

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CASSANDRA NEGRETE, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

WINSUPPLY INC., a Delaware
corporation; ORANGE COUNTY
WINDUSTRIAL CO., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2021-01188066-CU-OE-CXC

(Assigned for all purposes to the Hon. Randall J.
Sherman, Dept. CX105)

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: August 19, 2022
Time: 10:00 a.m.
Dept.: CX105

Reservation Number: 73761897

Complaint Filed: March 9, 2021
FAC Filed: April 13, 2022
Trial Date: None Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff Sandra Negrete ("Plaintiff"). I have personal knowledge of the facts set forth below and if called upon I could and would do so competently.

3. The terms of the settlement provide that Defendants shall pay a gross settlement amount of Two Million Dollars (\$2,000,000.00) which will be distributed to the Class on a non-reversionary basis without the need to submit claim forms.

Plaintiff filed a complaint in the

5. Plaintiff alleges that Defendants failed to provide off-duty meal and rest breaks, failed to pay all regular, minimum, and overtime wages owed, failed to pay all wages owed upon separation of employment, failed to reimburse business expenses, failed to provide accurate itemized wage statements, and engaged in unfair business practices. Plaintiff seeks damages and penalties under the California Labor Code, the California Business & Professions Code, and the PAGA, as well as attorneys' fees and costs.

1 6. Since the filing of Defendants' Answer to Complaint, the Parties conferred regarding
2 possible settlement discussions. The Parties subsequently engaged in informal discovery in order
3 for Plaintiff to assess the claims, as well as the maximum exposure of damages and penalties.
4 Defendants provided Plaintiff's counsel with informal data and information pertaining to the
5 putative class size and number of pay periods, and Defendants' wage statement policies and
6 practices. Defendants also produced a sample of data for the putative class, including time and pay
7 records. This allowed Plaintiff to conduct a damages analysis.

8 **DISCOVERY AND INVESTIGATION CONDUCTED SHOWS THAT THE SETTLEMENT**
9 **IS FAIR, REASONABLE, ADEQUATE AND IN THE BEST INTERESTS OF THE CLASS**

10 7. Plaintiff's class and PAGA claims as pled in the First Amended Complaint are
11 predicated upon the following allegations. With respect to Plaintiff's meal and rest break claims,
12 Plaintiff contends that Defendants routinely denied employees off-duty meal breaks of at least 30
13 minutes for shifts of 5 hours or longer and off-duty rest breaks of 10 minutes for each 3.5 hours
14 worked due to the staffing and other operational needs of the employer. Plaintiff also alleges that
15 Defendants failed to pay premium compensation in lieu of the off-duty meal and rest breaks. With
16 respect to Plaintiff's regular rate claim, Plaintiff contends that Defendants failed to factor non-
17 discretionary remuneration, such as bonuses, into the calculation of the regular rate for purposes of
18 paying minimum and overtime wages, and thus Plaintiff and employees were underpaid said wages.
19 With respect to Plaintiff's wage statement claims, Plaintiff contends that Defendants issued
20 deficient wage statements, as said wage statements do not correctly identify the overtime rate of
21 pay, gross and net wages earned, and inclusive pay period dates. With respect to Plaintiff's business
22 reimbursement claims, Plaintiff contends that Defendants required employees to use their personal
23 cell phones in order to perform their jobs but failed to reimburse them for the cost of said use.
24 Lastly, Plaintiff contends that Defendants failed to pay all wages owed upon separation of
25 employment. As a result of the alleged violations above, Plaintiff seeks damages and penalties
26 under the California Labor Code, the California Business & Professions Code, and the PAGA, as
27 well as attorneys' fees and costs.

28 8. After the Parties conferred regarding possible settlement discussions, they agreed to

1 exchange information informally to evaluate their respective claims and defenses. The Parties
2 subsequently engaged in informal discovery for Plaintiff to assess the claims, as well as the
3 maximum exposure of damages and penalties. Defendants provided Plaintiff's counsel with
4 informal data and information pertaining to the putative class size and number of pay periods, a
5 sampling of time and pay records from different locations where Defendants operated in California,
6 and Defendants' wage and hour policies and practices. Defendants' production of time and pay
7 records allowed Plaintiff to conduct a damages analysis and extrapolate from the sample.
8 Defendant produced a twenty (20%) sampling of time and pay data for the putative class, which
9 included records for approximately 125 employees across California. From this data, Plaintiff was
10 able to investigate the claims asserted and conduct an exposure analysis that informed Plaintiff's
11 position at mediation. Plaintiff was also able to extrapolate from the sampling to support her
12 position with respect to the alleged Labor Code violations for the putative class.

13 9. On February 3, 2022, the Parties engaged in a full-day mediation with mediator
14 Steven Rottman, Esq., and continued settlement discussions thereafter facilitated by Mr. Rottman.
15 After thorough investigation and evaluation of the facts and claims, and as a result of the arm's
16 length negotiations facilitated by Mr. Rottman, the Parties reached the current settlement. Based on
17 my independent investigations and evaluation, I believe that settlement for the consideration and on
18 the terms set forth in the Stipulation is fair, reasonable, and adequate and is in the best interests of
19 the Class in light of all known facts and circumstances and the expenses and risks inherent in
20 litigation.

21 10. At the time of mediation, there were approximately 763 individuals that comprised
22 the putative class, which includes "all current and former hourly-paid, non-exempt employees of
23 Defendants¹ employed in the State of California at any time during the Class Period." *See*
24 Stipulation ¶ 6. The Class Period is defined as "the period from September 12, 2016, to the date
25

26 ¹ The term "Defendants" is defined in the Joint Stipulation of Class Action and PAGA
27 Settlement, page 3, paragraph 11. As explained in the Motion, Defendants contended that each
28 individual entity was locally owned and managed, which Defendants argued would preclude class
certification. Plaintiff, on the other hand, contended that the companies used a centralized payroll
and management system.

the Court signs an order granting preliminary approval of the Settlement or May 1, 2022, whichever is sooner.” *Id.* ¶ 7.

11. From the sampling and information gathered in advance of mediation, I conducted an exposure analysis of Plaintiff’s claims:

12. Meal & Rest Period Claims: Plaintiff alleged she and similarly situated employees were routinely not provided duty-free and/or timely meal/rest periods because Defendants’ scheduling practices did not provide sufficient staffing to permit duty-free breaks. Defendants allege that they maintained compliant meal and rest break policies that would have defeated class certification and placed very little, if not zero value to these class claims. Plaintiff calculated approximately 350,000 shifts where a putative class member would have been entitled to receive a meal or rest period, and determined there to be an alleged violation rate of meal periods of approximately 47% of shifts. From this, Plaintiff estimated approximately 164,500 shifts where a meal period premium should have been paid, which resulted in approximately \$3.27M in unpaid meal period premiums (164,500 shifts x \$19.89 average rate of pay). Plaintiff applied the same violation rate and penalty calculation to the rest period claim, for a total of approximately \$3.27M in rest period premium penalties.

13. Failure to pay all regular, minimum, and overtime wages owed: Plaintiff alleges that Defendants failed to accurately calculate the regular rate of pay by failing to factor in non-discretionary income, which resulted in a failure to pay proper minimum and overtime wages. Plaintiff and the Class also earned additional non-discretionary incentive pay, including without limitation, bonuses, but Defendants did not calculate and/or factor such remuneration into the regular rate of pay for purposes of paying overtime wages. The amount of wages withheld was minimal when compared to the penalties associated with Defendants’ alleged failure to pay all wages due and owing at separation of employment, as detailed below. Based on an analysis of the data performed by a consultant who analyzed the data at Plaintiff’s request, Plaintiff estimated that the amount of back wages owed was approximately \$200,000, which was calculated taking into account the frequency of the alleged underpayments.

14. Waiting time penalties: Plaintiff also alleged that Defendants failed to pay all wages

1 owed upon separation of employment. Plaintiff estimated that the potential exposure on this claim
2 was approximately \$1.17M, which was calculated based on 246 former employees, whose average
3 rate of pay was \$19.89 (246 employees x 8 hours x 30 days x \$19.89 per hour).

4 15. Section 226 Penalties: Plaintiff also alleged that Defendants would be subject to
5 penalties, pursuant to Labor Code § 226, because the wage statements it distributed to employees
6 did not state the pay period start date or provide the applicable overtime rates of pay. Plaintiff
7 estimated the penalties associated with this claim as approximately \$780,000, which was based on
8 8,099 alleged pay periods.

9 16. Section 2802: Plaintiff alleges that employees were required to use their own
10 personal cellular phones to carry out their job duties, but Defendants failed to reimburse them for
11 the costs of their work-related cell phone expenses. Plaintiff calculated the total exposure for this
12 claim as approximately \$200,000, which contemplates a \$10.00 per month reimbursement for use
13 of personal telephones (\$5.00 x 41,000 pay periods).

14 17. With respect to Plaintiff's claim under the PAGA, Plaintiff calculated the maximum
15 potential penalties available in relation to the approximately 18,000 pay periods at issue during the
16 PAGA period. If the Court were to award separate PAGA penalties for each alleged Labor Code
17 violation (aka "stack" penalties), the potentially available PAGA penalties could rise as high as
18 \$4.5M. If, on the other hand, the Court only awarded one penalty per pay period regardless of the
19 number of alleged violations occurring during the pay period, the potentially available PAGA
20 penalties could total approximately \$1.8M. These scenarios do not account for the imposition of
21 the subsequent penalty amount given recent authority indicating this increased penalty may only be
22 available where there is a prior citation for a Labor Code violation. *See Bernstein v. Virgin Am.,*
23 *Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no heightened penalty because the Labor
24 Commissioner nor any court warned the defendant that it was subject to the Labor Code until the
25 court handling the case at issue). Both these scenarios do not account for the possibility that the
26 Court would reduce the PAGA penalties, pursuant to its discretion, which is discussed further
27 below.

28 18. Defendants asserted many arguments that would decrease the potential value of the

1 claims. Despite Plaintiff's theories of liability and allegations, Defendants contended that they
2 complied with the Labor Code. For example, Defendants produced policies showing, among other
3 things, that Defendants prohibited off-the-clock work, provided off-duty meal and rest periods, and
4 made efforts to ensure employees' rights under the Labor Code were not impinged.

5 19. Defendants also would have argued if the case continued that it was not suited for
6 class certification. Defendants operate different wholesalers throughout California, which
7 Defendants contended operate independently from each other. Each location is its own entity.
8 Each has its own separate ownership structure with local owners at each location. Employment
9 related decisions are made locally by each company President/owner. Plaintiff contended, on the
10 other hand, that Defendants operated with a unified payroll system, such that Plaintiff's allegations
11 were applicable to all nonexempt California employees. These risks on class certification are
12 compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal.
13 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently prevailed at trial
14 after eight years of litigation, but the judgment and the certification ruling were reversed by the
15 California Supreme Court after an additional five years of litigation. The case was remanded to
16 superior court where class certification was denied and plaintiffs' subsequent appeal also was
17 denied.

18 20. Defendants also alleged that the Court would not have awarded the full amount of
19 PAGA penalties. *Id.* Pursuant to Labor Code § 2699(f)(2) the Court can decline to award PAGA
20 penalties where "...if, based on the facts and circumstances of the particular case, to do otherwise,
21 would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown
22 in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018),
23 while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum
24 PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law.
25 *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.

26 21. Courts routinely award far less than the statutory maximum amount of civil
27 penalties, even where an underlying violation of the Labor Code is found. In *Magadia v. Wal-Mart*
28 *Assocs., et al.*, while the trial court imposed substantial PAGA penalties upon the defendant, such

1 amount still represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019
2 U.S. Dist. Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019). Moreover, this was only after the
3 plaintiff in *Magadia* had prevailed after trial. Thereafter, the Ninth Circuit reversed the trial court's
4 ruling, which demonstrates the significant risk presented in moving forward with litigation.
5 *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 677 (9th Cir. 2021).

6 22. In the present case, the total amount of Labor Code penalties amounts to
7 approximately \$8.55M without discounting for potentially losing some of the causes of action. The
8 total exposure for PAGA penalties ranges from 1.8M on the low end to \$4.5M on the higher end, if
9 the Court were to "stack" penalties. Thus, the total amount of underlying Labor Code damages
10 along with PAGA penalties would have amounted to between \$10.35M to \$13.5M. *Id.* As such, the
11 gross settlement amount ranges between approximately 19% to 14.8% of the maximum penalty
12 exposure. This is well within the range of reasonableness and therefore, the Court should grant
13 approval of this settlement.

14 23. Plaintiff believes that the Class could prevail at trial for all of the Labor Code
15 violations. However, Plaintiff also believes in the fairness of the settlement that is based on
16 factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the
17 causes of action or theories alleged in the operative Complaint, the possibility of non-certification,
18 and potential for appeals. Moreover, as Defendants adamantly dispute that they should be liable for
19 the full extent of the penalties, there is a possibility that Plaintiff and the Class would be awarded
20 fewer or no penalties at trial.

21 24. After taking into account sharply disputed factual and legal issues involved in this
22 litigation, the risks attending further prosecution, and the substantial benefits to be received
23 pursuant to the compromise and settlement of the litigation, Plaintiff and Class Counsel have
24 concluded that settlement on the terms hereinafter set forth is appropriate and in the best interests of
25 the Parties and that this settlement is fair and reasonable.

26 **SUMMARY OF NEGOTIATIONS AND SETTLEMENT TERMS**

27 25. The Parties negotiated the amount to be paid to the Class for all of the Labor Code
28 violations and PAGA penalties, including the attorneys' fees and costs, Class Representative

Enhancement Payment, and Settlement Administration Costs. The Stipulation provides for a Gross Settlement Amount of Two Million Dollars (\$2,000,000.00). The Stipulation provides that each Participating Class Member will receive a share of the Net Settlement Amount of approximately \$1,135,833.00.

26. This amount will be divided amongst the approximate 763 Class Members. Based on the Net Settlement Amount, on a pure raw average, each Class Member will receive \$1,488.64. Class Members will automatically receive their share of the settlement proceeds and do not need to submit a claim form.

27. The entire settlement amount will be distributed and no remaining amounts, *i.e.*, unclaimed funds, will not revert to Defendants.

28. Plaintiff will be entitled to receive up to \$10,000.00 for her Class Representative Enhancement Payment. Plaintiff met with Class Counsel on various occasions to discuss the case, provided documents and information to Class Counsel, and reviewed the Settlement Agreement.

29. The LWDA will receive \$112,500.00 of the \$150,000.00 PAGA Payment.

30. The Settlement Administrator will be paid up to \$12,500.00 for the administration costs. Notice will be mailed in English and Spanish by the Settlement Administrator. The Settlement Administrator will also provide notice of the final judgment on its website.

31. Plaintiff's attorneys may seek fees up to \$666,667.00 and costs up to \$25,000.00.

32. Both Plaintiff's and Defendants' counsel have a great deal of experience in wage and hour class action litigation. Furthermore, counsel for Plaintiff are an experienced team of lawyers with substantial complex litigation experience. Plaintiff's counsel have been approved as class counsel in other wage/hour class actions that have been granted final approval.

ATTORNEY EXPERIENCE

33. I am one of the primary attorneys on this matter. My qualifications are as follows: I received a full-tuition scholarship, and graduated from Southwestern Law School in 2013, magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I was a Notes and Comments Editor on the Southwestern Law Review. I also received awards for achieving the highest grade in my class in several courses. In 2012, I was a full-time extern, at the United States

1 District Court for the Central District. Immediately after law school, I taught several courses at
2 Southwestern, including Principles of Legal Analysis and Legal Methods. I taught those courses for
3 approximately four years.

4 34. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately
5 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted in
6 a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute. I also
7 regularly litigated cases across the civil litigation spectrum, including employment matters.

8 35. From February 2016, through Fall 2017, I practiced at the international law firm of
9 Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50
10 companies in Multi-District Litigation primarily in the product liability sphere. I also successfully
11 drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary judgment
12 decision regarding trade secret issues, in addition to working in several other practice groups.

13 36. From September 2017, through September 2018, I served as a law clerk to a Judge
14 sitting on the United States District Court, Central District of California. I regularly prepared bench
15 memoranda, on cases involving all types of civil litigation, including regularly working on wage
16 and hour class actions.

17 37. I am currently an associate at the law firm Diversity Law Group, P.C., an
18 employment law firm that has handled numerous wage and hour class and individual actions, on
19 both plaintiff and defense sides. My current practice focuses on employment matters involving both
20 class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior Courts,
21 the Orange County Superior Courts, the San Diego County Superior Courts, and the United States
22 District Courts for the Central, Northern, and Eastern Districts of California. I am currently
23 handling, or have handled, numerous wage and hour class action lawsuits with the firm, including,
24 but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-001906, Stanislaus
25 County Superior Court); *Heredia v. Eddie Bauer LLC* (Case No. 16CV300475, United States
26 District Court, Northern District of California); *Parsons v. Estenson Logistics, LLC* (Case No. 34-
27 2019-00252929, Sacramento County Superior Court); and *Rodas v. Goodyear Tire* (Case No. 21-
28 cv-07526, United States District Court, Central District of California), among many others.

1 38. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of
2 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,
3 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our clients.
4 *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

5 39. I have also assisted the firm in numerous wage and hour class action mediations.

6 40. My co-counsel and I will adequately represent the Class Members in this action.
7 Plaintiff's counsel have and will zealously represent Plaintiff and the Class and pursue this lawsuit
8 to its conclusion.

9 41. I have no conflicts with the Class and will adequately represent the Class.

10 42. Attached hereto as **Exhibit A** is a true and correct copy of the Joint Stipulation of
11 Class Action and PAGA Settlement ("Stipulation" or "Settlement Agreement"). A copy of the
12 proposed notice to be sent to Class Members is attached to the Stipulation as Exhibit 1.

13 43. On May 17th, 2022, I caused the Motion and Settlement Agreement to be uploaded
14 to the LWDA's website. Attached hereto as **Exhibit B** is the confirmation of submission.

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

17 Executed on this 17th day of May 2022, at Los Angeles, California.

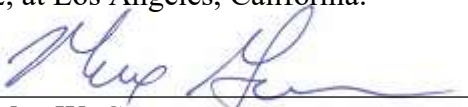
18 
19 _____
20 Max W. Gavron

EXHIBIT A

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and the Class

LEWIS BRISBOIS BISGAARD & SMITH LLP
RACHEL J. LEE, SB# 225263
E-Mail: Rachel.Lee@lewisbrisbois.com
633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: 213.250.1800
Facsimile: 213.250.7900

Attorneys for Defendants WINSUPPLY INC. and ORANGE COUNTY WINDUSTRIAL CO.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CASSANDRA NEGRETE, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

WINSUPPLY INC., a Delaware corporation;
ORANGE COUNTY WINDUSTRIAL CO.,
a Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 30-2021-01188066-CU-OE-CXC

[ASSIGNED FOR ALL PURPOSES TO:
HON. RANDALL J. SHERMAN
DEPARTMENT CX105]

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

Action Filed: March 9, 2021
FSC Date: None Set
Trial Date: None Set

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiff Cassandra Negrete, individually and on behalf of the Settlement Class and Defendants Winsupply Inc. and Orange County Windustrial Co.

DEFINITIONS

1. "Agreement" or "Settlement Agreement" means this Joint Stipulation of Class Action and PAGA Settlement.

2. "Action" means the court action, entitled "*Negrete v. Winsupply Inc., et al* (Case No. 30-2021-01188066-CU-OE-CXC), pending before the Orange County Superior Court.

3. "Class Counsel" means Diversity Law Group, P.C.

4. "Class Counsel's Fees and Costs" means attorneys' fees for Class Counsel's litigation and resolution of this Action and their expenses and costs incurred in connection with the Action, which shall be paid from the Gross Settlement Amount. Class Counsel will request attorneys' fees not to exceed Sixty Hundred Sixty-Six Thousand Six Hundred and Sixty-Seven Dollars (\$666,667.00), which is Thirty-Three and One Third Percent (33 1/3%) of the Gross Settlement Amount, and the reimbursement costs and expenses associated with the litigation and settlement of the Action, not to exceed Twenty-Five Thousand Dollars (\$25,000.00), subject to the Court's approval. Defendants have agreed not to oppose Class Counsel's request for fees and reimbursement of costs and expenses in the amount set forth above.

5. "Class List" means a complete list of all Class Members that Defendants will diligently and in good faith compile from their records and provide to the Settlement Administrator within fifteen (15) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include Class Member's: (1) full name; (2) last known home address; (3) last known telephone number (if available); (4) social security number; and (5) total Pay Periods worked or information sufficient to allow the Settlement Administrator to calculate individual Class Member Pay Periods. Because Social Security numbers are included in the list, the Settlement Administrator

1 will maintain the list in confidence, and shall only access and use the list to administer the
2 settlement in conformity with the Court's orders.

3 6. "Class" or "Class Members" means all current and former hourly-paid, non-
4 exempt employees of Defendants employed in the State of California at any time during the Class
5 Period.

6 7. "Class Period" means the period from September 12, 2016, to the date the Court
7 signs an order granting preliminary approval of the Settlement or May 1, 2022, whichever is
8 sooner.

9 8. "Class Representative" or "Named Plaintiff" means Plaintiff Cassandra Negrete
10 in her capacity as the representative of the Participating Class Members.

11 9. "Class Representative Enhancement Payment" means the amount that the Court
12 authorizes to be paid to Named Plaintiff, in addition to her Individual Settlement Payment, in
13 exchange for her general release of all claims pursuant to California Civil Code section 1542 and
14 in recognition of the efforts and risks she has taken in assisting with the prosecution of the Action.
15 Named Plaintiff will request, and Defendants will not oppose, an Enhancement Payment of up to
16 Ten Thousand Dollars (\$10,000.00). Named Plaintiff will be issued an IRS Form 1099 in
17 connection with her Enhancement Payment.

18 10. "Court" means the Superior Court of the State of California for the County of
19 Orange.

20 11. "Defendants" means Winsupply Inc. and Orange County Windustrial Co. and
21 specifically includes the following "Identified but Unnamed Defendants": Winsupply Van Nuys
22 CA Co., Winsupply Vista CA Co., Winsupply Kearny Mesa CA Co., Inland Empire Windustrial
23 Co, Winsupply Desert Cities CA Co., Winsupply Bakersfield CA Co., Winsupply Paso Robles
24 CA Co., Riverside Winnelson Co., Winsupply San Diego CA Co., Temecula Winnelson Co.,
25 Ontario Winnelson Co., Winsupply Hesperia CA Co., Santa Fe Springs Winwater Works Co.,
26 San Diego Winsupply Co., Fremont Windustrial Co., Orange County Winwater Works Co., Santa
27 Clara Windustrial Co., Winsupply S San Diego CA Co., Winsupply Monterey County CA Co.,
28 Winsupply of Silicon Valley Co., Stockton Windustrial Co., Sacramento Windustrial Co.,

1 Rocklin Windustrial Co., Woodland Windustrial Co., Modesto Windustrial Co., Winsupply
2 Fresno County CA Co., Pittsburg Winsupply Co., Escondido Winsupply Co., Winsupply Lake
3 Elsinore CA Co., Wyatt Irrigation Co.

4 12. "Effective Date" means: the later of: (a) if no timely objections are filed or if all
5 objections are withdrawn, the date upon which the Court enters the Final Approval Order and
6 Final Judgment; (b) if an objection is filed and not withdrawn, the date for filing an appeal and
7 no such appeal being filed; or (c) if any timely appeals are filed, the date of the resolution (or
8 withdrawal) of any such appeal in a way that does not alter the terms of the settlement.

9 13. "Final Approval Order and Final Judgment" means the Court entering an order
10 granting final approval of the Settlement Agreement and judgment based thereon which
11 includes the following provisions: (a) confirming certification of the Class for settlement
12 purposes only; (b) finding that the dissemination of the Class Notice in the form and manner
13 ordered by the Court was accomplished as directed and met the requirements of due process; (c)
14 finally approving the Settlement Agreement and the Settlement as fair, reasonable and adequate,
15 and directing consummation of the Settlement in accordance with its terms and provisions; (d)
16 directing the Parties to implement the terms of the Settlement Agreement; (e) releasing and
17 discharging the Released Parties from any and all liability with respect to the Released Claims
18 as provided herein; (f) resolving and settling all the Released Claims by the Class
19 Representative and all Participating Class Members, as herein provided; (g) awarding reasonable
20 attorneys' fees and litigation costs to Class Counsel as determined by the Court; (h) awarding a
21 Class Representative Enhancement Payment to Class Representative as determined by the
22 Court; (i) awarding Settlement Administration costs to the Settlement Administrator as
23 determined by the Court; (j) approving the allocation of PAGA Penalties to the LWDA; (k)
24 entering final judgment on the operative Complaint; and (l) preserving continuing and exclusive
25 jurisdiction over all matters related to the administration and consummation of the terms of this
26 Settlement and enforcement of the Judgment.

1 14. "Gross Settlement Amount" means the sum of Two Million Dollars and Zero
2 Cents (\$2,000,000.00). The Gross Settlement Amount is non-reversionary; no portion of the
3 Gross Settlement Amount will return to Defendants. The Gross Settlement Amount plus any
4 applicable employer-side payroll taxes shall be the maximum amount Defendants are required to
5 pay under the Settlement.

6 15. "Individual Settlement Payment" means the amount payable from the Net
7 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
8 eligible to receive from the employee portion of the PAGA Payment. Individual Settlement
9 Payments shall be paid by a Settlement Check made payable to Participating Class Members
10 and/or PAGA Members.

11 16. "Net Settlement Amount" means the funds available for payments to the Class,
12 which shall be amount remaining after the following amounts are deducted from the Gross
13 Settlement Amount: (1) Class Counsel's fees, (2) Class Counsel's costs, (3) Settlement
14 Administration Costs, (4) Class Representative Enhancement Payment to Plaintiff; and (5) the
15 PAGA Payment to the LWDA and PAGA Members.

16 17. "Notice" means the Notice of Class Action Settlement in a form substantially
17 similar to the form attached hereto as Exhibit A, that will be mailed to Class Members' last known
18 addresses and which will provide Class Members with information regarding the Action and
19 information regarding the settlement of the Action.

20 18. "PAGA" means the California Labor Code Private Attorneys General Act of 2004
21 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA").

22 19. "PAGA Payment" means the amount that the Parties have agreed to allocate in
23 order to settle claims arising under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§
24 2698, *et seq.*) ("PAGA"). The Parties have agreed that One Hundred Fifty Thousand Dollars
25 (\$150,000.00) of the Gross Settlement Amount will be allocated to the resolution of Plaintiff's
26 PAGA Claim. Seventy Five Percent (75%) of this amount (\$112,500.00) will be paid to the
27 California Labor and Workforce Development Agency in accordance with Labor Code §§ 2698
28 *et seq.* Twenty Five Percent (25%) of this amount (\$37,500.00), will be distributed to PAGA

1 Members on a *pro rata* basis based on the total number of Pay Periods (full or partial) worked by
2 each PAGA Member during the PAGA Period. PAGA Members will receive payment from the
3 employee portion of the PAGA Payment regardless of their decision to participate in the class
4 action if the PAGA Payment is approved by the Court.

5 20. "PAGA Period" means the period from September 7, 2019, and ending on the date
6 the Court signs an order granting preliminary approval of the Settlement, or May 1, 2022,
7 whichever is sooner.

8 21. "PAGA Members" means all current and former hourly paid, non-exempt
9 employees of Defendants employed in the State of California at any time during the PAGA
10 Period.

11 22. "PAGA Release" means the following release: Upon remittance of the Gross
12 Settlement Amount by Defendants to the Settlement Administrator and entry of judgment by the
13 Court, PAGA Members and each of them, for themselves and their past, present and future
14 representatives, attorneys, agents, heirs, executors, administrators, and assigns, and all those
15 claiming by, through or under them, will fully and finally release and discharge Defendants and
16 their past, present and/or future, direct and/or indirect, stockholders, shareholders, members,
17 directors, managers, officers, employees, agents, representatives, attorneys, insurers, reinsurers,
18 partners, investors, lenders, administrators, parent companies, subsidiaries, affiliates, divisions,
19 predecessors, successors, assigns, and joint venturers, and related companies from all claims,
20 rights, demands, liabilities and causes of action for civil penalties that are alleged, or reasonably
21 could have been alleged based on the facts and claims asserted in the PAGA letter, dated March
22 3, 2021, under the PAGA, Cal. Lab. Code §§ 2698, et seq., which are premised on alleged
23 violations of the California Labor Code for: (i) failure to pay all regular wages, minimum wages
24 and overtime wages due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii)
25 failure to provide rest periods or compensation in lieu thereof; (iv) failure to provide complete,
26 accurate wage statements or disclosures; (v) failure to pay wages timely at time of termination or
27 resignation (Labor Code 203); and (vi) for civil penalties that could have been alleged based on
28 the facts and claims asserted in the PAGA letter, dated March 3, 2021, including but not limited

1 to Labor Code sections 201-203, 226, 226.7, 510, 512, 558, 1194, 2802 and 2699, and the relevant
2 Wage Orders issued by the Industrial Welfare Commission, any and all claims for attorneys' fees
3 and costs, which are premised a violation of the PAGA based on the factual allegations of the
4 operative complaint.

5 23. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean
6 either Plaintiff or Defendants, individually.

7 24. "Participating Class Members" or "Settlement Class Members" means all Class
8 Members who do not submit valid and timely Requests for Exclusion, and their present and future
9 representatives, attorneys, agents, heirs, executors, administrators, and assigns and all those
10 claiming by, through, or under them, and each of them.

11 25. "Plaintiff" means Cassandra Negrete.

12 26. "Preliminary Approval" means the Court order granting preliminary approval of
13 the Settlement Agreement.

14 27. "Objection" means a Class Member's valid and timely written objection to the
15 Settlement Agreement. For an Objection to be valid, it must include: (a) the objector's full name,
16 address, telephone number, last four digits of the employees' social security number or employee
17 ID number and (b) a written statement of all grounds for the objection accompanied by legal
18 support, if any, for such objection. To be effective, the Objection must be post-marked by the
19 Response Deadline and received by the Settlement Administrator.

20 28. "Released Claims" means claims, rights, demands, liabilities and causes of
21 actions that are alleged or reasonably could have been alleged based on the facts and claims
22 asserted in the operative complaint in the Action including the following claims: (i) failure to
23 pay all regular wages, minimum wages and overtime wages due; (ii) failure to provide meal
24 periods or compensation in lieu thereof; (iii) failure to provide rest periods or compensation in
25 lieu thereof; (iv) failure to provide complete, accurate wage statements or disclosures; (v) failure
26 to pay wages timely at time of termination or resignation (Labor Code 203); (vi) unfair business
27 practices that could have been premised on the claims, causes of action or legal theories of relief
28 described above or any of the claims, causes of action or legal theories of relief pleaded in the

operative complaint; (vii) Failure to Reimburse for Business Expenses under Labor Code Section 2802; (viii) all claims under the California Labor Code Private Attorneys General Act of 2004 (Labor Code 2698, et. seq.) or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief based on the facts alleged in the operative complaint including but not limited to Labor Code sections 201-203, 218.5, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197.1, 2802, and 2699, B&P Code 17200, et. seq., Civil Code 1021.5, claims regarding bonuses and commissions, as they relate to the factual allegations in the operative complaint, and the relevant Wage Orders issued by the Industrial Welfare Commission, any and all claims for attorneys' fees and costs, and/or California Code of Civil Procedure section 1021, which are premised on the factual allegations of the operative complaint. This release shall apply to claims arising during the Class Period. Plaintiff will file an Amended Complaint to reflect the Class Period herein and all claims referenced in the release which were not previously included.

29. "Released Parties" means Defendants Winsupply Inc. and Orange County Windustrial Co., and their past, present and/or future, direct and/or indirect, stockholders, shareholders, members, directors, managers, officers, employees, agents, representatives, attorneys, insurers, reinsurers, partners, investors, lenders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, and related companies (and specifically including the following "Identified but Unnamed Defendants": Winsupply Van Nuys CA Co., Winsupply Vista CA Co., Winsupply Kearny Mesa CA Co., Inland Empire Windustrial Co, Winsupply Desert Cities CA Co., Winsupply Bakersfield CA Co., Winsupply Paso Robles CA Co., Riverside Winnelson Co., Winsupply San Diego CA Co., Temecula Winnelson Co., Ontario Winnelson Co., Winsupply Hesperia CA Co., Santa Fe Springs Winwater Works Co., San Diego Winsupply Co., Fremont Windustrial Co., Orange County Winwater Works Co., Santa Clara Windustrial Co., Winsupply S San Diego CA Co., Winsupply Monterey County CA Co., Winsupply of Silicon Valley Co., Stockton Windustrial Co., Sacramento Windustrial Co., Rocklin Windustrial Co., Woodland Windustrial Co., Modesto

1 Windustrial Co., Winsupply Fresno County CA Co., Pittsburg Winsupply Co., Escondido
2 Winsupply Co., Winsupply Lake Elsinore CA Co., Wyatt Irrigation Co.).

3 30. "Request for Exclusion" means a valid and timely written statement submitted by
4 a Class Member requesting to be excluded from the Action. To be effective, the Request for
5 Exclusion must contain (a) the Class Member's name, address, telephone number, and the last
6 four digits of the Class Member's Social Security number and/or the Employee ID number and
7 (b) a clear statement requesting to be excluded from the settlement of the class claims similar to
8 the following: "I wish to exclude myself from the class settlement reached in the matter of *Negrete*
9 *v. Winsupply*. I understand that by excluding myself, I will not receive money from the settlement
10 of my individual claims." To be effective, the Request for Exclusion must be post-marked by the
11 Response Deadline and received by the Settlement Administrator. The Request for Exclusion
12 shall not exclude any PAGA Member from the PAGA Release.

13 31. "Response Deadline" means the date forty-five (45) days after the Settlement
14 Administrator mails Notice to Class Members and the last date on which Class Members may
15 submit Requests for Exclusion, written objections to the Settlement, or Pay Period Disputes. In
16 the event the 45th day falls on a Sunday or Federal holiday, the Response Deadline will be
17 extended to the next day on which the U.S. Postal Service is open. The Response Deadline for
18 Requests for Exclusion or objections will be extended fifteen (15) calendar days for any Class
19 Member who is re-mailed a Notice by the Settlement Administrator, unless the 15th day falls on
20 a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next
21 day on which the U.S. Postal Service is open. The Response Deadline may also be extended by
22 express agreement between Class Counsel and Defendants' Counsel. Under no circumstances,
23 however, will the Settlement Administrator have the authority to unilaterally extend the deadline
24 for Class Members to submit a Request for Exclusion or objection to the settlement.

25 32. "Settlement" means the disposition of the Action pursuant to this Agreement.

26 33. "Settlement Administrator" means Phoenix Class Action Settlement
27 Administrators. The Parties each represent that they do not have any financial interest in the
28

1 Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
2 could create a conflict of interest.

3 34. "Settlement Administration Costs" mean the costs payable from the Gross
4 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
5 but not limited to, printing, distributing, and tracking documents for this Settlement,
6 calculating/confirming the class member Pay Periods from the information contained in the Class
7 List, calculating each Participating Class Member's Individual Settlement Payment, tax reporting,
8 distributing the Gross Settlement Amount, providing necessary reports and declarations, and other
9 duties and responsibilities set forth herein to process this Settlement, and as requested by the
10 Parties. Settlement Administration Costs shall not exceed Twelve Thousand Five Hundred
11 Dollars (\$12,500.00).

12 35. "Pay Period" shall mean any bi-weekly Pay Period in which a Class Member or
13 PAGA Member worked for Defendants in the State of California.

14 **TERMS OF AGREEMENT**

15 36. Settlement Consideration. Defendants shall fund the Gross Settlement Amount
16 and all applicable employer-side payroll taxes following Final Approval Order and Final
17 Judgment entered by the Court and the occurrence of the Effective Date. The following will be
18 paid out of the Gross Settlement Amount: the sum of the Individual Settlement Payments, the
19 Class Representative Enhancement Payment, Class Counsel's Fees and Costs, the PAGA
20 Payment, and the Settlement Administration Costs, as specified in this Agreement. Except for any
21 employer-side taxes due on the Individual Settlement Payments, or as a result of an increase in
22 the number of Pay Periods as set forth below in Paragraph 37, Defendants shall not be required
23 to pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-
24 reversionary; no portion of the Gross Settlement Amount will revert to Defendants.

25 37. Potential Increase to the Gross Settlement Amount/Limitation of Class Period.
26 Defendants have represented there are approximately 41,000 Pay Periods during the Class Period.
27 Should the actual number of Pay Periods increase by more than ten percent (10%) (i.e. by more
28 than 4,100 Pay Periods) for the Class Period, Defendants would agree to increase the Gross

1 Settlement Amount on a *pro-rata* basis equal to the percentage increase in the number of Pay
2 Periods worked by the Class Members above 10% (e.g., if there was an 11% increase in the
3 number of Pay Periods during the Class Period, Defendants would agree to increase the Gross
4 Settlement Amount by 1%).

5 38. Funding of the Gross Settlement Amount. Within fourteen (14) calendar days of
6 the Effective Date of the Settlement, presuming the Settlement Administrator provides all
7 necessary funding information, the Treasurer of each of Defendant Orange County Windustrial
8 Co. and the identified but unnamed defendants will cause to be deposited the Gross Settlement
9 Amount and all applicable employer-side payroll taxes into a Qualified Settlement Fund ("QSF")
10 to be established by the Settlement Administrator. The Settlement Administrator shall timely
11 provide Defendants with a list of information/documents needed in order to calculate employer-
12 side payroll taxes. Defendants shall provide all information necessary for the Settlement
13 Administrator to calculate necessary payroll taxes including its official name, Eight digit state
14 unemployment insurance tax ID number, and other information requested by the Settlement
15 Administrator, no later than ten (10) calendar days of the Effective Date.

16 39. Distribution of the Gross Settlement Amount. Within fourteen (14) calendar days
17 of the funding of the Settlement, the Settlement Administrator will issue payments for: (a)
18 Individual Settlement Payments; (b) the PAGA Payment to the Labor and Workforce
19 Development Agency; (c) the Class Representative Enhancement Payment; (d) Class Counsel's
20 Fees and Costs and (e) Settlement Administration Costs.

21 40. Attorneys' Fees and Costs. Defendants agree not to oppose any application or
22 motion by Class Counsel for attorneys' fees of not more than Sixty Hundred Sixty-Six Thousand
23 Six Hundred and Sixty-Seven Dollars (\$666,667.00), plus the reimbursement of costs and
24 expenses associated with the litigation and settlement of the Action, in an amount not to exceed
25 Twenty-Five Thousand Dollars (\$25,000.00), both of which will be paid from the Gross
26 Settlement Amount. Any portion of the requested fees or costs that is not awarded to the Class
27 Counsel shall be reallocated to the Net Settlement Amount and distributed to Participating Class
28

Members as provided in this Agreement. Under no circumstances shall Class Counsel receive more than \$691,667.00 for their Fees and Costs.

41. Class Representative Enhancement Payment. Defendants agree not to oppose or object to any application or motion by Plaintiff for a Class Representative Enhancement Payment of Ten Thousand Dollars (\$10,000.00). The Class Representative Enhancement Payment is in exchange for her general release of all claims pursuant to California Civil Code section 1542 and in recognition of her time, effort and risk in bringing and prosecuting the Action. Any portion of the requested Class Representative Enhancement Payments that is not awarded to Plaintiff shall be reallocated to the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

42. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Amount as further set forth in this Agreement. Settlement Administration Costs shall not exceed Twelve Thousand Five Hundred Dollars (\$12,500.00).

43. PAGA Payment. One Hundred Fifty Thousand Dollars (\$150,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment, or One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00), to the California Labor and Workforce Development Agency ("LWDA"). Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00), will be distributed to PAGA Members on a *pro rata* basis based on the total number of Pay Periods worked by each PAGA Member during the PAGA Period. PAGA Members shall receive their portion of the PAGA Payment and release the claims as set forth herein under the PAGA Release regardless of their decision to opt-out of the class settlement.

44. Net Settlement Amount for Payment of Class Claims. The Net Settlement Amount will be used to satisfy the class portion of Participating Class Members Individual Settlement Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount is as follows:

1	Gross Settlement Amount	\$	2,000,000.00
2	Enhancement Payment:	\$	10,000.00
3	Class Counsel's Fees:	\$	666,667.00
4	Class Counsel's Costs:	\$	25,000.00
5	PAGA Payment	\$	150,000.00
6	Settlement Administration Costs:	\$	12,500.00
7	Estimated Net Settlement Amount	\$	\$1,135,833.00

8

9 45. Individual Settlement Payment Calculations. Individual Settlement Payments will

10 be paid from the Net Settlement Amount and the 25% portion of the PAGA Payment allocated

11 for PAGA Members and shall be paid pursuant to the formulas set forth herein:

12 a) Calculation of Class Portion of Individual Settlement Payments.

13 The Settlement Administrator will calculate the total Pay Periods for all Participating Class

14 Members by adding the number of Pay Periods worked by each Participating Class Member

15 during the Class Period. The respective Pay Periods for each Participating Class Member will be

16 divided by the total Pay Periods for all Participating Class Members, resulting in the Payment

17 Ratio for each Participating Class Member. Each Participating Class Member's Payment Ratio

18 will then be multiplied by the Net Settlement Amount to calculate each Settlement Class

19 Member's estimated share of the Net Settlement Amount.

20 b) Calculation of PAGA Portion of Individual Settlement Payments.

21 The Settlement Administrator will calculate the total Pay Periods for all PAGA Members by

22 adding the number of Pay Periods worked by each PAGA Member during the PAGA Period. The

23 respective Pay Periods for each PAGA Member will be divided by the total Pay Periods for all

24 PAGA Members, resulting in the Payment Ratio for each PAGA Member. Each PAGA Member's

25 Payment Ratio will then be multiplied by the employee portion of the PAGA Payment to calculate

26 each PAGA Member's estimated share of the PAGA Payment. PAGA Members shall receive this

27 portion of their Individual Settlement Payment regardless of whether they opt out of the

28 participation regarding the class claims.

c) Allocation of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: thirty percent (30%) of each Individual Settlement Payment will be allocated as wages, twenty percent (20%) shall be allocated as interest, and fifty percent (50%) shall be allocated as penalties. The portion of the Individual Settlement Payment allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator.

46. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans. Payment of wages shall not extend or alter Participating Class Members' period of employment for any purpose.

47. Settlement Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Settlement Administrator will provide the following services:

- a) Establish and maintain a Qualified Settlement Fund.
- b) Calculate the Individual Settlement Payment each Participating Class Member is eligible to receive and the portion of the PAGA Payment each PAGA Member shall receive.
- c) Translate the Notice to Spanish.
- d) Print and mail the Notice.
- e) Conduct additional address searches for mailed Notices that are returned as undeliverable.

f) Process Requests for Exclusion, field inquiries from Class Members.

g) Print and issue and issue Settlement Payment Checks, prepare IRS W2 and 1099 Tax Forms and any other filings required by any governmental taxing authority.

h) Provide declarations and/or other information to this Court as requested by the Parties and/or the Court.

i) Provide weekly status reports to counsel for the Parties.

j) Post a notice of final judgment online at Settlement Administrator's website.

48. Delivery of the Class List. Within Fifteen (15) calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator.

49. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class List from Defendants, the Settlement Administrator will mail the Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

50. Confirmation of Contact Information in the Class List. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved and will then perform a single re-mailing. If any notice sent to a Class Member by the Settlement Administrator is returned as undeliverable to a current employee, then Defendants shall make all reasonable efforts to obtain the current address from the Class Member and provide the same within seven (7) calendar days of notice from the Settlement Administrator. Those Class Members who receive a re-mailed Notice,

whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a Request for Exclusion, or an objection to the Settlement.

51. Notice. All Class Members will be mailed a Notice. Each Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of Pay Periods each respective Class Member worked for Defendants during the Settlement Class Period; (e) each Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class Period; (g) the deadlines by which the Class Member must postmark Requests for Exclusion, Objections to the Settlement, or Pay Period Disputes; (h) the claims to be released, as set forth herein; and (j) the date for the final approval hearing.

52. Disputed Information on Notice. Class Members will have an opportunity to dispute the information provided in their Notice. To the extent Class Members dispute the number of Pay Periods with which they have been credited or the amount of their Individual Settlement Payment, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence to the contrary by the Response Deadline, the Parties will evaluate the evidence submitted by the Class Member and the Parties will make the final decision as to the number of eligible Pay Periods that should be applied and/or the Individual Settlement Payment to which the Class Member may be entitled. If the Parties do not agree, the dispute will be submitted to the Court.

53. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the Action must sign and postmark a written Request for Exclusion to the Settlement Administrator by the Response Deadline. The Request for Exclusion must include (a) the Class Member's name, address, telephone number, and the last four digits of the Class Member's Social Security number and/or the Employee ID number and (b) a clear statement requesting to be excluded from the settlement of the class claims similar to the following: "I wish to exclude myself from the class settlement reached in the matter of *Negrete v. Winsupply*. I understand that by excluding myself,

1 I will not receive money from the settlement of my individual claims.” The date of the postmark
2 on the return mailing envelope receipt confirmation will be the exclusive means to determine
3 whether a Request for Exclusion has been timely submitted. All Requests for Exclusion will be
4 submitted to the Settlement Administrator, who will certify jointly to Class Counsel and
5 Defendants’ Counsel the Requests for Exclusion that were timely submitted. All Class Members
6 who do not request exclusion from the Action will be bound by all terms of the Settlement
7 Agreement if the Settlement is granted final approval by the Court. The Request for Exclusion
8 shall not exclude any PAGA Member from the PAGA Release.

9 54. Defendants’ Right to Rescind. If more than five percent (5%) of the Class
10 Members elect not to participate in the Settlement, Defendants may, at their election, rescind the
11 Settlement Agreement and all actions taken in furtherance of it will be thereby null and void.
12 Defendants must meet and confer with Class Counsel prior to exercising this right and must make
13 clear their intent to rescind the Agreement within fourteen (14) calendar days after the expiration
14 of the Opt Out Deadline. If Defendants exercise their right to rescind the Agreement, Defendants
15 shall be responsible for all Settlement Administration Costs incurred to the date of rescission.

16 55. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
17 Member who does not affirmatively opt-out of the Settlement by submitting a timely and valid
18 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
19 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
20 Settlement. Class Members who opt-out of the Settlement shall not be bound by such Judgment
21 or release. The names of Class Members who have opted-out of the settlement shall be disclosed
22 to the Counsel for both Plaintiff and Defendants and noted in the proposed Judgment submitted
23 to the Court.

24 56. Objection Procedures. To object to the Settlement, a Participating Class Member
25 must postmark a valid Objection to the Settlement Administrator on or before the Response
26 Deadline. The Objection must be signed by the Participating Class Member and contain all
27 information required by this Settlement Agreement including the employees full name, address,
28 telephone number, the last four digits of their social security number and/or Employee ID number,

1 and the specific reason including any legal grounds for the Participating Class Members objection.
2 The postmark date will be deemed the exclusive means for determining that the Notice of
3 Objection is timely. Participating Class Members who fail to object in the manner specified above
4 will be foreclosed from making a written objection, but shall still have a right to appear at the
5 Final Approval Hearing in order to have their objections heard by the Court. At no time will any
6 of the Parties or their counsel seek to solicit or otherwise encourage Participating Class Members
7 to submit written objections to the Settlement or appeal from the Order and Judgment. Class
8 Counsel will not represent any Class Members with respect to any objections to this Settlement.

9 57. Certification Reports Regarding Individual Settlement Payment Calculations. The
10 Settlement Administrator will provide Defendants' Counsel and Class Counsel a weekly report
11 which certifies: (a) the number of Class Members who have submitted valid Requests for
12 Exclusion; (b) the number of Class Members who have submitted valid Objections; (c) the
13 number of Notices returned and re-mailed; and (d) whether any Class Member has submitted a
14 challenge to any information contained in the Notice. Additionally, the Settlement Administrator
15 will provide to counsel for both Parties any updated reports regarding the administration of the
16 Settlement Agreement as needed or requested.

17 58. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator
18 to Participating Class Members and PAGA Members will be negotiable for at least one hundred
19 eighty (180) calendar days. If a Participating Class Member or PAGA Member does not cash his
20 or her Settlement Check or PAGA payment check within 180 days, the uncashed funds, subject
21 to Court approval, shall be distributed to the Controller of the State of California to be held
22 pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of
23 those Participating Class Members and PAGA Members who did not cash their checks until such
24 time that they claim their property. The Parties agree that this disposition results in no "unpaid
25 residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will
26 be paid out to Participating Class Members and PAGA Members, whether or not they all cash
27 their Settlement Checks or PAGA payment checks. Therefore, Defendants will not be required to
28 pay any interest on such amounts. The Individual Settlement Payments provided to Participating

1 Class Members and to PAGA Members shall prominently state the expiration date or a statement
2 that the Settlement Check will expire in one hundred eighty (180) days, or alternatively, such a
3 statement may be made in a letter accompanying the Individual Settlement Payment. Expired
4 Individual Settlement Payments will not be reissued, except for good cause and as mutually
5 agreed by the Parties in writing. The parties agree no unclaimed funds will result from the
6 settlement.

7 59. Administration of Taxes by the Settlement Administrator. The Settlement
8 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
9 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
10 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
11 all payroll taxes and penalties to the appropriate government authorities.

12 60. Tax Liability. Defendants make no representation as to the tax treatment or legal
13 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
14 not relying on any statement, representation, or calculation by Defendants or by the Settlement
15 Administrator in this regard. Plaintiff and Participating Class Members understand and agree that
16 they will be solely responsible for the payment of any taxes and penalties assessed on the
17 payments described herein. Defendants' share of any employer payroll taxes, including
18 Defendants' FICA and FUTA contributions, shall be paid separate and apart from the Gross
19 Settlement Amount.

20 61. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this
21 section, the "acknowledging party" and each Party to this Agreement other than the
22 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this
23 Agreement, and no written communication or disclosure between or among the Parties or their
24 attorneys and other advisers, is or was intended to be, nor shall any such communication or
25 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United
26 States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging
27 party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for
28 advice (including tax advice) in connection with this Agreement, (b) has not entered into this

1 Agreement based upon the recommendation of any other Party or any attorney or advisor to any
2 other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney
3 or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging
4 party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects
5 the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
6 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
7 tax structure of any transaction, including any transaction contemplated by this Agreement.

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

12 63. Release by Participating Class Members PAGA Members, the LWDA and the
13 State of California. Upon the complete funding of the Gross Settlement Amount and all applicable
14 employer-side payroll taxes by Defendants and entry of the Final Approval Order and Final
15 Judgment by the Court, Participating Class Members shall fully release and discharge the
16 Released Parties from any and all Released Claims for the Class Period. This release shall be
17 binding on all Participating Class Members and their present and future representatives, attorneys,
18 agents, heirs, executors, administrators, and assigns and all those claiming by, through, or under
19 them, and each of them. All PAGA Members, the LWDA, and State of California shall release
20 claims arising under PAGA for the PAGA Period as set forth in the PAGA Release. The PAGA
21 Release shall be effective for PAGA Members regardless of their decision to participate in the
22 class settlement.

23 64. General Release by Plaintiff Negrete Only: In addition to the PAGA Release and
24 Released Claims against Released Parties made by the Participating Class Members as set forth in
25 Paragraphs 22, 28, and 29 *supra*, Named Plaintiff, and her present and future representatives, attorneys,
26 agents, heirs, executors, administrators, and assigns and all those claiming by, through, or under them, and
27 each of them, in exchange for the Class Representative Enhancement Payment as requested or as
28 otherwise authorized by the Court, will, as of the date the Settlement Administrator mails out the

1 Settlement Checks to the Participating Class Members, makes the additional following General Release
2 of all Claims under Section 1542 of the California Civil Code, known or unknown, in exchange and
3 consideration of the sum set forth in Paragraph 9, *supra*. Named Plaintiff, and her present and future
4 representatives, attorneys, agents, heirs, executors, administrators, and assigns and all those claiming by,
5 through, or under them, and each of them, agrees to the General Release of the Released Parties. Named
6 Plaintiff, and her present and future representatives, attorneys, agents, heirs, executors, administrators, and
7 assigns and all those claiming by, through, or under them, and each of them, also agrees to release the
8 Released Parties from all wage and hour Claims, including, but not limited to, minimum and overtime
9 wages, meal and rest period premiums, penalties under the Labor Code and Private Attorneys General Act
10 and all other Released Claims including but not limited to FEHA, Contract, Wrongful Termination in
11 Violation of Public Policy, and Intentional Infliction of Emotional Distress claims. The General Release
12 as to Named Plaintiff, and her present and future representatives, attorneys, agents, heirs, executors,
13 administrators, and assigns and all those claiming by, through, or under them, and each of them, includes
14 any unknown Claims that Named Plaintiff does not know or suspect to exist in her favor at the time of the
15 General Release, which, if known by her, might have affected her settlement with, and release of, the
16 Released Parties or might have affected her decision not to object to this Settlement or the General Release.

17 With respect to the General Release, Named Plaintiff stipulates and agrees that, upon entry
18 of the Final Approval Order and Final Judgment by the Court, Named Plaintiff shall be deemed
19 to have, and by operation of the Final Judgment shall have, expressly waived and relinquished,
20 to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
21 California Civil Code, or any other similar provision under federal or state law, which provides:

22
23 **A general release does not extend to claims that the creditor or releasing party**
24 **does not know or suspect to exist in his or her favor at the time of executing**
25 **the release and that, if known by him or her, would have materially affected**
26 **his or her settlement with the debtor or released party.**

27 Named Plaintiff may hereafter discover facts in addition to or different from those she
28 now knows or believes to be true with respect to the subject matter of the General Release, but
Named Plaintiff upon the date the Claims Administrator mails out the Settlement Checks to the

1 Participating Class Members shall be deemed to have, and by operation of the Final Judgment
2 shall have, fully, finally, and forever settled and released any and all of the claims released
3 pursuant to the General Release whether known or unknown, suspected or unsuspected,
4 contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law
5 or equity now existing or coming into existence in the future, including, but not limited to, conduct
6 that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without
7 regard to the subsequent discovery or existence of such different or additional facts.

8 65. Neutral Employment Reference: Defendants agree that they will adopt a neutral
9 reporting policy regarding any future employment references related to Plaintiff. In the event that
10 any potential or future employers of Plaintiff requests a reference regarding Defendants'
11 employment of Plaintiff, Defendants shall only provide Plaintiff's dates of employment, job titles
12 during employment, and final rate of pay.

13 66. Nullification of Settlement Agreement. In the event that: (a) the Court does not
14 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any
15 material term of this Settlement Agreement; or (c) the Settlement does not become final as written
16 and agreed to by the Parties for any other reason, then this Settlement Agreement, and any
17 documents generated to bring it into effect, will be null and void, all amounts deposited into the
18 QSF will be returned to Defendants, and the Parties shall be returned to their original respective
19 positions as of February 7, 2022. Any order or judgment entered by the Court in furtherance of
20 this Settlement Agreement will likewise be treated as void from the beginning. Should the Court
21 fail to approve this settlement for any reason, the Parties agree that they will return to and attend
22 mediation with a mutually agreed Mediator in an effort to reach a settlement that may be approved
23 by the Court.

24 67. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
25 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
26 Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes
27 only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for
28 a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for

1 the Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary
2 Approval hearing, Plaintiff will submit this Agreement, which sets forth the terms of the
3 Settlement, and will include the proposed Notice attached as Exhibit A. Defendants agree that
4 they will not oppose a Motion for Preliminary Approval based upon the terms of this agreement.
5 Counsel for Defendants will be given an opportunity to review and comment on the motion for
6 Preliminary Approval of the Settlement prior to its being filed with the Court and such comments will be
7 implemented to the extent reasonable. Any failure by the Court to fully and completely approve the
8 Agreement as to the Action will result in this Settlement Agreement and the Memorandum of
9 Understanding entered into by the Parties, and all obligations under this Settlement Agreement
10 and the Memorandum of Understanding being nullified and voided pursuant to paragraph 66 of
11 this Agreement.

12 68. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
13 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and
14 with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to
15 determine the Final Approval of the Settlement Agreement along with the amounts properly
16 payable for: (a) Individual Settlement Payments; (b) the Attorneys' Fees and Costs; (c) the Class
17 Representative Enhancement Payments; and (d) the Settlement Administration Costs. Class
18 Counsel will be responsible for drafting all documents necessary to obtain Final Approval.
19 Counsel for Defendants will be given an opportunity to comment on the motion for final approval of the
20 Settlement and Proposed Order and Judgment prior to its being filed with the Court and such comments
21 will be implemented to the extent reasonable. Any failure by the Court to fully and completely
22 approve the Settlement Agreement as to all of the Action, or the entry of any Order by another
23 Court with regard to any of the Action which has the effect of modifying material terms of this
24 Agreement or preventing the full and complete approval of the Settlement Agreement as written
25 and agreed to by the Parties, will result in this Agreement and all obligations under this Agreement
26 being null and void pursuant to paragraph 66 of this Agreement. Defendants agree they shall not
27 oppose the granting of the Motion for Final Approval based upon the terms of this agreement,
28 provided Defendants have not exercised their right to rescind pursuant to the terms of this

1 Agreement.

2 69. Final Approval Order and Final Judgment and Continued Jurisdiction. Upon Final
3 Approval of the Settlement by the Court or after the Final Approval/Settlement Fairness Hearing,
4 the Parties will present the Final Judgment to the Court for its approval. After entry of the
5 Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the
6 interpretation and enforcement of the terms of the Settlement, (b) Settlement administration
7 matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set
8 forth in this Settlement.

9 70. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
10 set forth in any attached Exhibits, which are incorporated by this reference as though fully set
11 forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

12 71. Entire Agreement. This Settlement Agreement and any attached Exhibits
13 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written
14 or oral agreements may be deemed binding on the Parties.

15 72. Amendment or Modification. This Settlement Agreement may be amended or
16 modified only by a written instrument signed by counsel for all Parties or their successors-in-
17 interest.

18 73. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
19 and represent they are expressly authorized by the Parties whom they represent to negotiate this
20 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
21 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
22 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
23 counsel will cooperate with each other and use their best efforts to affect the implementation of
24 the Settlement. If the Parties are unable to reach agreement on the form or content of any
25 document needed to implement the Settlement, or on any supplemental provisions that may
26 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
27 of the Court to resolve such disagreement. The Parties agree that, to the extent further
28 modifications to the Settlement Agreement are required, Class Counsel and Defendant's counsel

1 may execute any amendments and/or modifications to the Settlement Agreement on behalf of
2 their respective clients.

3 74. Binding on Successors and Assigns. This Settlement Agreement will be binding
4 upon, and inure to the benefit of, and be enforceable by the Parties' respective heirs, executors,
5 administrators, representatives, successors and assigns.

6 75. California Law Governs. All terms of this Settlement Agreement and Exhibits
7 hereto will be governed by and interpreted according to the laws of the State of California.

8 76. Execution and Counterparts. This Settlement Agreement is subject only to the
9 execution of all Parties. However, the Settlement Agreement may be executed in one or more
10 counterparts. All executed counterparts and each of them, including facsimile, electronic
11 signature, and scanned copies of the signature page, will be deemed to be one and the same
12 instrument provided that counsel for the Parties will exchange among themselves original signed
13 counterparts.

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

21 78. Invalidity of Any Provision. Before declaring any provision of this Agreement
22 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
23 consistent with applicable precedents so as to define all provisions of this Agreement valid and
24 enforceable.

25 79. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
26 class certification for purposes of this Settlement only; except, however, that either party may
27 appeal any court order that materially alters the Settlement Agreement's terms.

28 80. Class Action Certification for Settlement Purposes Only. The Parties agree to

1 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
2 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
3 that certification for purposes of the Settlement is not an admission that class action certification
4 is proper under the standards applied to contested certification motions and that this Agreement
5 will not be admissible in this or any other proceeding as evidence that either: (a) a class action
6 should be certified or (b) Defendants are liable to Plaintiff or any Class Member, other than
7 according to the Settlement's terms.

8 81. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
9 dispute that has arisen between them and to avoid the burden, expense and risk of continued
10 litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, they
11 have violated any federal, state, or local law; violated any regulations or guidelines promulgated
12 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
13 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
14 engaged in any other unlawful conduct with respect to their employees. Neither this Agreement,
15 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed
16 as an admission or concession by Defendants of any such violations or failures to comply with
17 any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement,
18 this Agreement and its terms and provisions shall not be offered or received as evidence in any
19 action or proceeding to establish any liability or admission on the part of Defendants or to
20 establish the existence of any condition constituting a violation of, or a non-compliance with,
21 federal, state, local or other applicable law. Payment of wages does not extend or alter the class
22 member-claimants' period of employment for any purpose.

23 82. Captions. The captions and section numbers in this Agreement are inserted for the
24 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
25 provisions of this Agreement.

26 83. Waiver. No waiver of any condition or covenant contained in this Settlement
27 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
28 to imply or constitute a further waiver by such party of the same or any other condition, covenant,

right or remedy.

84. Enforcement Action. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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

86. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

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

88. Cooperation and Execution of Necessary Documents. The Parties agree to cooperate to promote participation in the Settlement, and in seeking court approval of the Settlement. The Parties and their counsel agree not to take any action to encourage any Class Members to opt out of and/or object to the Settlement. The Parties will work in good faith to reach an agreement approved by the Court.

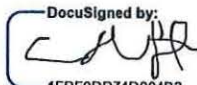
89. Confidentiality. The Parties and their counsel agree to keep the terms of the Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff and Class Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the Settlement Agreement. Nothing in this Settlement Agreement shall limit

1 Class Counsel's communications with the Class Members in furtherance of approval of this
2 Settlement.

3 90. Binding Agreement. The Parties warrant that they understand and have full
4 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
5 fully enforceable and binding on all Parties and agree that it will be admissible and subject to
6 disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality
7 provisions that otherwise might apply under federal or state law.

8
9 Dated: 4/21/2022

PLAINTIFF

10
11 By: 
12 DocuSigned by:
13 1FDF0DD74D00483...
Cassandra Negrete

14 Dated: 4/24/2022

DEFENDANT WINSUPPLY INC.

15
16 By: 
17 Robert DiTommaso
18 Title: Treasurer

19
20
21 Dated: 4/24/2022

**DEFENDANT ORANGE COUNTY
WINDUSTRIAL CO. AND EACH
IDENTIFIED BUT UNNAMED
DEFENDANT**

22
23 By: 
24 Sean Culler
25 Title: Treasurer of Orange County
26 Windustrial Co., Winsupply Van Nuys CA
27 Co., Winsupply Vista CA Co., Winsupply
28 Kearny Mesa CA Co., Inland Empire

Windustrial Co, Winsupply Desert Cities
CA Co., Winsupply Bakersfield CA Co.,
Winsupply Paso Robles CA Co., Riverside
Winnelson Co., Winsupply San Diego CA
Co., Temecula Winnelson Co., Ontario
Winnelson Co., Winsupply Hesperia CA
Co., Santa Fe Springs Winwater Works
Co., San Diego Winsupply Co., Fremont
Windustrial Co., Orange County Winwater
Works Co., Santa Clara Windustrial Co.,
Winsupply S San Diego CA Co.,
Winsupply Monterey County CA Co.,
Winsupply of Silicon Valley Co., Stockton
Windustrial Co., Sacramento Windustrial
Co., Rocklin Windustrial Co., Woodland
Windustrial Co., Modesto Windustrial Co.,
Winsupply Fresno County CA Co.,
Pittsburg Winsupply Co., Escondido
Winsupply Co., Winsupply Lake Elsinore
CA Co., Wyatt Irrigation Co

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Negrete v. Winsupply Inc., et. al.

Orange County Superior Court, Case No. 30-2021-01188066-CU-OE-CXC

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To: All current and former hourly-paid, non-exempt employees who were employed by Winsupply Inc. and Orange County Windustrial Co. and other Identified but Unnamed Defendants* in the State of California at any time between September 12, 2016 to (date preliminary approval is granted or May 1, 2022, whichever is sooner).

*Identified but Unnamed Defendants are listed in Section 7, under the definition of “Released Parties”.

BASIC INFORMATION

1. What is this settlement about?

A lawsuit was commenced by Cassandra Negrete (“Plaintiff”) against Winsupply Inc. and Orange County Windustrial Co. (collectively “Defendants”) on March 9, 2021. The case is currently pending in the Orange County Superior Court, Case No. 30-2021-01188066-CU-OE-CXC.

The lawsuit claims that Defendants violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendants failed to provide compliant meal and rest periods and associated premium pay, did not properly pay employees all wages owed for time worked including regular wages, minimum wages and overtime wages, did not provide complete, accurate wage statements or disclosures, did not timely pay all wages owed at the end of employment, failed to reimburse employees for necessary business expenses, and maintained unfair business practices. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit claims that the Defendants violated the California Labor Code and the California Business and Professions Code, entitling Class Members to, *inter alia*, damages, penalties and restitution. Defendants deny all alleged violations and deny that they owe Class Members any remedies. The Court has not made a ruling on the merits of the case.

2. Why is this a class action?

In a class action, one or more people called the Class Representative sue on behalf of people who appear to have similar claims. All these people are referred to here as Class Members. In a class action one court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Orange County Superior Court is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiff or Defendants. Instead, both sides agreed to a settlement which is memorialized in the Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or

“Settlement”). On [DATE OF PRELIMINARY APPROVAL] the Court granted preliminary approval of the Settlement, appointed Plaintiff Cassandra Negrete as the Class Representative, and appointed her attorneys at Diversity Law Group, P.C. as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendants as an hourly-paid, non-exempt employee in the state of California at any time between September 12, 2016, and (date preliminary approval is granted or May 1, 2022, whichever is sooner).

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that certain Defendants will pay a maximum of Two Million Dollars (\$2,000,000.00) (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 33 1/3% of the Gross Settlement Amount or Six Hundred Sixty-Six Thousand Six Hundred and Sixty-Seven Dollars (\$666,667.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty-Five Thousand Dollars (\$25,000.00);
- C. **Class Representative Enhancement Payment** in an amount not to exceed Ten Thousand Dollars (\$10,000.00);
- D. **Settlement Administration Costs** which are currently estimated to be Twelve Thousand Five Hundred Dollars (\$12,500.00); and
- E. **PAGA Payment** in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) for the settlement of claims arising under the Private Attorney’s General Act of 2004 (PAGA). Seventy-Five percent (75%) of this amount, (\$112,500.00) shall be paid to the LWDA. The remaining twenty-five percent (25%) (\$37,500.00) will be distributed to hourly-paid, non-exempt employees who worked for Defendants and other Identified but Unnamed Defendants from September 7, 2019 to (date preliminary approval is granted or May 1, 2022, whichever is sooner), for the release of their claims as set forth in the PAGA Release, described below in Section .

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment” will be determined on a *pro rata* basis, based on the number of Pay Periods you worked in California as an hourly-paid, non-exempt employee of Defendants and other Identified but Unnamed Defendants from September 12, 2016,

to (date preliminary approval is granted or May 1, 2022, whichever is sooner) (“Pay Periods”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Payment.

[ONLY FOR PAGA MEMBERS]: Your share of the PAGA Payment is calculated on a *pro rata* basis based on the total number of Pay Periods (full or partial) worked by each PAGA Member during the PAGA Period.]

Your Individual Settlement Payment will be apportioned as thirty percent (30%) wages, twenty percent (20%) interest and fifty percent (50%) penalties. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid separately from and in addition to the Gross Settlement Amount. The penalties and interest portions of each class member’s settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

You worked XXX Pay Periods during the Class Period. Your Individual Settlement Payment is \$XXX.XX. The amount of the payment may change depending on the number of timely and valid requests for exclusions submitted in the Settlement, if any.

This Amount was determined based on Defendants’ record of your employment between September 12, 2016 and (date preliminary approval is granted or May 1, 2022, whichever is sooner), and is presumed correct. If you dispute the accuracy of Defendants’ records as to the number of Pay Periods worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by [DATE]. All disputes regarding your Pay Periods will be resolved and decided by the Parties or if the Parties cannot agree, the Court, after you submit evidence to the Settlement Administrator. The Settlement Administrator’s contact information is listed below:

[Settlement Administrator]
[Address]
[Telephone No].
[Fax No.]

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

7. What am I giving up if I do not request to be excluded from the Settlement?

Upon the funding of the Gross Settlement Amount by Defendants and entry of Final Approval Order and Final Judgment by the Court, in exchange for the consideration set forth by the Settlement, Class Members who do not submit a timely request for exclusion will release the “Released Parties” from the “Released Claims” for the “Class Period.”

The “Released Parties” means Defendants Winsupply Inc. and Orange County Windustrial Co., and their past, present and/or future, direct and/or indirect, stockholders, shareholders, members, directors, managers, officers, employees, agents, representatives, attorneys, insurers, reinsurers, partners, investors, lenders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, and

related companies (and specifically including the following “Identified but Unnamed Defendants”: Winsupply Van Nuys CA Co., Winsupply Vista CA Co., Winsupply Kearny Mesa CA Co., Inland Empire Windustrial Co., Winsupply Desert Cities CA Co., Winsupply Bakersfield CA Co., Winsupply Paso Robles CA Co., Riverside Winnelson Co., Winsupply San Diego CA Co., Temecula Winnelson Co., Ontario Winnelson Co., Winsupply Hesperia CA Co., Santa Fe Springs Winwater Works Co., San Diego Winsupply Co., Fremont Windustrial Co., Orange County Winwater Works Co., Santa Clara Windustrial Co., Winsupply S San Diego CA Co., Winsupply Monterey County CA Co., Winsupply of Silicon Valley Co., Stockton Windustrial Co., Sacramento Windustrial Co., Rocklin Windustrial Co., Woodland Windustrial Co., Modesto Windustrial Co., Winsupply Fresno County CA Co., Pittsburg Winsupply Co., Escondido Winsupply Co., Winsupply Lake Elsinore CA Co., Wyatt Irrigation Co.).

The “Released Claims” means claims, rights, demands, liabilities and causes of actions that are alleged or reasonably could have been alleged based on the facts and claims asserted in the operative complaint in the Action including the following claims: (i) failure to pay all regular wages, minimum wages and overtime wages due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to provide complete, accurate wage statements or disclosures; (v) failure to pay wages timely at time of termination or resignation (Labor Code 203); (vi) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (vii) Failure to Reimburse for Business Expenses under Labor Code Section 2802; (viii) all claims under the California Labor Code Private Attorneys General Act of 2004 (Labor Code 2698, et. seq.) or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief based on the facts alleged in the operative complaint including but not limited to Labor Code sections 201-203, 218.5, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197.1, 2802, and 2699, B&P Code 17200, et. seq., Civil Code 1021.5, claims regarding bonuses and commissions, as they relate to the factual allegations in the operative complaint,, and the relevant Wage Orders issued by the Industrial Welfare Commission, any and all claims for attorneys’ fees and costs, and/or California Code of Civil Procedure section 1021, which are premised on the factual allegations of the operative complaint. This release shall apply to claims arising during the Class Period. Plaintiff will file an Amended Complaint to reflect the Class Period herein and all claims referenced in the release which were not previously included.

The “Class Period” during which the release of Released Claims pertains is from September 12, 2016 to the date the Court signs an order granting preliminary approval of the Settlement or May 1, 2022, whichever is sooner.

All Class Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of the claims articulated in the “PAGA Release” with respect to all of the Released Parties irrespective of whether a Class Member submits a request for exclusion.

“PAGA Release” means the following release: Upon remittance of the Gross Settlement Amount by Defendants to the Settlement Administrator and entry of judgment by the Court, PAGA Members and each of them, for themselves and their past, present and future representatives, attorneys, agents, heirs, executors, administrators, and assigns, and all those claiming by, through or under them, will fully and finally release and discharge Defendants and their past, present and/or future, direct and/or indirect, stockholders, shareholders, members, directors, managers, officers, employees, agents, representatives, attorneys, insurers, reinsurers, partners, investors, lenders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, and related companies from all claims, rights, demands, liabilities and causes of action for civil penalties that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the PAGA letter, dated March 3, 2021, under the PAGA, Cal. Lab. Code

§§ 2698, et seq., which are premised on alleged violations of the California Labor Code for: (i) failure to pay all regular wages, minimum wages, and overtime wages due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to provide complete, accurate wage statements or disclosures; (v) failure to pay wages timely at time of termination or resignation (Labor Code 203); and (vi) for civil penalties that could have been alleged based on the facts and claims asserted in the PAGA letter, dated March 3, 2021, including but not limited to Labor Code sections 201-203, 226, 226.7, 510, 512, 558, 1194, 2802 and 2699, and the relevant Wage Orders issued by the Industrial Welfare Commission, any and all claims for attorneys' fees and costs, which are premised a violation of the PAGA based on the factual allegations of the operative complaint."

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Released Parties with respect to the Released Claims (other than those which fall within the definition of the PAGA Release), then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive your share of payment from the Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim.

8. How can I not participate in the Settlement?

To exclude yourself from the release of Released Claims you must submit a written request for exclusion. You must include your name, address, telephone number and the last four digits of your social security number and/or Employee ID number. Your request for exclusion must also include a statement that you do not wish to be included in this action similar to the following: "I wish to exclude myself from the class action settlement reached in the matter of *Negrete v. Winsupply*. I understand that by excluding myself I will not receive money from the class portion of the settlement."

The written for Exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [DATE]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No.]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You may still receive a portion of the PAGA Payment if you worked between September 7, 2019 and [REDACTED], because the request for exclusion does not apply to the PAGA Release. You will not be legally bound by the release of Released Claims (except for Released Claims that fall within the definition of the PAGA Release).

If you exclude yourself, you may be able to sue Defendants and/or the Released Parties or continue any suit you have pending against Defendants or the Released Parties, regarding the Released Claims (except for Released Claims that fall within the definition of the PAGA Release).

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

The Court has approved DIVERSITY LAW GROUP, P.C. as Class Counsel. The firm's contact information is:

DIVERSITY LAW GROUP, P.C.

Larry W. Lee, Esq.
Max W. Gavron, Esq.
515 S. Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213)488-6555

Class Counsel will ask the Court for attorneys' fees of up to \$666,667.00 and reimbursement of litigation cost/expenses of up to \$25,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

10. What if I want to object to this settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Settlement Administrator no later than [DATE]. Your objection must include your full name, address, telephone number, the last four digits of your social security number or employee ID number, and the specific reason for your objection. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection.

11. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

12. When and where will the Court decide whether to approve the settlement?

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend. The Court will hold the Final Approval Hearing at [] a.m./p.m. on [], 2022] in Department CX105 of the Orange County Superior Court located at 751 West Santa Ana Boulevard, Santa Ana, California 92701.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

13. Do I have to come to the hearing?

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. You may attend in person, but you may also attend remotely if you wish. Further information regarding how to appear remotely can be found here: Appearance Procedure and Information, Civil Unlimited and Complex, located at https://www.occourts.org/media-relations/covid/Civil_Unlimited_and_Complex_Appearance_Procedure_and_Information.pdf

14. How will I learn if the settlement was approved

A notice of final judgment will be posted on the Settlement Administrator website located at www.occourts.org. You will also receive your portion of the settlement if you choose to not to exclude yourself.

IF YOU DO NOTHING

15. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Claims. You will not be able to participate in any other lawsuit against Defendants or Released Parties about the Released Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund. You may then claim these funds from there.

GETTING MORE INFORMATION

16. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting the Settlement Administrator or Class Counsel.

WHAT IF MY INFORMATION CHANGES?

17. What if my contact information changes ?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO
THE CLERK OF THE COURT OR THE JUDGE**

EXHIBIT B