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Attorneys for Defendants
GAP, INC. and GPS CONSUMER DIRECT, INC.

(Additional Counsel listed on next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ALEXANDRIA EATON and REBECCA
WAKEMAN, as aggrieved employees
pursuant to the Labor Code Private Attorneys
Act of 2004 ("PAGA"), on behalf of the State
of California and other aggrieved employees,

Plaintiffs,

v.

THE GAP, INC., GPS CONSUMER
DIRECT, INC., and DOES 2 through 10
inclusive,

Defendants.

ALEXANDRIA EATON, on behalf of herself
and on behalf of all persons similarly situated,

Plaintiff,

v.

THE GAP, INC., GPS CONSUMER
DIRECT, INC. and DOES 1 to 10,

Defendants.

Related Cases:

Case No. RG21104093

Case No. 23CV045852

**JOINT STIPULATION OF CLASS AND
PAGA ACTIONS SETTLEMENT**

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ALEXANDRIA EATON

14 and PAGA Representatives

ERIKAJUSTINE TILI and LUCY IM

1 This Joint Stipulation of Class and PAGA Actions Settlement and Release (“Settlement
2 Agreement” or “Agreement”) is made by and between Plaintiff Alexandria Eaton (“Plaintiff”)
3 and Defendant Gap, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendants
4 collectively as “Parties,” or individually as “Party.” This Agreement resolves two related but
5 distinct cases:

6 1. *Alexandria Eaton v. Gap, Inc.*, et al., Case No. RG21104093, Alameda Superior
7 Court; and

8 2. *Alexandria Eaton v. Gap, Inc.*, et al., Case No. 23CV045852, Alameda Superior
9 Court.

10 This is a global settlement, and effectiveness is contingent on the Court’s approval of the
11 settlement with respect to both cases.

12 **I. DEFINITIONS**

13 1.1. “Action” means both of Plaintiff’s lawsuits alleging wage and hour violations against
14 Defendants captioned:

15 1.1.1. *Alexandria Eaton v. Gap, Inc.*, et al., Case No. RG21104093, Alameda
16 Superior Court (“*Eaton I*”); and

17 1.1.2. *Alexandria Eaton v. Gap, Inc.*, et al., Case No. 23CV045852, Alameda
18 Superior Court (“*Eaton II*”).

19 1.2. “Administrator” means CPT Group, the neutral entity the Parties have selected to
20 administer the Settlement.

21 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
22 from the Gross Settlement Amount for its reasonable fees and expenses as approved by the Court.

23 1.4. “Aggrieved Employee” means a member of either the *Eaton I* Aggrieved Employees
24 group or *Eaton II* Aggrieved Employees group.

25 1.4.1. “*Eaton I* Aggrieved Employees” means (1) all exempt and non-exempt
26 employees of GPS Consumer Direct, Inc. in California who worked remotely or from home at
27 any point during the *Eaton I* Class Period, and (2) all exempt and non-exempt employees of Gap,
28 Inc. in California who worked remotely or from home at any point during the *Eaton I* Class

1 Period.

2 1.4.2. “*Eaton II* Aggrieved Employees” means all non-exempt employees of either
3 Gap, Inc. or GPS Consumer Direct, Inc. in California whose work time used for purposes of
4 calculating payroll was lower than the work time captured in the timekeeping systems at any
5 point during the *Eaton II* PAGA Period.

6 1.5.1. “*Eaton I* Class” means all exempt and non-exempt employees of Defendants in
7 California who were required to work remotely or from home at any point during the *Eaton I*
8 Class Period.

9 1.5.2. “*Eaton II* Class” means all non-exempt employees of either Gap, Inc. or GPS
10 Consumer Direct, Inc. in California whose work time used for purposes of calculating payroll was
11 lower than the work time captured in the timekeeping systems at any point during the *Eaton II*
12 Class Period.

13 1.6. “Class Counsel” means Marita M. Lauinger and James F. Clapp of CLAPP &
14 LAUINGER LLP.

15 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
16 mean the amounts approved by the Court for Class Counsel’s attorneys’ fees and for
17 reimbursement of Class Counsel’s litigation expenses, respectively.

18 1.8. “Class Data” means *Eaton I* Class Member and *Eaton II* Class Member identifying
19 information in Gap’s possession including the individual’s name, last-known mailing address,
20 Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

21 1.9. “Class Member” means a member of either the *Eaton I* Class or *Eaton II* Class.

22 1.9.1. “*Eaton I* Class Member” means a member of the *Eaton I* Class, as either a
23 Participating *Eaton I* Class Member or Non-Participating *Eaton I* Class Member (including a
24 Non-Participating *Eaton I* Class Member who qualifies as an *Eaton I* Aggrieved Employee).

25 1.9.2. “*Eaton II* Class Member” means a member of the *Eaton II* Class, as either a
26 Participating *Eaton II* Class Member or Non-Participating *Eaton II* Class Member (including a
27 Non-Participating *Eaton II* Class Member who qualifies as an *Eaton II* Aggrieved Employee).

28 1.10. “Class Member Address Search” means the Administrator’s investigation and

1 search for current Class Member mailing addresses using all reasonably available sources,
2 methods and means including, but not limited to, the National Change of Address database, skip
3 traces, and direct contact by the Administrator with Class Members.

4 1.11. “Class Notice” means the court approved notice of Class Action Settlement and
5 Hearing Date for Final Court Approval, to be mailed to Class Members in English in the form,
6 without material variation, attached as Exhibit A and incorporated by reference into this
7 Agreement.

8 1.12.1 “*Eaton I* Class Period” means: (1) the period from March 1, 2020, through July 4,
9 2024 for *Eaton I* Class Members who were required to work remotely at any point as a result of
10 the COVID-19 pandemic; and (2) from June 16, 2017, through July 4, 2024 for *Eaton I* Class
11 Members who were remote employees prior to the COVID-19 pandemic.

12 1.12.2 “*Eaton II* Class Period” means the period of September 27, 2019, through July 4,
13 2024.

14 1.13. “Class Representative” or “Plaintiff” means Alexandria Eaton—the named
15 Plaintiff in the operative complaints in the Action, seeking Court approval to serve as a Class
16 Representative.

17 1.14. “Class and PAGA Representative Service Payments” means the payments
18 approved by the Court to the Class and PAGA Representatives for their service on behalf of the
19 Class Members and the LWDA.

20 1.15. “Court” means the Superior Court of California, County of Alameda.

21 1.16. “Defendants” means Gap, Inc. and GPS Consumer Direct, Inc.

22 1.17. “Defense Counsel” means Jessica Perry, Katie Briscoe, Mariam Bicknell, and
23 Scott Morrison of ORRICK, HERRINGTON & SUTCLIFFE LLP.

24 1.18. “Effective Date” means the date by when the following have occurred in both
25 *Eaton I* and *Eaton II*:

26 1.18.1 If any objections are filed, when both (a) the Court enters a Judgment on its
27 Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is
28 final as of the latest of the following occurrences: (a) the day after the deadline for filing a notice

1 of appeal from the Judgment (i.e., the sixty-first day after Judgment is entered); or (b) if a timely
2 appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and
3 issues a remittitur.

4 1.18.2 If no objections are filed, the Effective Date means the date the Court
5 enters a Judgment on its Order Granting Final Approval of the Settlement.

6 1.19. "Final Approval" means the Court's order granting final approval of the
7 Settlement.

8 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final
9 Approval of the Settlement.

10 1.22. "Gross Settlement Amount" means \$7,500,000 which is the total amount
11 Defendant Gap, Inc. agrees to pay under the Settlement except as provided in Paragraph 9 below.
12 The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA
13 Payments, LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, the Class and
14 PAGA Representative Service Payments, and the Administrator's Expenses.

15 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share
16 of the Net Settlement Amount calculated according to the number of Workweeks worked during
17 the applicable Class Period.

18 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
19 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the
20 applicable PAGA Period.

21 1.25. "Judgment" means the judgment entered by the Court based upon the Final
22 Approval.

23 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
24 agency entitled, under Labor Code section 2699, subd. (i).

25 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties to be paid to the
26 LWDA under Labor Code section 2699, subd. (i).

27 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
28 payments in the amounts approved by the Court: Individual PAGA Payments, LWDA PAGA

1 Payment, Class and PAGA Representative Service Payments, Class Counsel Fees Payment, Class
2 Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder
3 is to be paid to Participating Class Members as Individual Class Payments.

4 1.28.1. “*Eaton I* Net Settlement Amount” means 50% of the Net Settlement
5 Amount.

6 1.28.2. “*Eaton II* Net Settlement Amount” means 50% of the Net Settlement
7 Amount.

8 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
9 Settlement by sending the Administrator a valid and timely Request for Exclusion. Non-
10 Participating Class Members who are also Aggrieved Employees cannot opt-out of the PAGA
11 Claims.

12 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
13 worked for Defendants (either or both of them) for at least one day during the PAGA Period.

14 1.31.1. “*Eaton I* PAGA Period” means the period from March 12, 2020, through July 4,
15 2024.

16 1.31.2. “*Eaton II* PAGA Period” means the period from September 27, 2022, through July
17 4, 2024.

18 1.32. “PAGA” means the Labor Code Private Attorneys General Act of 2004 (Labor
19 Code §§ 2698, et seq.).

20 1.33. “PAGA Notices” means Plaintiff’s letters dated March 10, 2021 and October 11,
21 2022, and PAGA Representatives (*Eaton II*) Lucy Im and Erika-Justine Tili’s letter dated
22 September 27, 2023, and any subsequent, amended, or supplemental letters, to Defendant and the
23 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

24 1.34. “PAGA Penalties” means the \$750,000 in PAGA civil penalties to be paid from
25 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$187,500) and the
26 75% to LWDA (\$562,500) in settlement of PAGA claims.

27 1.34.1 “*Eaton I* PAGA Penalties” means 50% (\$375,000) of the PAGA Penalties,
28 allocated 25% to the *Eaton I* Aggrieved Employees (\$93,750) and 75% to the LWDA (\$281,250).

1.34.2 “*Eaton II* PAGA Penalties” means the other 50% (\$375,000) of the PAGA Penalties, allocated 25% to the *Eaton II* Aggrieved Employees (\$93,750) and 75% to the LWDA (\$281,250).

1.35 “PAGA Representatives (*Eaton II*)” means Lucy Im and Erika-Justine Tili who submitted their PAGA Notice Letter to the LWDA and Defendants on September 27, 2023.

1.36. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.37. “Preliminary Approval Order” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.38. “*Eaton I* Released Class Claims” means the claims being released as described in Paragraph 6.2.1 below.

1.39. “*Eaton II* Released Class Claims” means the claims being released as described in Paragraph 6.2.3 below.

1.40. “*Eaton I* Released PAGA Claims” means the claims being released as described in Paragraph 6.2.2 below.

1.41. “*Eaton II* Released PAGA Claims” means the claims being released as described in Paragraph 6.2.4 below.

1.42. “Released Parties” means: Defendants Gap, Inc. and GPS Consumer Direct, Inc. and each of their former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

1.43. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the *Eaton I* and/or *Eaton II* portions of the class Settlement signed by the Class Member.

1.44. “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are re-mailed after having been returned undeliverable to the Administrator shall have an additional 15 calendar days

beyond the Response Deadline has expired.

1.45. “Settlement” means this Joint Stipulation of Class and PAGA Action Settlement, the disposition of the Action effected thereby, and any resulting Judgment(s).

1.46. “Workweek” means any week during which a Class Member worked for Defendants for at least one day, during the applicable Class Periods.

II. RECITALS

2.1. After submitting her PAGA Notice letter to the LWDA on March 10, 2021, on June 16, 2021, Plaintiff commenced *Eaton I* by filing a complaint alleging a single cause of action against Defendant Gap, Inc. for PAGA penalties for alleged unreimbursed business expenses. On March 10, 2021, Plaintiff filed an amended PAGA Notice letter with the LWDA, naming GPS Consumer Direct, Inc., and adding alleged violations of the Labor Code related to regular rate calculations. On April 21, 2023, Plaintiff filed her Second Amended Complaint, which is the operative complaint, against Defendants Gap, Inc. and GPS Consumer Direct, Inc. The “Operative *Eaton I* Complaint” alleges a class action and PAGA representative action against Defendants for (1) unreimbursed business expenses; (2) unpaid overtime; (3) non-compliant wage statements; (4) waiting time penalties; (5) unfair business practices; and (6) derivative civil penalties under PAGA. Plaintiff alleges that Defendants’ conduct violated Labor Code §§ 201–204, 221–224, 226, 226.3, 400–410, 510, 558, 1174, 1194, 1198, 2802, Section 8 of the applicable wage order, Business and Professions Code § 17200, *et seq.*

Defendants deny the allegations in the Operative *Eaton I* Complaint, deny any failure to comply with the laws identified in in the Operative *Eaton I* Complaint, and deny any and all liability for the causes of action alleged.

2.2. On September 27, 2023, Plaintiff commenced *Eaton II* by filing a complaint alleging causes of action against Defendants for: (1) failure to pay wages; (2) waiting time penalties; and (3) unfair competition. Plaintiff alleges that Defendants’ conduct violated Labor Code §§ 201–204, 223, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, and Sections 3, 4, 7, and 11 of the applicable wage order, and Business and Professions Code § 17200, *et seq.*

On September 27, 2023, Lucy Im and Erika-Justine Tili submitted their PAGA Notice

1 letter to the LWDA alleging that Defendants violated the PAGA statute, Labor Code § 2698 *et*
2 *seq.*, by their failure to pay wages as alleged in the *Eaton II* Complaint.

3 As part of, and for purposes of this Settlement only, before filing the Preliminary
4 Approval Motion, Plaintiff shall amend her *Eaton II* Complaint to add Lucy Im and Erika-Justine
5 Tili as named plaintiffs and to allege a cause of action under PAGA, Defendants will stipulate to
6 the filing of the Amended Complaint. The Amended *Eaton II* Complaint will be referred to
7 herein as the “Operative *Eaton II* Complaint.” If the Court does not grant final approval of the
8 Settlement, the Parties agree that the original *Eaton II* complaint shall be operative and Plaintiff
9 will withdraw or otherwise act to ensure the Amended Complaint is of no force and effect.
10 However, Plaintiff is in no way precluded from seeking leave of court to amend her Complaint to
11 add Lucy Im and Erika-Justine Tili as named plaintiffs and to allege a cause of action under
12 PAGA.

13 Defendants deny the allegations in the *Eaton II* Complaint and the Operative *Eaton II*
14 Complaint, deny any failure to comply with the laws identified in the *Eaton II* Complaint and the
15 Operative *Eaton II* Complaint, and deny any and all liability for the causes of action alleged.

16 2.3. For purposes of Settlement, the Parties agree that, pursuant to Labor Code section
17 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the
18 PAGA Notices.

19 2.4 On September 29, 2022, the Parties participated in an all-day mediation before
20 mediator Mark Rudy, Esq. The mediation was unsuccessful.

21 2.5. On November 3, 2023, the Parties participated in an all-day mediation before
22 mediator Tripper Ortman, Esq., at which the Parties were unable to reach resolution. The Parties
23 continued to negotiate with Mr. Ortman’s assistance for the next several months and, ultimately,
24 accepted a mediator’s proposal on April 4, 2024, which led to this Agreement to settle the Action.

25 2.6. Prior to mediation, Plaintiff obtained, through extensive formal and informal
26 discovery, more than one thousand pages of relevant documents regarding Defendants’ policies
27 and practices, detailed timekeeping and earnings data for putative Class Members, statistics
28 regarding Class Members, Plaintiff’s personnel records, and other information relevant to

1 evaluating the strengths and weaknesses of her claims. Plaintiff's investigation was sufficient to
2 satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48
3 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
4 130 ("Dunk/Kullar").

5 2.7. The Court has not granted class certification in either *Eaton I* or *Eaton II*.

6 2.8. The Parties, Class Counsel and Defense Counsel represent that they are not aware
7 of any other pending matter or action asserting claims that will be extinguished by the Settlement.

8 **III. MONETARY TERMS**

9 3.1. Gross Settlement Amount. Defendant Gap, Inc. promises to pay \$7,500,000 and no
10 more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes
11 owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to
12 pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph
13 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount
14 without asking or requiring Participating Class Members or Aggrieved Employees to submit any
15 claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

16 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
17 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
18 the Court in the Final Approval:

19 3.2.1. To Plaintiff and the PAGA Representatives: The Parties agree the amount
20 of Class Representative Service Payments will be determined by the Court. The Parties also
21 agree Class Representative, Alexandria Eaton will seek Court approval of a Class Representative
22 Service Payment of not more than \$15,000, in addition to any Individual Class Payment and any
23 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
24 Member and Aggrieved Employee. The Parties also agree PAGA Representatives, Lucy Im and
25 Erika-Justine Tilli, will each seek Court approval of a PAGA Representative Service Payment of
26 not more than \$5,000. If the Court approves Class and PAGA Representative Service Payments
27 less than the amounts requested, that reduction will not be a basis to invalidate this Settlement,
28 and the Administrator will allocate the remainder to the Net Settlement Amount. The

1 Administrator will pay the Class and PAGA Representative Service Payments using IRS Form
2 W-2.

3 3.2.2. To Class Counsel: The Parties agree the amount of Class Counsel's
4 attorney's fees award and reimbursement of Class Counsel's litigation expenses will be
5 determined by the Court. The Parties also agree Class Counsel will seek Court approval of a
6 Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which
7 is \$2,500,000, and a Class Counsel Litigation Expenses Payment of not more than \$20,000. If the
8 Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses
9 Payment less than the amounts requested, the Administrator will allocate the remainder to the Net
10 Settlement Amount. Released Parties shall have no liability to Class Counsel or any other
11 Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or
12 Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees
13 Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class
14 Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees
15 Payment and the Class Counsel Litigation Expenses Payment.

16 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
17 \$44,750 except for a showing of good cause and as approved by the Court. To the extent the
18 Administration Expenses are less or the Court approves payment less than \$44,750, the
19 Administrator will allocate the remainder in the Net Settlement Amount.

20 3.2.4.1. To Each Participating *Eaton I* Class Member: An Individual Class
21 Payment calculated by (a) dividing the *Eaton I* Net Settlement Amount by the total number of
22 Workweeks worked by all Participating *Eaton I* Class Members during the *Eaton I* Class Period
23 and (b) multiplying the result by each Participating *Eaton I* Class Member's Workweeks.

24 3.2.4.2. To Each Participating *Eaton II* Class Member: An Individual Class
25 Payment calculated by (a) dividing the *Eaton II* Net Settlement Amount by the total number of
26 Workweeks worked by all Participating *Eaton II* Class Members during the *Eaton II* Class Period
27 and (b) multiplying the result by each Participating *Eaton II* Class Member's Workweeks.

28 ///

1 3.2.4.3. Tax Allocation of Individual Class Payments. 50% of each *Eaton II*
2 Participating Class Member's Individual Class Payment will be allocated to settlement of wage
3 claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
4 reported on an IRS W-2 Form. The 50% of each *Eaton II* Participating Class Member's
5 Individual Class Payment and 80% of each *Eaton I* Participating Class Member's Individual
6 Class Payment will be allocated to settlement of claims for non-wage statutory penalties and
7 reimbursements (the "Non-Wage Portion") and 20% will be allocated to settlement of claims for
8 wage claims (the "Wage Portion"). The Non-Wage Portions are not subject to wage withholdings
9 and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility
10 and liability for any employee taxes owed on their Individual Class Payment.

11 3.2.4.4. Effect of Non-Participating Class Members on Calculation of
12 Individual Class Payments. Non-Participating Class Members will not receive an Individual Class
13 Payment. The Administrator will retain amounts equal to the Individual Class Payment in the Net
14 Settlement Amount for distribution to Participating Class Members on a pro rata basis.

15 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
16 \$750,000 to be paid from the Gross Settlement Amount, divided evenly into *Eaton I* PAGA
17 Penalties and *Eaton II* PAGA Penalties, with 75% allocated to the LWDA PAGA Payment and
18 25% allocated to the Individual PAGA Payments.

19 3.2.5.1. For each case, the Administrator will calculate each Individual
20 PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA
21 Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
22 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA
23 Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes
24 owed on their Individual PAGA Payment.

25 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
26 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
27 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

28 ///

1 **IV. SETTLEMENT FUNDING AND PAYMENTS.**

2 4.1. Class Workweeks. Based on a review of its records, Defendants estimate that
3 Class Members collectively worked a total of 461,235 Workweeks through February 28, 2024.

4 4.2. Class Data. Not later than 14 days after the Court grants Preliminary Approval of
5 the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a
6 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must
7 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and
8 for no other purpose, and restrict access to the Class Data to Administrator employees who need
9 access to the Class Data to effect and perform under this Agreement. Administrator will keep
10 confidential and not share the Class Data with Plaintiffs, Class Counsel, or anyone else.
11 Defendants will notify Class Counsel if they discover that the Class Data omitted class member
12 identifying information and to provide corrected or updated Class Data as soon as reasonably
13 feasible. Without any extension of the deadline by which Defendants must send the Class Data to
14 the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith,
15 to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

16 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
17 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of
18 payroll taxes by transmitting the funds to the Administrator no later than 30 calendar days after
19 the Effective Date.

20 4.4. Payments from the Gross Settlement Amount.

21 Within two business days of receipt of the Gross Settlement Amount, the Administrator
22 will disburse the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment,
23 and the Class and PAGA Representative Service Payments pursuant to the instructions provided
24 to the Administrator by Class Counsel.

25 Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator
26 will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA
27 PAGA Payment, and the Administration Expenses Payment.

28 4.4.1. The Administrator will issue checks for the Individual Class Payments

1 and/or Individual PAGA Payments and send them to the Participating Class Members and
2 Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall
3 prominently state the date (not less than 180 days after the date of mailing) when the check will
4 be voided. The Administrator will cancel all checks not cashed by the void date. The
5 Administrator will send checks for Individual Settlement Payments to all Participating Class
6 Members (including those for whom Class Notice was returned undelivered). The Administrator
7 will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-
8 Participating Class Members who qualify as Aggrieved Employees (including those for whom
9 Class Notice was returned undelivered). The Administrator may send Participating Class
10 Members a single check combining the Individual Class Payment and the Individual PAGA
11 Payment. If a Class Member or Aggrieved Employee is to receive a payment from each *Eaton I*
12 and *Eaton II*, the Administrator may send a single check consolidating payments for both cases.
13 Before mailing any checks, the Settlement Administrator must update the recipients' mailing
14 addresses using the National Change of Address database.

15 4.4.2. The Administrator must conduct a Class Member Address Search for all
16 other Class Members whose checks are returned undelivered without USPS forwarding address.
17 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
18 forwarding address provided or to an address ascertained through the Class Member Address
19 Search. The Administrator need not take further steps to deliver checks to Class Members whose
20 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
21 replacement check to any Class Member whose original check was lost or misplaced, requested
22 by the Class Member prior to the void date.

23 4.4.3 For any Class Member whose Individual Class Payment check and/or Individual
24 PAGA Payment check is uncashed within 90 days of mailing, the Administrator will mail a check
25 cashing reminder postcard, in a form approved by Class Counsel and Defense Counsel, to that
26 Class Member.

27 4.4.4. For any Class Member whose Individual Class Payment check and/or Individual
28 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall

1 transmit the funds represented by such checks to a Court-approved nonprofit organization or
2 foundation, such as Legal Aid At Work, consistent with Code of Civil Procedure Section 384,
3 subd. (b) ("Cy Pres Recipient"). The Parties, Class Counsel and Defense Counsel represent that
4 they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

5 4.4.5. The payment of Individual Class Payments and Individual PAGA Payments shall
6 not obligate Defendants to confer any additional benefits or make any additional payments to
7 Class Members (such as 401(k) contributions or bonuses) beyond those specified in this
8 Agreement.

9 **V. RELEASES OF CLAIMS.**

10 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
11 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
12 Plaintiff, Participating Class Members, and Class Counsel will release claims against all Released
13 Parties as follows:

14 5.1 Representatives' General Release. Class Representative Alexandria Eaton and
15 PAGA Representatives Lucy Im and Erika-Justine Tili (collectively, "Representatives") and their
16 respective former and present spouses, representatives, agents, attorneys, heirs, administrators,
17 successors, and assigns generally, release and discharge Released Parties from all claims, charges,
18 complaints, liens, demands, causes of action, obligations, damages and liabilities, known or
19 unknown, suspected or unsuspected, that they had, now have, or may hereafter claim to have
20 against said Released Parties, or any of them, arising out of, grounded upon, or in any way
21 connected with their employment relationship with Defendants, their termination and/or release
22 from that employment, any damages they claim to have sustained while employed by Defendants,
23 or any other transactions, occurrences, acts or omissions or any loss, damages or injury
24 whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by
25 or on the part of the Released Parties, or any of them, committed or omitted prior to the date of
26 this Agreement ("Representatives' Release"). Representatives' Release does not extend to any
27 claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment
28 benefits, disability benefits, social security benefits, or workers' compensation benefits that arose

1 at any time. The Representatives acknowledge that they may discover facts or law different from,
2 or in addition to, the facts or law that they now know or believe to be true but agrees, nonetheless,
3 that Representatives' Release shall be and remain effective in all respects, notwithstanding such
4 different or additional facts or their discovery of them.

5 5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
6 purposes of Representatives' Release, the Representatives expressly waive and relinquish the
7 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

12 5.2.1 Release by Participating *Eaton I* Class Members:

13 All Participating *Eaton I* Class Members, on behalf of themselves and their respective
14 former and present representatives, agents, attorneys, heirs, administrators, successors, and
15 assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have
16 been alleged, based on the facts stated in the Operative *Eaton I* Complaint, which occurred during
17 the *Eaton I* Class Period, including any and all claims involving any alleged (1) failure to
18 reimburse business expenses; (2) failure to properly calculate the regular rate of pay; (3) failure to
19 issue compliant wage statements; (4) failure to timely pay wages due and owing each pay period
20 and at the time of termination; (5) failure to keep complete and accurate records; (6) unlawful
21 deductions from wages; and (7) unlawful business practices, or alleged violation of Labor Code
22 §§ 201–204, 221–224, 226, 226.3, 400–410, 510, 512, 558, 1174, 1194, 1198, 2802, 2699, *et*
23 *seq.*, Section 8 of the applicable wage order, and Business and Professions Code § 17200, *et seq.*

24 Except as set forth in this Agreement, Participating *Eaton I* Class Members do not release
25 any other claims, including claims for vested benefits, wrongful termination, violation of the,
26 unemployment insurance, social security, workers' compensation, or claims based on facts
27 occurring outside the *Eaton I* Class Period.

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1 5.2.2 Release by *Eaton I* Aggrieved Employees:

2 All *Eaton I* Aggrieved Employees and the LWDA are deemed to release, on behalf of
3 themselves and their respective former and present representatives, agents, attorneys, heirs,
4 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties
5 that were alleged, or reasonably could have been alleged, based on the facts stated in the
6 Operative *Eaton I* Complaint and the *Eaton I* PAGA Notice(s), which occurred during *Eaton I*
7 PAGA Period, including any and all claims involving any alleged (1) failure to reimburse
8 business expenses; (2) failure to calculate the regular rate of pay; (3) failure to issue compliant
9 wage statements; (4) failure to timely pay wages due and owing each pay period and at the time
10 of termination; (5) failure to keep complete and accurate records; and (6) unlawful deductions
11 from wages, or alleged violation of Labor Code §§ 201–204, 221–224, 226, 226.3, 400–410, 510,
12 512, 558, 1174, 1194, 1198, 2802, 2699.

13 5.2.3 Release by Participating *Eaton II* Class Members:

14 All Participating *Eaton II* Class Members, on behalf of themselves and their respective
15 former and present representatives, agents, attorneys, heirs, administrators, successors, and
16 assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have
17 been alleged, based on the facts stated in the Operative *Eaton II* Complaint, which occurred
18 during the *Eaton II* Class Period, including any and all claims involving any alleged (1) unpaid
19 minimum, straight, and overtime wages, (2) non-compliant meal periods; (2) failure to issue
20 compliant wage statements; (3) failure to timely pay wages due and owing each pay period and at
21 the time of termination; (4) failure to keep complete and accurate records; (5) unlawful
22 deductions from wages; and (6) unlawful business practices, or alleged violation of Labor Code
23 §§ 201–204, 223, 226, 226.7, 510, 512, , 1194, 1194.2, 1197, 1197.1, 1198, 2699, *et seq.*, Section
24 3, 4, 7, and 11 of the applicable wage order, and Business and Professions Code § 17200, *et seq.*

25 Except as set forth in this Agreement, Participating *Eaton II* Class Members do not release
26 any other claims, including claims for vested benefits, wrongful termination, violation of the
27 unemployment insurance, social security, workers' compensation, or claims based on facts
28 occurring outside the *Eaton II* Class Period.

1 5.2.4 Release by *Eaton II* Aggrieved Employees:

2 All *Eaton II* Aggrieved Employees and the LWDA are deemed to release, on behalf of
3 themselves and their respective former and present representatives, agents, attorneys, heirs,
4 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties
5 that were alleged, or reasonably could have been alleged, based on the facts stated in the
6 Operative *Eaton II* Complaint and the *Eaton II* PAGA Notice(s), which occurred during *Eaton II*
7 PAGA Period, including any and all claims involving any alleged (1) unlawful rounding of
8 timekeeping practices resulting in (a) unpaid minimum, straight, and overtime wages, and (b)
9 non-compliant meal periods; (2) failure to issue compliant wage statements; (3) failure to timely
10 pay wages due and owing each pay period and at the time of termination; (4) failure to keep
11 complete and accurate records; and (5) unlawful deductions from wages, or alleged violation of
12 Labor Code §§ 201–204, 223, 226, 226.7, 510, 512, 558, , 1194, 1194.2, 1197, 1197.1, 1198, and
13 2699.

14 **VI. MOTION FOR PRELIMINARY APPROVAL.**

15 Class Counsel will prepare and file a motion for preliminary approval (“Motion for
16 Preliminary Approval”).

17 6.1 Defendants’ Declaration in Support of Preliminary Approval. Defendants will
18 prepare and provide to Class Counsel at least 5 court days before the filing deadline, a signed
19 Declaration from Defendants and/or Defense Counsel disclosing all facts relevant to any actual or
20 potential conflicts of interest with the Administrator and Cy Pres Recipient for filing with the
21 Motion for Preliminary Approval. In their Declarations, Defense Counsel and/or Defendants shall
22 aver that they are not aware of any other pending matter that will be extinguished by the
23 Settlement.

24 6.2 Plaintiff’s Responsibilities. Plaintiff will prepare and provide to Defense Counsel
25 at least 5 court days before filing: (i) a draft of the memorandum of points and authorities in
26 support of the Motion for Preliminary Approval; and (ii) a draft proposed Order Granting
27 Preliminary Approval and Approval of PAGA Settlement.

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1 6.3 Responsibilities of Counsel. Class Counsel is responsible for preparing, finalizing
2 and filing the Motion for Preliminary Approval. Class Counsel will consider in good faith
3 Defense Counsel’s comments pertaining to the draft Motion for Preliminary Approval and Order
4 Granting Preliminary Approval and Approval of PAGA Settlement. Class Counsel is responsible
5 for providing the Court’s Preliminary Approval Order to the Administrator.

6 6.4 Duty to Cooperate. The Parties agree to cooperate with each other and use their
7 best efforts to obtain Preliminary Approval of the Settlement. If the Court does not grant
8 Preliminary Approval or conditions Preliminary Approval on any material change to this
9 Agreement, Class Counsel and Defense Counsel will expeditiously work together in good faith to
10 modify the Agreement and otherwise satisfy the Court’s concerns.

11 **VII. SETTLEMENT ADMINISTRATION**

12 7.1 Selection of Administrator. The Parties have jointly selected CPT Group to serve
13 as the Administrator and verified that, as a condition of appointment, CPT Group agrees to be
14 bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in
15 exchange for payment of Administration Expenses. The Parties and their Counsel represent that
16 they have no interest or relationship, financial or otherwise, with the Administrator other than a
17 professional relationship arising out of prior experiences administering settlements.

18 7.2 Employer Identification Number. The Administrator shall have and use its own
19 Employer Identification Number for purposes of calculating payroll tax withholdings and
20 providing reports state and federal tax authorities.

21 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
22 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
23 Regulation section 468B-1.

24 7.4 Notice to Class Members.

25 7.4.1 No later than three (3) business days after receipt of the Class Data, the
26 Administrator shall notify Class Counsel that the list has been received and state the number of
27 Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data for both *Eaton*
28 *I* and *Eaton II*.

1 7.4.2 Using best efforts to perform as soon as practicable, and in no event later
2 than 14 days after receiving the Class Data, the Administrator will send to all Class Members
3 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class
4 Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the
5 Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment
6 and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks
7 and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class
8 Notices, the Administrator shall update Class Member addresses using the National Change of
9 Address database.

10 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class
11 Notice returned by the USPS as undeliverable, the Administrator shall re-mail the Class Notice
12 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
13 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
14 Notice to the most current address obtained. The Administrator has no obligation to make further
15 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
16 USPS a second time.

17 7.4.4 The deadlines for Class Members’ written objections, Challenges to
18 Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 15
19 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
20 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
21 with the re-mailed Class Notice.

22 7.4.5 If the Administrator, Defendants, or Class Counsel is contacted by or
23 otherwise discovers any persons who believe they should have been included in the Class Data
24 and should have received Class Notice, Defendants will expeditiously review its business records
25 to determine whether the individual should be a Class Member and receive a Class Notice. If
26 Defendants determine that such persons should be included in either *Eaton I*, *Eaton II*, or both,
27 such persons will be Class Members entitled to the same rights as other Class Members, and the
28 Administrator will send, via email or overnight delivery, a Class Notice requiring them to

1 exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the
2 deadline dates in the Class Notice, which ever are later.

3 7.5 Requests for Exclusion (Opt-Outs).

4 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
5 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
6 Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional
7 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
8 from a Class Member or his/her legal representative that reasonably communicates the Class
9 Member's election to be excluded from the *Eaton I* and/or *Eaton II* class action portions of the
10 Settlement and includes the Class Member's name, address and email address or telephone
11 number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by
12 the Response Deadline.

13 7.5.2 The Administrator may not reject a Request for Exclusion as invalid simply
14 because it fails to contain all the information specified in the Class Notice. The Administrator
15 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
16 identity of the person as a Class Member and the Class Member's desire to be excluded. The
17 Administrator's determination shall be final and not appealable or otherwise susceptible to
18 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
19 the Administrator may demand additional proof of the Class Member's identity. The
20 Administrator's determination of authenticity shall be final and not appealable or otherwise
21 susceptible to challenge.

22 7.5.3 Every Class Member who does not submit a timely and valid Request for
23 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
24 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
25 Members' Releases under Paragraphs 5.2.1 and 5.2.3 of this Agreement, regardless whether the
26 Participating Class Member actually receives the Class Notice or objects to the Settlement.

27 7.5.4 Every Class Member who submits a valid and timely Request for
28 Exclusion is a Non-Participating Class Member for *Eaton I*, *Eaton II*, or both, as applicable, and

1 accordingly shall not receive an Individual Class Payment or have the right to object to the class
2 action components of the Action. Because future PAGA claims are subject to claim preclusion
3 upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are
4 deemed to release the claims identified in Paragraphs 5.2.2 and 5.2.4 of this Agreement and are
5 eligible for an Individual PAGA Payment(s) and have no right to bring a future PAGA action for
6 any of the claims released in Paragraphs 5.2.2 and 5.2.4.

7 7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days
8 after the Administrator mails the Class Notice (plus an additional 15 days for Class Members
9 whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay
10 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may
11 challenge the allocation by communicating with the Administrator via fax, email or mail. The
12 Administrator must encourage the challenging Class Member to submit supporting
13 documentation. In the absence of any contrary documentation, the Administrator is entitled to
14 presume that the Workweeks contained in the Class Notice are correct so long as they are
15 consistent with the Class Data. The Administrator's determination of each Class Member's
16 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise
17 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
18 calculation of Workweeks and/or Pay Periods to Defense Counsel and the Administrator's
19 determination of the challenges.

20 7.7 Objections to Settlement.

21 7.7.1 Only Participating Class Members may object to the class action
22 components of the Settlement, including contesting the fairness of the Settlement, and/or amounts
23 requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment
24 and/or Class and PAGA Representative Service Payments.

25 7.7.2 Participating Class Members may send written objections to the
26 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
27 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
28 Hearing. A Participating Class Member who elects to send a written objection to the

1 Administrator must do so not later than 45 days after the Administrator's mailing of the Class
2 Notice (plus an additional 15 days for Class Members whose Class Notice was re-mailed).

3 7.7.3 Non-Participating Class Members have no right to object to any of the
4 class action components of the Settlement.

5 7.8 Administrator Duties. The Administrator has a duty to perform or supervise all
6 tasks to be performed or supervised by the Administrator reasonably contained in this Agreement
7 or otherwise.

8 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will
9 establish and maintain and use an internet website to post information of interest to Class
10 Members for both *Eaton I* and *Eaton II*, including the respective date, time and location for the
11 Final Approval Hearing and copies of the Settlement Agreement and Class Notice. The
12 Administrator will also maintain and monitor an email address and a toll-free telephone number
13 to receive Class Member calls, faxes and emails.

14 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
15 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
16 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
17 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
18 and other identifying information of Class Members who have timely submitted valid Requests
19 for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class
20 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
21 Exclusion from Settlement submitted (whether valid or invalid).

22 7.8.3 Weekly Reports. The Administrator will, on a weekly basis, provide
23 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
24 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion
25 (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay
26 Periods received and/or resolved, and checks mailed for Individual Class Payments and
27 Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the
28 Administrator's assessment of the validity of Requests for Exclusion and attach copies of all

1 Requests for Exclusion and objections received.

2 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
3 authority to address and make final decisions consistent with the terms of this Agreement on all
4 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
5 Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

6 7.8.5 Administrator's Declaration. Not later than 15 days before the date by
7 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
8 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
9 for filing in Court attesting to its due diligence and compliance with all of its obligations under
10 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
11 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
12 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
13 number of written objections and attach the Exclusion List. The Administrator will supplement its
14 declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
15 for filing the Administrator's declaration(s) in Court.

16 7.8.6 Final Report by Settlement Administrator. Within 10 days after the
17 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
18 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
19 identification number only of all payments made under this Agreement. At least 15 days before
20 any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and
21 Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of
22 all payments required under this Agreement. Class Counsel is responsible for filing the
23 Administrator's declaration in Court.

24 **VIII. DEFENDANTS' RIGHT TO WITHDRAW**

25 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5%
26 of the total of all Class Members, Defendants may, but are not obligated to, elect to withdraw
27 from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void
28 ab initio, have no force or effect whatsoever, and that neither Party will have any further

1 obligation to perform under this Agreement; provided, however, Defendant will remain
2 responsible for paying all Settlement Administration Expenses incurred to that point. Defendants
3 must notify Class Counsel and the Court of any election to withdraw not later than seven days
4 after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have
5 no effect.

6 **IX. MOTION FOR FINAL APPROVAL**

7 Plaintiff will file in the Alameda County Superior Court a noticed motion for final
8 approval of the Settlement that includes a memorandum of points and authorities, a proposed
9 Final Approval Order, and a proposed Judgment. Plaintiff shall provide drafts of these documents
10 to Defense Counsel no later than 5 court days prior to filing the filing deadline. Class Counsel
11 will in good faith consider Defense Counsel's comments prior to filing the Motion for Final
12 Approval, the proposed Final Approval Order, and the proposed Judgment.

13 9.1 Response to Objections. Each Party retains the right to respond to any objection
14 raised by a Participating Class Member, including the right to file responsive documents in Court
15 no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or
16 accepted by the Court.

17 9.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
18 Approval on any material change to the Settlement (including, but not limited to, the scope of
19 release to be granted by Class Members), the Parties will expeditiously work together in good
20 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
21 Approval. The Court's decision to award less than the amounts requested for the Class and PAGA
22 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation
23 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
24 modification to the Agreement within the meaning of this paragraph.

25 9.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
26 Judgment, the Court will retain jurisdiction in each *Eaton I* and *Eaton II* over the Parties, Action,
27 and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment,
28 (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters

1 as are permitted or required by law.

2 9.4 Waiver of Right to Appeal. Provided the Judgment in each *Eaton I* and *Eaton II* is
3 consistent with the terms and conditions of this Agreement, specifically including the Class
4 Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this
5 Settlement, the Parties, their respective counsel, and all Participating Class Members who did not
6 object to the Settlement as provided in this Agreement, waive all rights to appeal from the
7 Judgment, including all rights to post-judgment and appellate proceedings, the right to file
8 motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver
9 of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an
10 objector appeals either Judgment, the Parties' obligations to perform under this Agreement will
11 be suspended until such time as the appeal is finally resolved and the Judgment becomes final,
12 except as to matters that do not affect the amount of the Net Settlement Amount.

13 9.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
14 the reviewing Court vacates, reverses, or modifies the Judgment in either *Eaton I* or *Eaton II* in a
15 manner that requires a material modification of this Agreement (including, but not limited to, the
16 scope of release to be granted by Class Members or Aggrieved Employees), this Agreement shall
17 be null and void in its entirety. The Parties shall nevertheless expeditiously work together in good
18 faith to address the appellate court's concerns and to obtain Final Approval and entry of
19 Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred
20 after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class
21 and PAGA Representative Service Payments or any payments to Class Counsel shall not
22 constitute a material modification of the Judgment within the meaning of this paragraph, as long
23 as the Gross Settlement Amount remains unchanged.

24 **X. AMENDED JUDGMENT**

25 If any amended judgment is required under Code of Civil Procedure section 384, the
26 Parties will work together in good faith to jointly submit and a proposed amended judgment.

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1 **XI. ADDITIONAL PROVISIONS**

2 11.1 No Admission of Liability, Class Certification or Representative Manageability for
3 Other Purposes. This Agreement represents a compromise and settlement of highly disputed
4 claims. Nothing in this Agreement is intended or should be construed as an admission by
5 Defendants that any of the allegations in the Operative *Eaton I* Complaint, Operative *Eaton II*
6 Complaint, and PAGA Notices have merit or that Defendants have any liability for any claims
7 asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants'
8 defenses in the Action have merit. The Parties agree that class certification and representative
9 treatment is for purposes of this Settlement only. If, for any reason the Court does not grant
10 Preliminary Approval, Final Approval or enter Judgment in both *Eaton I* and *Eaton II*,
11 Defendants reserve the right to contest certification of any class for any reasons, and Defendants
12 reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move
13 for class certification on any grounds available and to contest Defendants' defenses. The
14 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on,
15 and will not be admissible in connection with, any litigation (except for proceedings to enforce or
16 effectuate the Settlement and this Agreement).

17 11.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
18 Defendants, and Defense Counsel separately agree that, until the Motion for Preliminary
19 Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or
20 publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms
21 of the Agreement directly or indirectly, specifically or generally, to any person, corporation,
22 association, government agency, or other entity except: (1) to the Parties' attorneys, accountants,
23 or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a
24 related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in
25 response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a
26 state or federal government agency. Each Party agrees to immediately notify each other Party of
27 any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class
28 Counsel, Defendants, and Defense Counsel separately agree not to, directly or indirectly, initiate

1 any conversation or other communication, before the filing of the Motion for Preliminary
2 Approval, any with third party regarding this Agreement or the matters giving rise to this
3 Agreement except to respond only that “the matter was resolved,” or words to that effect. This
4 paragraph does not restrict Class Counsel’s communications with Class Members in accordance
5 with Class Counsel’s ethical obligations owed to Class Members.

6 11.3. No Solicitation. The Parties separately agree that they and their respective counsel
7 and employees will not solicit any Class Member to opt out of or object to the Settlement, or
8 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
9 Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s
10 ethical obligations owed to Class Members.

11 11.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
12 Agreement together with its attached exhibits shall constitute the entire agreement between the
13 Parties relating to the Settlement, superseding any and all oral representations, warranties,
14 covenants, or inducements made to or by any Party.

15 11.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
16 and represent that they are authorized by Plaintiff and Defendants, respectively, to take all
17 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to
18 effectuate its terms, and to execute any other documents reasonably required to effectuate the
19 terms of this Agreement including any amendments to this Agreement.

20 11.6 Cooperation. The Parties and their counsel will cooperate with each other and use
21 their best efforts, in good faith, to implement the Settlement by, among other things, modifying
22 the Settlement Agreement, submitting supplemental evidence and supplementing points and
23 authorities as requested by the Court. In the event the Parties are unable to agree upon the form or
24 content of any document necessary to implement the Settlement, or on any modification of the
25 Agreement that may become necessary to implement the Settlement, the Parties will seek the
26 assistance of a mediator and/or the Court for resolution.

27 11.7 No Prior Assignments. The Parties separately represent and warrant that they have
28 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or

1 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
2 action, or right released and discharged by the Party in this Settlement.

3 11.8 No Tax Advice. Neither Plaintiff, Class Counsel, nor Defense Counsel are
4 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
5 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
6 Part 10, as amended) or otherwise.

7 11.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
8 modified, changed, or waived only by an express written instrument signed by all Parties or their
9 representatives, and approved by the Court.

10 11.10 Agreement Binding on Successors. This Agreement will be binding upon, and
11 inure to the benefit of, the successors of each of the Parties.

12 11.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
13 be governed by and interpreted according to the internal laws of the state of California, without
14 regard to conflict of law principles.

15 11.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
16 preparation of this Agreement. This Agreement will not be construed against any Party on the
17 basis that the Party was the drafter or participated in the drafting.

18 11.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
19 entered during the Action and in this Agreement relating to the confidentiality of information
20 shall survive the execution of this Agreement.

21 11.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to
22 Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel
23 by Defendants in connection with the mediation, other settlement negotiations, or in connection
24 with the Settlement, may be used only with respect to this Settlement, and no other purpose, and
25 may not be used in any way that violates any existing contractual agreement, statute, or rule of
26 court. Not later than 90 days after the date when the Court discharges the Administrator's
27 obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff
28 shall destroy the Class Data received from Defendants, along with any other material provided

1 informally for purposes of mediation.

2 11.15 Headings. The descriptive heading of any section or paragraph of this Agreement
3 is inserted for convenience of reference only and does not constitute a part of this Agreement.

4 11.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement
5 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
6 weekend or federal legal holiday, such date or deadline shall be on the first business day
7 thereafter.

8 11.17 Notice. All notices, demands or other communications between the Parties in
9 connection with this Agreement will be by e-mail addressed to Class Counsel and Defense
10 Counsel as reflected in the caption of this Stipulation.

11 11.18 Execution in Counterparts. This Agreement may be executed in one or more
12 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
13 Agreement shall be accepted as an original. All executed counterparts and each of them will be
14 deemed to be one and the same instrument if counsel for the Parties will exchange between
15 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
16 the existence and contents of this Agreement.

17 11.19 Stay of Litigation. The Parties agree that, upon the execution of this Agreement,
18 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
19 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
20 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
21 process.

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23 ///

24 ///

25 ///

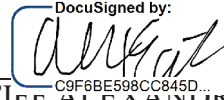
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10/24/2024

Dated: October __, 2024

By: 
PLAINTIFF ALEXANDRIA EATON

Dated: October __, 2024

By: _____
PAGA REPRESENTATIVE
LUCY IM

Dated: October __, 2024

By: _____
PAGA REPRESENTATIVE
ERIKA-JUSTINE TILI

Dated: October __, 2024

GAP, INC.

By: _____

Its: _____

APPROVED OF AS TO FORM:

Dated: October __, 2024

CLAPP & LAUINGER LLP

By: _____
JAMES CLAPP
MARITA LAUINGER
Attorneys for Plaintiff

Dated: October __, 2024

ORRICK, HERRINGTON & SUTCLIFFE
LLP

By: _____
JESSICA R. PERRY
KATIE BRISCOE
MARIAM BICKNELL
SCOTT MORRISON
Attorneys for Defendants

1 Dated: October __, 2024

2

3

10/25/2024

4 Dated: October __, 2024

5

6

7 Dated: October __, 2024

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10

11 Dated: October __, 2024

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13

14

15 **APPROVED OF AS TO FORM:**

16 Dated: October __, 2024

17

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22 Dated: October __, 2024

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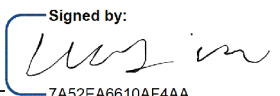
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By: _____
PLAINTIFF ALEXANDRIA EATON

Signed by:

By: _____
7A52EA6610AF4AA...
PAGA REPRESENTATIVE
LUCY IM

By: _____
PAGA REPRESENTATIVE
ERIKA-JUSTINE TILI

GAP, INC.

By: _____

Its: _____

CLAPP & LAUINGER LLP

By: _____
JAMES CLAPP
MARITA LAUINGER
Attorneys for Plaintiff

ORRICK, HERRINGTON & SUTCLIFFE
LLP

By: _____
JESSICA R. PERRY
KATIE BRISCOE
MARIAM BICKNELL
SCOTT MORRISON
Attorneys for Defendants

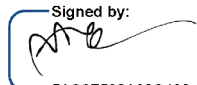
1 Dated: October __, 2024

2
3 By: _____
PLAINTIFF ALEXANDRIA EATON

4 Dated: October __, 2024

5
6 By: _____
PAGA REPRESENTATIVE
LUCY IM

7 10/25/2024
Dated: October __, 2024

8
9 By: _____

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PAGA REPRESENTATIVE
ERIKA-JUSTINE TILI

10
11 Dated: October __, 2024

GAP, INC.

12
13 By: _____

14 Its: _____

15 **APPROVED OF AS TO FORM:**

16 Dated: October __, 2024

17 CLAPP & LAUINGER LLP

18
19 By: _____
JAMES CLAPP
MARITA LAUINGER
Attorneys for Plaintiff

20
21 Dated: October __, 2024

22 ORRICK, HERRINGTON & SUTCLIFFE
23 LLP

24
25 By: _____
JESSICA R. PERRY
KATIE BRISCOE
26 MARIAM BICKNELL
27 SCOTT MORRISON
Attorneys for Defendants

1 Dated: October __, 2024

2

3

By: _____
PLAINTIFF ALEXANDRIA EATON

4 Dated: October __, 2024

5

6

By: _____
PAGA REPRESENTATIVE
LUCY IM

7 Dated: October __, 2024

8

9

By: _____
PAGA REPRESENTATIVE
ERIKA-JUSTINE TILI

10 11/6/2024

11 Dated: October __, 2024

GAP, INC.

12

John Briscoe

13

By: _____

14

Its: EVP, Chief Legal Officer

15 **APPROVED OF AS TO FORM:**

16 Dated: October __, 2024

17

CLAPP & LAUINGER LLP

18

19

By: _____
JAMES CLAPP
MARITA LAUINGER
Attorneys for Plaintiff

20

21 11/6/2024

22 Dated: October __, 2024

23

ORRICK, HERRINGTON & SUTCLIFFE
LLP

24

25

By: *Katie Briscoe*

JESSICA R. PERRY
KATIE BRISCOE
MARIAM BICKNELL
SCOTT MORRISON
Attorneys for Defendants

26

27

28

1 Dated: October __, 2024

2

3

By: _____
PLAINTIFF ALEXANDRIA EATON

4 Dated: October __, 2024

5

6

By: _____
PAGA REPRESENTATIVE
LUCY IM

7 Dated: October __, 2024

8

9

By: _____
PAGA REPRESENTATIVE
ERIKA-JUSTINE TILI

10

11 Dated: October __, 2024

GAP, INC.

12

13

By: _____

14

Its: _____

15 **APPROVED OF AS TO FORM:**

16 Dated: October 25, 2024

17

CLAPP & LAUINGER LLP

18

19

By:  _____
JAMES CLAPP
MARITA LAUINGER
Attorneys for Plaintiff

20

21

22 Dated: October __, 2024

23

ORRICK, HERRINGTON & SUTCLIFFE
LLP

24

25

By: _____
JESSICA R. PERRY
KATIE BRISCOE
MARIAM BICKNELL
SCOTT MORRISON
Attorneys for Defendants

26

27

28

EXHIBIT A

EXHIBIT “A”

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

Alexandria Eaton v. Gap, Inc. and GPS Consumer Direct, Inc., (Eaton I)
Superior Court of the State of California,
County of Alameda, Case No. RG21104093

AND

Alexandria Eaton v. Gap, Inc.
and GPS Consumer Direct, Inc., (Eaton II)
Superior Court of the State of California,
County of Alameda, Case No. 23CV045852

The Superior Court for the State of California authorized this Notice.

READ IT CAREFULLY!

It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

You may be eligible to receive money from one or both of two employee class action lawsuits (“Actions”) against Defendants GPS Consumer Direct, Inc. and Gap, Inc. (“Defendants”) for alleged wage and hour violations called *Eaton I* and *Eaton II*.

Eaton I was filed by Plaintiff Alexandria Eaton (“Plaintiff”) and seeks payment of (1) wages and other relief for the Class of all individuals who were employed by Defendants in California and were required to work remotely or from home at any time during the Class Period which is from March 1, 2020, through July 4, 2024, (“Class Members”), and (2) civil penalties under the California Private Attorney General Act (“PAGA”) for all individuals who were employed by Defendants in California and were required to work remotely or from home at any time during the PAGA Period which is March 12, 2020, through July 4, 2024 (“Aggrieved Employees”).

Eaton II was initiated by Plaintiff Alexandria Eaton and joined by Plaintiffs Erika-Justine Tili and Lucy Im (collectively “Plaintiffs”) and seeks payment of (1) wages and other relief for the Class of all non-exempt employees of Defendants in California whose work time used for purposes of calculating payroll was lower than the work time captured in the timekeeping systems at any point during the Class Period, which is from September 27, 2019, through July 4, 2024, (“Class Members”), and (2) civil penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt employees of Defendants in California whose work time used for purposes of calculating payroll was lower than the work time captured in the timekeeping systems at any point during the PAGA Period, which is September 27, 2022, through July 4, 2024 (“Aggrieved Employees”).

The proposed Settlement covers both *Eaton I* and *Eaton II*, and each case has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendants to fund the PAGA Penalties to pay penalties to the California Labor and Workforce Development Agency (“LWDA”) and to Aggrieved Employees. **You may be eligible for an Individual Class Payment in *Eaton I*, or *Eaton II*, or Both. You may be eligible for a share of the PAGA Penalties in *Eaton I*, or *Eaton II*, or Both.**

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment in *Eaton I* is estimated to be <<\$_____>> (less withholding); and your share of the PAGA Penalties is estimated to be <<\$_____>>. Your Individual Class Payment in *Eaton II* is estimated to be <<\$_____>> (less withholding); and your share of the PAGA Penalties is estimated to be <<\$_____>>.** The actual amount you may receive could be different and will depend on a number of factors. If no amount is stated for either *Eaton I* or *Eaton II*, or for your share of the PAGA Penalties, then according to Defendant’s records you are not eligible for that part of the Settlement because you do not meet the Class definition or the definition of an Aggrieved Employee.

The above estimates are based on Defendants’ records showing that **you worked <<_____>> workweeks during the *Eaton I* Class Period and you worked <<_____>> pay periods during the *Eaton I* PAGA Period; and you worked <<_____>> workweeks during the *Eaton II* Class Period and you worked <<_____>> pay periods during the *Eaton II* PAGA Period.**

If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 5 of this Notice below.

The Court has preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. **READ THIS NOTICE CAREFULLY.** You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and in exchange requires Class Members to give up their rights to assert certain claims against Defendants.

If you worked for either Defendant during the Class Period and/or the PAGA Period for *Eaton I* or *Eaton II*, you have two primary options under the Settlement:

- (1) **Do Nothing.** You do not have to do anything to participate in the proposed Settlement to be eligible for an Individual Class Payment and/or a share of the PAGA Penalties. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims against Defendants as described below in Section 4 below.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise

notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment, however you will preserve your right to personally pursue Class Period wage claims against Defendants. If you are an Aggrieved Employee, you remain eligible for a share of the PAGA Penalties. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Do Not Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and a share of the PAGA Penalties (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Class Claims). Additional information is set forth below.
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Response Deadline is _____.	If you do not want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you request exclusion, you will receive no money from the Class Settlement and you will not be bound by the Class Settlement. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of this Notice for more information about how to opt-out of the proposed Settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. If you are an Aggrieved Employee and exclude yourself, you will still be paid your share of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of whether you submit a request for exclusion.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by the Response Deadline (_____)	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. See Section 8 of this Notice for more information about how to object to the proposed Settlement.
You Can Participate in	The Court’s Final Approval Hearing is scheduled to take place on

the Final Approval Hearing	_____ at _____ [a.m./p.m.], at the Alameda County Superior Court, located at the Oakland Administration Building, 1221 Oak Street, Oakland, CA, 94612, in Department 20 before Judge Karin Schwartz. This hearing may change as explained below in Section 9 of this Notice. You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Notice.
You Can Challenge the Calculation of Your Workweeks / Pay Periods Written Challenges Must be Submitted by the Response Deadline (_____)	The amount of your Individual Class Payment and your share of the PAGA Penalties (if any) depend on how many workweeks you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. For more information, see Section 5 of this Notice.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in the Superior Court of the State of California, in and for the County of Alameda (the “Court”), has been reached between Plaintiff and Defendants and has been preliminarily approved by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the *Eaton I* Class, which is defined as:

All individuals who were employed by Defendants in California and were required to work remotely or from home at any time during the Class Period, which is March 1, 2020, through July 4, 2024.

And/Or

the *Eaton II* Class, which is defined as:

All non-exempt employees of Defendants in California whose work time used for purposes of calculating payroll was lower than the work time captured in the timekeeping systems at any point during the Class Period, which is from September 27, 2019, through July 4, 2024.

You may have been identified as a member of both the *Eaton I* Class and the *Eaton II* Class.

2. What is this class action lawsuit about?

On June 16, 2021, Plaintiff Eaton initiated the *Eaton I* action against Defendants in the Superior Court of the State of California, County of Alameda. Plaintiff now alleges the following claims against Defendants: (1) unreimbursed business expenses; (2) unpaid overtime; (3) non-compliant wage statements; (4) waiting time penalties; (5) unfair business practices; and (6) derivative civil penalties under PAGA. Plaintiff further alleges that Defendants' conduct violated Labor Code §§ 201-204, 221-224, 226, 226.3, 400-410, 510, 558, 1174, 1194, 1198, 2802, Section 8 of the applicable wage order, and Business and Professions Code § 17200, *et seq.* This lawsuit is referred to in this Class Notice as the "Action."

On September 27, 2023, Plaintiff Eaton initiated the *Eaton II* action against Defendants in the Superior Court of the State of California, County of Alameda. Plaintiffs Erika-Justine Tili and Lucy Im later joined Plaintiff Eaton. Plaintiffs now allege the following claims against Defendants: (1) failure to pay wages; (2) waiting time penalties; (3) unfair business practices; and (4) civil penalties under California's Private Attorneys General Act ("PAGA") for violating the Labor Code. Plaintiffs further allege that Defendants' conduct violated Labor Code §§ 201-204, 223, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2699, *et seq.*, and Sections 3, 4, 7, and 11 of the applicable wage order, and Business and Professions Code § 17200, *et seq.* This lawsuit is referred to in this Class Notice as the "Action."

Defendants deny that they have done anything wrong and dispute all the claims in the Action. Specifically, Defendants contend that Plaintiff and the Class Members were, at all times, properly compensated for overtime wages under California law; that Plaintiff and the Class Members were reimbursed all reasonable and necessary business expenses in compliance with California law; that Defendants paid all Class Members any wages allegedly due at the time of their termination; that Defendants complied with California wage statement requirements; that Defendants do not engage in unfair business practices; that Defendants are not liable for any of the penalties sought or that could be sought in the Action; and that this Action cannot be maintained as a class or representative action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firm CLAPP & LAUINGER LLP to serve as Class Counsel.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with the business operations of Defendants, the Parties concluded that it is in their best interests and the interests of the Class to settle the Action now on the terms summarized in this Class Notice. The Settlement was reached after mediation and arm's-length negotiations between the Parties. The Plaintiff and Class Counsel think the settlement is in the best interest of all Class Members.

Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendants, who expressly deny all liability.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “Gross Settlement Amount”) to fund the settlement of the Action, which includes both *Eaton I* and *Eaton II*. The Gross Settlement Amount includes all payments of Individual Class Payments to Class Members, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative and PAGA Representative Service Payments, the Administration Expenses Payment, and the PAGA Penalties for civil penalties under PAGA. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendants. Defendants shall fully fund the Gross Settlement Amount no later than 15 court days after the Effective Date. The “Effective Date” is the date the Judgment is final and no longer subject to appeal. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.

Court Approved Deductions from Gross Settlement Amount. The proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before payments of Individual Class Payments are made to Class Members who do not request exclusion (“Participating Class Members”). At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

- **Administration Expenses Payment.** Payment to the Settlement Administrator, estimated not to exceed \$44,750, for expenses, including expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing settlement checks and tax forms.
- **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.** Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third (1/3) of the Gross Settlement Amount, which is \$2,500,000, and reimbursement of actual litigation costs incurred not to exceed \$20,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis and will request the Court approve the amount of attorneys’ fees and costs at the Final Approval Hearing.
- **Class Representative Service Payment.** Payment to Class Representative Eaton of a Service Award for her service in both *Eaton I* and *Eaton II* in initiating and prosecuting the action on behalf of the Class and the risk she undertook, in an amount not more than \$15,000 subject to Court approval at the Final Approval Hearing. Payment to PAGA Representatives Plaintiffs Tili and Im for their service in *Eaton II* in prosecuting the Action on behalf of the Class and the risks they undertook, in an amount no more than \$5,000 each, subject to Court approval at the Final Approval Hearing.
- **PAGA Penalties.** A payment of \$750,000 relating to Plaintiff’s claim under PAGA, \$562,500 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA”). The remaining \$187,500 will be distributed to the Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$187,500) by the total number of PAGA Period Pay

Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period \.

Calculation of Payments to Class Members. After all of the payments of the court-approved Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, the Class and PAGA Representative Service Payment, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount", shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be approximately \$4,160,250 divided equally between *Eaton I* and *Eaton II*. The Settlement Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount for each *Eaton I* and *Eaton II* by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day. The number of Workweeks will be based on Defendant's records, however, Class Members may challenge the number of Workweeks as explained below.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Twenty percent (20%) of each Participating *Eaton I* Class Member's Individual Class Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. Eighty percent(80%) of each Participating Class Member's Individual Class Payment is in settlement of claims for alleged expense reimbursement, statutory and civil penalties, and interest due to employees (collectively the "Non-Wage Portion").

Fifty percent(50%) of each Participating *Eaton II* Class Member's Individual Class Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. Fifty percent (50%) of each Participating Class Member's Individual Class Payment is in settlement of claims for alleged expense reimbursement, statutory and civil penalties, and interest due to employees (collectively the "Non-Wage Portion").

The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendants' Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or

taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment is conditioned upon the Court entering an order granting final approval of the Settlement and entering Judgment.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you do not cash it by the void date, your check will be automatically cancelled, and the funds represented by such checks to Legal Aid At Work a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384(b) (“Cy Pres Recipient”).

4. What Do I Release Under the Settlement?

Released Class Claims *Eaton I*. As of the Effective Date and upon full finding of the Gross Settlement Amount by Defendant, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative *Eaton I* Complaint, which occurred during the *Eaton I* Class Period, including any and all claims involving any alleged (1) failure to reimburse business expenses; (2) failure to properly calculate the regular rate of pay; (3) failure to issue compliant wage statements; (4) failure to timely pay wages due and owing each pay period and at the time of termination; (5) failure to keep complete and accurate records; (6) unlawful deductions from wages; and (7) unlawful business practices, or alleged violation of Labor Code §§ 201–204, 221–224, 226, 226.3, 400–410, 510, 512, 558, 1174, 1194, 1198, 2802, 2699, *et seq.*, Section 8 of the applicable wage order, and Business and Professions Code § 17200, *et seq.*

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court’s orders in the Actions will apply to you and legally bind you.

Released PAGA Claims *Eaton I*. As of the Effective Date and upon full funding of the Gross Settlement Amount by Defendant, all Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative *Eaton I* Complaint and the *Eaton I* PAGA Notice(s), which occurred

during *Eaton I* PAGA Period, including any and all claims involving any alleged (1) failure to reimburse business expenses; (2) failure to calculate the regular rate of pay; (3) failure to issue compliant wage statements; (4) failure to timely pay wages due and owing each pay period and at the time of termination; (5) failure to keep complete and accurate records; and (6) unlawful deductions from wages, or alleged violation of Labor Code §§ 201–204, 221–224, 226, 226.3, 400–410, 510, 512, 558, 1174, 1194, 1198, 2802, 2699.

Released Class Claims *Eaton II*. As of the Effective Date and upon full finding of the Gross Settlement Amount by Defendant, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative *Eaton II* Complaint, which occurred during the *Eaton II* Class Period, including any and all claims involving any alleged (1) unpaid minimum, straight, and overtime wages, (2) non-compliant meal periods; (2) failure to issue compliant wage statements; (3) failure to timely pay wages due and owing each pay period and at the time of termination; (4) failure to keep complete and accurate records; (5) unlawful deductions from wages; and (6) unlawful business practices, or alleged violation of Labor Code §§ 201–204, 223, 226, 226.7, 510, 512, , 1194, 1194.2, 1197, 1197.1, 1198, 2699, *et seq.*, Section 3, 4, 7, and 11 of the applicable wage order, and Business and Professions Code § 17200, *et seq.*

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court’s orders in the Actions will apply to you and legally bind you.

Released PAGA Claims *Eaton II*. As of the Effective Date and upon full funding of the Gross Settlement Amount by Defendant, all Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative *Eaton II* Complaint and the *Eaton II* PAGA Notice(s), which occurred during *Eaton II* PAGA Period, including any and all claims involving any alleged (1) unlawful rounding of timekeeping practices resulting in (a) unpaid minimum, straight, and overtime wages, and (b) non-compliant meal periods; (2) failure to issue compliant wage statements; (3) failure to timely pay wages due and owing each pay period and at the time of termination; (4) failure to keep complete and accurate records; and (5) unlawful deductions from wages, or alleged violation of Labor Code §§ 201–204, 223, 226, 226.7, 510, 512, 558, , 1194, 1194.2, 1197, 1197.1, 1198, and 2699.

Released Parties. The Released Parties are: Defendants and each of their former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns and subsidiaries.

5. How much will my payment be?

If you are eligible for a payment in *Eaton I*, your payment will be calculated as follows:

Defendants' records reflect that you worked << _____ >> Workweeks during the Class Period (March 1, 2020 – July 4, 2024).

Based on this information, your estimated Individual Class Payment from the Net Settlement Amount is << _____ >>.

[Defendant's records reflect that you worked << _____ >> PAGA Pay Periods during the during the PAGA Period (March 12, 2020 – July 4, 2024). Based on this information your estimated Individual PAGA Payment is << _____ >>.]

If you are eligible for a payment in *Eaton II*, your payment will be calculated as follows:

Defendants' records reflect that you worked << _____ >> Workweeks during the Class Period (March 12, 2020 – July 4, 2024).

Based on this information, your estimated Individual Class Payment from the Net Settlement Amount is << _____ >>.

[Defendant's records reflect that you worked << _____ >> PAGA Pay Periods during the during the PAGA Period (September 27, 2022 – July 4, 2024). Based on this information your estimated Individual PAGA Payment is << _____ >>.]

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than the Response Deadline, which is _____ [forty-five (45) days after the mailing of the Class Notice or an additional 15 days in the case of re-mailing]. The address for the Administrator is _____ . You may also fax the dispute to _____ or email the dispute to _____ by no later than the Response Deadline. Any dispute should include credible written evidence and will be resolved by the Administrator.

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: CPT Group _____ (800) _____.

The Court will hold a Final Approval Hearing on _____ at _____ to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payment to Plaintiff. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately three months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I do not want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Class portion of the Settlement or “opt out.” **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by its terms, which means you will retain the right to sue Defendants for the Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of whether they submit a request for exclusion.

To opt out, you must submit to the Administrator a written, signed, and dated request to opt-out postmarked no later than the Response Deadline which is _____. You may also fax your request to opt out to _____ or email the dispute to _____ by no later than the Response Deadline. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the “*Eaton I*” or the “*Eaton II*” lawsuit. The request to opt-out should state the Class Member’s full name, address, and email address or telephone number. Please include the name and number of the case, which is *Eaton I*, Case No. RG21104093 or *Eaton II*, Case No. 23CV045852. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I Object to the Settlement?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. See Section 10 of this Notice for Information about how to obtain a copy of the proposed Settlement Agreement. A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Attorneys’ Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The Response Deadline for sending written objections to the Administrator is _____** [forty-five (45) days after the date of the Notice or an additional 15 days after the Notice in the case of re-mailing]. You may also fax the objection to _____ or email the objection to _____ by no later than this Response Deadline. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, “*Eaton I*”, Case No. RG21104093, and include your name, current address, email or telephone number, and approximate dates of employment with Defendants and sign the objection. The Administrator’s contact information is as follows:

Administrator:

Name of Company: CPT Group

Email Address: _____

Mailing Address: _____

Telephone Number: _____
Fax Number: _____

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 9 of this Notice (immediately below) for specifics regarding the Final Approval Hearing

The addresses for Parties' counsel are as follows:

CLASS COUNSEL:

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9. Can I Attend the Final Approval Hearing?

The Court will hold a Final Approval Hearing at _____ (Pacific Standard Time) on _____, in Department 20 of the Superior Court of California, County of Alameda, located at the Oakland Administration Building, 1221 Oak Street, Oakland, CA, 94612, before Judge Karin Schwartz. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and

costs to Class Counsel and as service payment to Plaintiff. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

It is possible the Court will reschedule the Final Approval Hearing. Hearing dates are posted on the Internet via the eCourt Public Portal page for the California Superior Court for the County of Alameda (<https://eportal.alameda.courts.ca.gov/?q=Home>) and entering the Case No. RG21104093 or 23CV056852

10. How Can I Get More Information?

You may call the Administrator at _____ or write to the “*Eaton v. Gap Inc.*” Administrator, c/o _____.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court’s website, known as 'eCourt Public Portal,' at <https://eportal.alameda.courts.ca.gov>. After arriving at the website, click the 'Search ' tab at the top of the page, then select the Document Downloads link, enter the case number and click 'Submit.' Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings. Once such location is the Clerk’s Office located at 1225 Fallon St., Oakland, CA 94612. The Case Numbers are RG21104093 (*Eaton I*) and 23CV045852 (*Eaton II*).

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.
- **What if You Fail to Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such event, the Administrator shall pay all unclaimed funds to a Court-approved nonprofit organization consistent with Code of Civil Procedure Section 384(b), and the Parties have selected the non-profit charity, Legal Aid At Work, to be this Cy Pres Recipient, subject to final Court approval.
- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.