admissibility of any Class Member objections.

13 **d. Encouragement of Class Members**

14 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
15 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
16 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
17 Class Members.

18 **e. Right of Defendant to Void the Settlement**

19 The class portion of the settlement agreement is contingent upon no more than 10% of the
20 Class Members opting out of the final class portion of the settlement. Should more than 10% of the
21 Class Members submit timely and valid requests for exclusion, then Defendant shall have the option
22 to void the class portion of the Settlement. Defendant must exercise this option within ten (10)
23 calendar days of receiving a report from the Settlement Administrator showing the total number of
24 timely and valid requests for exclusion exceeds 10% of the Class Members. If Defendant chooses to
25 exercise this option, then the class portion of the settlement agreement shall be deemed void and
26 without effect, the Agreement will be deemed void, and all Settlement Administration Costs incurred
27 by the Settlement Administrator through that date will be paid by Defendant.

1 **Section 3.05: Final Fairness and Approval Hearing**

2 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
3 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement
4 and determine whether the Court should give it final approval, and (2) consider any objections made
5 and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the
6 Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a
7 Proposed Final Order Approving Settlement of Class Action.

8 **Section 3.06: Settlement Payment Procedures**

9 **a. Settlement Amount**

10 In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the
11 Gross Settlement Amount in the amount of Three Hundred Thousand Dollars (\$300,000.00). The
12 Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class
13 Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement
14 Amount, and the Incentive Payments.

15 Within twenty-one (21) calendar days after the Court signs the Final Order, Defendant shall
16 transfer the Gross Settlement Amount plus Defendant's share of employer-side payroll taxes, as set
17 forth herein, into a QSF established by the Settlement Administrator either directly or by sending the
18 funds to the Settlement Administer to be deposited and distributed via a wire transfer or other method
19 agreeable to the Settlement Administrator. The Settlement Administrator will use these funds to fund
20 payment of the Individual Settlement Payments to Participating Class Members, Class Counsel's
21 attorneys' fees and costs, the Incentive Awards, the LWDA Payment, and the Settlement
22 Administration Costs.

23 Within fourteen (14) calendar days after receiving Defendant's final payment, funding the
24 Gross Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement
25 Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA
26 Payment, the Incentive Awards, and employer and employee tax withholdings applicable to the Net
27 Settlement Amount allocated to wages. Prior to this distribution, the Settlement Administrator will

perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes.

b. Payment of Attorneys' Fees and Costs

Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One Hundred Thousand Dollars and Zero Cents (\$100,000.00). Class Counsel shall submit an application for an award of costs not to exceed Thirty Thousand Dollars (\$30,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness and Approval Hearing. Defendant shall not object to or oppose any such application in these amounts. Class Counsel shall serve Defendant with copies of all documents submitted in support of their application for an award of attorneys' fees and costs.

Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs, and expenses related to the investigation, prosecution, and settlement of the Action incurred through the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees and/or costs that Class Counsel requests, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

c. Payment of Settlement Administration Costs

The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Nine Thousand Dollars and Zero Cents, (\$9,000.00)

d. Payment of Incentive Award to the Named Plaintiff

Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Seven Thousand Five Hundred Dollars (\$7,500.00), the request for which Defendant will not object to or oppose. The Incentive Award shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s) other than Named Plaintiff. To the extent

1 that the Court approves less than the amount of incentive award that Class Counsel request, the
2 difference between the requested and awarded amounts will be reallocated to the Net Settlement
3 Amount.

4 Because it is the intent of the Parties that the Incentive Award represent payment to Named
5 Plaintiff for his or her service to the Class Members, and not wages, the Settlement Administrator
6 will not withhold any taxes from the Incentive Awards. The Incentive Awards will be reported on a
7 Form 1099, which the Settlement Administrator will provide to Named Plaintiff and to the pertinent
8 taxing authorities as required by law.

9 **e. Payment to the Labor and Workforce Development Agency**

10 In consideration of claims made under PAGA, Class Counsel will request that the Court
11 approve allocation of Twenty-Five Thousand Dollars (\$25,000) of the Gross Settlement Amount to
12 these claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
13 Workforce Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be paid
14 to the Net Settlement Amount for distribution to PAGA Group Members. Defendant will not oppose
15 this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount.
16 The Court’s adjustment, if any, of the amount allocated to Named Plaintiff’s PAGA claim in the
17 Action, will not invalidate this Agreement.

18 **f. Payment of Individual Settlement Payments to Participating Class Members**

19 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
20 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
21 Participating Class Members in proportion to the number of individual Qualifying Workweeks for
22 each Class Member. To calculate the minimum amount each Class Member will receive based on
23 their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total
24 number of Qualifying Workweeks by all Class Members during the Class Period and then allocated
25 on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class
26 Member’s approximate Individual Settlement Payment amount will be included in his or her Notice
27 Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to

1 Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the
2 individual Qualifying Workweeks worked during the Class Period by each Participating Class
3 Member.

4 Each Individual Settlement Payment will represent wages and penalties allocated using the
5 following formula: 1/3 allocated to wages, 1/3 allocated to interest, and 1/3 allocated to penalties.
6 The amounts paid as wages shall be subject to all tax withholdings customarily made from an
7 employee's wages and all other authorized and required withholdings and shall be reported by W-2
8 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement
9 Amount. The amounts paid as penalties and interest shall be subject to all authorized and required
10 withholdings other than the tax withholdings customarily made from employees' wages and shall be
11 reported by IRS 1099 forms.

12 No later than fourteen (14) calendar days after receiving the Gross Settlement Amount from
13 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
14 Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the
15 Net Settlement Amount allocated to wages will be reduced by applicable employer and employee
16 tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of
17 the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the
18 extent required by law for the interest and penalty portions of the Individual Settlement Payments.
19 Participating Class Members shall have 180 days from the date their Individual Settlement Payment
20 checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration
21 of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller
22 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

23 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
24 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
25 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
26 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
27 Settlement Administrator is unable to obtain a valid mailing address through this process, the
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1 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
2 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated. The
3 failure by a Class Member to claim or deposit any check issued by the Settlement Administrator shall
4 have no effect on that Class Member's release of all Released Claims as set forth herein.

5 **g. Default on Payment.**

6 Defendant's failure to fund the Gross Settlement Amount within twenty-one (21) calendar
7 days after the date that the Court grants final approval of the Settlement shall be considered a default.
8 In the event Defendant fails to timely fund the Gross Settlement Amount, the Settlement
9 Administrator will provide notice to Class Counsel and Defense Counsel within five (5) calendar
10 days of the missed payment. Thereafter, Defendant will have seven (7) calendar days to cure the
11 default and tender payment to the Settlement Administrator. In the event Defendant fails to cure the
12 default within the times set forth herein, Named Plaintiff may elect to enter judgment against
13 Defendant, on an ex parte basis, for the balance of the unpaid Gross Settlement Amount to date, and
14 Named Plaintiff will be entitled to recover interest at ten percent (10%) per year from the due date
15 for such payment and reasonable attorneys' fees and costs.

16 **h. No Credit Toward Benefit Plans.**

17 The Individual Settlement Payments made to Participating Class Members under this
18 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
19 calculate any additional benefits under any benefit plans to which any Class Members may be
20 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
21 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
22 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
23 Members may be entitled under any benefit plans.

1 **ARTICLE IV**

2 **LIMITATIONS ON USE OF THIS SETTLEMENT**

3 **Section 4.01: No Admission**

4 Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a
5 Class should not have been certified in the Action. This Agreement is entered into solely for the
6 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
7 construed as an admission of liability or wrongdoing by Defendant.

8 **Section 4.02: Non-Evidentiary Use**

9 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
10 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
11 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
12 including but not limited to, evidence of a presumption, concession, indication, or admission by any
13 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
14 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
15 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
16 Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims
17 released through this Agreement.

18 **Section 4.03: Nullification**

19 The Parties have agreed to the certification of the Class encompassing all claims alleged in
20 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
21 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
22 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
23 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
24 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
25 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
26 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
27 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
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1 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
2 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
3 should be certified by the Court in a non-settlement context in this Action or any other action, and in
4 any of those events, Defendant expressly reserves the right to oppose certification of the Class.

5 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
6 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

7 **ARTICLE V**

8 **RELEASES**

9 **Section 5.01: Released Claims by Class Members**

10 Upon the date Defendant transfers the Gross Settlement Amount, Named Plaintiff and
11 Participating Class Members who do not opt out of the Settlement, release the Released Parties from
12 any and all claims alleged in Named Plaintiff's Operative Complaints, or that could have been alleged
13 based upon, arising out of, or reasonably related to the facts or events set forth in Named Plaintiff's
14 Operative Complaints, during the Class Period, including but not limited to (1) failure to pay
15 minimum wages (2) failure to pay overtime wages (3) failure to provide meal periods (4) failure to
16 authorize or permit rest periods (5) failure to furnish accurate itemized wage statements wage
17 statement violations (6) failure to pay wages upon separation of employment and within the required
18 time (7) violation of California Business and Professions Code §§17200, *et seq.*, based on the
19 preceding claims ("Released Claims"). The Released Claims include any and all claims arising out
20 of, based upon or reasonably related to the facts asserted in the Action, and all derivative claims
21 thereto, including all such claims for alleged unpaid wages, compensation, or benefits, including, but
22 not limited to, missed meal-period and rest-break wages or penalties, untimely or inadequate final
23 paychecks and any applicable damages or penalties, noncompliant wage statements and any
24 applicable damages or penalties, overtime compensation, interest, related or stand-alone penalties or
25 damages, including, but not limited to, recordkeeping penalties, pay-stub/wage statement penalties,
26 minimum-wage penalties, missed meal-period and rest-break penalties, and waiting-time penalties,
27 and costs and attorneys' fees and expenses. The scope of the Released Claims include all such claims
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arising under the California Labor Code (including, but not limited to, sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 2698 et seq., and all other applicable sections); the wage orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200 et seq.; California regulations; and any other applicable and related statutory or common law.

Section 5.02: Released Claims by PAGA Group Members

Upon the date of funding the GSA, the State of California and PAGA Group Members release the Released Parties from all claims exhausted in Plaintiff's notice(s) sent to the LWDA and alleged in the operative PAGA complaint, or that could have been alleged based upon, arising out of, or reasonably related to the facts or events set forth in the Named Plaintiff's notice(s) sent to the LWDA or the operative PAGA complaint, which arose during the PAGA Period, regardless of whether PAGA Group Members opt out of the Class Settlement.

Section 5.03: Named Plaintiff's Release of Unknown Claims

Upon the date of funding the GSA, Named Plaintiff, waives, releases, acquits, and forever discharges the Released Parties from any and all claims, actions, charges, complaints, grievances, and causes of action, of any kind or nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code § 1542, as quoted below, which exist or may exist as of the Parties' execution of this Agreement, for any type of relief, including, without limitation, claims for wages, compensation, benefits, damages, unpaid business expenses, mileage or costs, penalties (including civil and waiting time penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief with the sole exception of any claims which cannot be released as a matter of law. The Named Plaintiff's released claims include, but are not limited to, the Released Claims, as well as any other claims under any provision of the Fair Labor Standards Act, the California Labor Code (including sections 132a, 2698, 4553 et seq.) or any applicable California Industrial Welfare Commission Wage Orders, the

1 California Business and Professions Code section 17200 *et seq.*; the California common law of
2 contract, and claims under state or federal discrimination statutes, including, without limitation, the
3 California Fair Employment and Housing Act, California Government Code § 12940 *et seq.*; the
4 Unruh Civil Rights Act, California Civil Code § 51 *et seq.*; the California Constitution; Title VII of
5 the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C.
6 § 12101 *et seq.*; the Age Discrimination in Employment Act of 1967, as amended; the Employee
7 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; and all of their implementing
8 regulations and interpretive guidelines.

9 Section 1542 of the California Civil Code provides as follows:

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

14 The Named Plaintiff’s general release provided herein is made with an express waiver and
15 relinquishment of any claim, right, or benefit under California Civil Code § 1542.

16 **ARTICLE VI**

17 **MISCELLANEOUS PROVISIONS**

18 **Section 6.01: Amendments or Modification**

19 The terms and provisions of this Agreement may be amended or modified only by an express
20 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
21 and approved by the Court.

22 **Section 6.02: Assignment**

23 None of the rights, commitments, or obligations recognized under this Agreement may be
24 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
25 consent of each other Party and their respective counsel. The representations, warranties, covenants,
26 and agreements contained in this Agreement are for the sole benefit of the Parties under this
27 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

1 **Section 6.03: Governing Law**

2 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
3 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
4 of laws.

5 **Section 6.04: Entire Agreement**

6 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
7 contains the entire understanding of the Parties with respect to the subject matter contained herein.
8 In case of any conflict between text contained in Articles I through VI of this Agreement and text
9 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
10 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
11 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
12 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
13 supersedes all prior agreements and understandings among the Parties with respect to the settlement
14 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
15 prior agreements or proposals.

16 **Section 6.05: Waiver of Compliance**

17 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
18 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
19 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
20 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
21 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
22 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

23 **Section 6.06: Counterparts and Fax/PDF Signatures**

24 This Agreement, and any amendments hereto, may be executed in any number of counterparts
25 and any Party and/or their respective counsel may execute any such counterpart, each of which when
26 executed and delivered shall be deemed to be an original. All counterparts taken together shall
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1 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
2 signature.

3 **Section 6.07: Meet and Confer Regarding Disputes**

4 Should any dispute arise among the Parties or their respective counsel regarding the
5 implementation or interpretation of this Agreement, a representative of Class Counsel and a
6 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
7 to submitting such disputes to the Court.

8 **Section 6.08: Agreement Binding on Successors**

9 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
10 of each of the Parties.

11 **Section 6.09: Cooperation in Drafting**

12 The Parties have cooperated in the negotiation and preparation of this Agreement. This
13 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
14 was the drafter or participated in the drafting of this Agreement.

15 **Section 6.10: Fair and Reasonable Settlement**

16 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
17 the Action and have arrived at this Agreement through arm's-length negotiation, after submission to
18 mediation before a professional, private mediator, and in the context of adversarial litigation, taking
19 into account all relevant factors, current and potential. The Parties further believe that the Settlement
20 is and is consistent with public policy, and fully complies with applicable law.

21 **Section 6.11: Headings**

22 The descriptive heading of any section or paragraph of this Agreement is inserted for
23 convenience of reference only and does not constitute a part of this Agreement and shall not be
24 considered in interpreting this Agreement.

25 **Section 6.12: Notice**

26 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
27 communications under this Agreement must be in writing and addressed as follows:

To the Named Plaintiff and the Class:

AEGIS LAW FIRM, PC

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Carolyn M. Bell
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

And

To Defendant:

BAKER & HOSTETLER LLP

David H. Stern
Alex Spjute
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509
Telephone: 310.820.8800
Facsimile: 310.820.8859

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

1 **Section 6.14: Mutual Full Cooperation**

2 The Parties agree fully to cooperate with each other to accomplish the terms of this
3 Agreement, including but not limited to the execution of such documents, and the taking of such
4 other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties
5 to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its
6 terms. In the event the Parties are unable to reach agreement on the form or content of any document
7 needed to implement the Settlement, or on any supplemental provisions that may become necessary
8 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

9 **Section 6.15: Authorization to Act**

10 Class Counsel warrants and represents that they are authorized by Named Plaintiff, and
11 Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action
12 required to effectuate the terms of this Agreement, except for signing documents, including but not
13 limited to this Agreement, that are required to be signed by the Parties themselves. Defendant
14 represents and warrants that the individual executing this Agreement on its behalf has the full right,
15 power, and authority to enter into this Agreement and to carry out the transactions contemplated
16 herein.

17 **Section 6.16: No Reliance on Representations**

18 The Parties have made such investigation of the facts and the law pertaining to the matters
19 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
20 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
21 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
22 rights, or with regard to the advisability of entering into and executing this Agreement, or with respect
23 to any other matters. No representations, warranties, or inducements, except as expressly set forth
24 herein, have been made to any party concerning this Agreement.

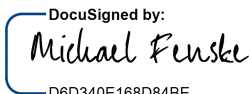
25 **EXECUTION BY PARTIES AND COUNSEL**

26 The Parties and their counsel hereby execute this Agreement.

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Dated: 10/13/2022 | 12:34 PM PDT

MICHAEL FENSKE

By: 
D6D340E168D84BE
Named Plaintiff

Dated: _____

FRESENIUS USA MANUFACTURING, INC.

By: _____
(Signature)

(Printed Name)

(Title)

APPROVED AS TO FORM ONLY:

Dated: 10/13/2022

AEGIS LAW FIRM, PC

By: 
Kashif Haque
Jessica L. Campbell
Carolyn M. Bell

Attorneys for Named Plaintiff Michael Fenske

Dated: _____

BAKER & HOSTETLER LLP

By: _____
David H. Stern
Alex Spjute

Attorneys for Defendant Fresenius USA
Manufacturing, Inc.

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Dated: _____

MICHAEL FENSKE

By: _____
Named Plaintiff

Dated: Oct 3, 2022

FRESENIUS USA MANUFACTURING, INC.

By: 
(Signature)
Mollie Miller
(Printed Name)
Assistant Treasurer
(Title)

APPROVED AS TO FORM ONLY:

Dated: _____

AEGIS LAW FIRM, PC

By: _____
Kashif Haque
Jessica L. Campbell
Carolyn M. Bell

Attorneys for Named Plaintiff Michael Fenske

Dated: October 3, 2022

BAKER & HOSTETLER LLP

By: 
David H. Stern
Alex Spjute

Attorneys for Defendant Fresenius USA
Manufacturing, Inc.