

STIPULATION OF CLASS AND PAGA SETTLEMENT

This Stipulation of Class and PAGA Settlement (“Settlement Agreement”) is reached by and between Plaintiffs Jesus Diaz (“Diaz”) and Hector Garcia (“Garcia”) (collectively “Plaintiffs”), individually and on behalf of all members of the Class (as defined below) and other aggrieved employees, and Defendant Cal Plate (“Defendant”), following mediation on June 28, 2021 with Michael Young, Esq.

Plaintiffs and Defendant are referred to herein collectively as the “Parties.” Plaintiffs and the Class are represented by James R. Hawkins, Esq. and Isandra Fernandez, Esq. of James Hawkins, APLC (“Class Counsel”). Defendant is represented by Scott K. Dauscher, Esq. and Jon M. Setoguchi, Esq. of Atkinson, Andelson, Loya, Ruud & Romo.

On January 8, 2020, Diaz filed a Class Action Complaint for Damages against Defendant in Los Angeles Superior Court, Spring Street Courthouse, Case No. 20STCV00696. On March 1, 2021, Garcia provided notice to the Labor and Workforce Development Agency (“LWDA”) of his intent to pursue Defendant for all civil penalties arising from Defendant’s alleged failure to, *inter alia*, pay all wages earned including failure to provide proper rest periods and meal breaks and failure to provide accurate wage statements to Plaintiff and other similarly situated aggrieved employees. On June 9, 2021, Diaz filed a First Amended Class Action Complaint adding Garcia as a named plaintiff and proposed class representative. The FAC alleges the following claims against Defendant: (1) failure to pay lawful wages including overtime wages (California Labor Code sections 510 and 1194); (2) failure to provide lawful meal periods or compensation in lieu thereof (California Labor Code sections 226.7 and 512, and IWC Wage Orders); (3) failure to provide rest periods or compensation in lieu thereof (California Labor Code section 226.7 and IWC Wage Orders); (4) failure to timely pay wages due at termination (California Labor Code sections 201-203 and 227.3); (5) knowing and intentional failure to comply with itemized employee wage statement provisions (California Labor Code section 226(b)); (6) violation of unfair competition law (California Business and Professions Code sections 17200-17208); and (7) Labor Code Private Attorney General Act (California Labor Code § 2699, *et seq.*) (the “Lawsuit”).

Given the risks and uncertainties of litigation, the Parties have agreed to settle this Lawsuit on the terms set forth herein and subject to the approval of the Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability as the Settlement Agreement is intended solely to allow the Parties to buy their peace and resolve the disputed claims asserted in the Lawsuit. The settlement and resolution of the Lawsuit in accordance with the Settlement Agreement is referred to herein as “Settlement.”

1. Conditional Certification of Class for Settlement Purposes. The Parties request the Court certify a class (the “Class”) as follows for the purposes of this Settlement:

All persons who are or were employed by Defendant as non-exempt, hourly-paid employees in California from January 8, 2016 through preliminary approval (the “Class Period”).

All employees who are part of this Class are referred to as “Class Members”.

If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, the conditional class certification shall be void and this Settlement Agreement will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. Aggrieved Employees for Settlement Purposes. The Parties have reached a settlement of the PAGA claims in connection with the following individuals who are considered to be aggrieved employees (“Aggrieved Employees”) for purposes of this Settlement:

All persons who are or were employed by Defendant as non-exempt, hourly-paid employees in California from March 1, 2020 through preliminary approval (“PAGA Period”).

3. Releases.

A. Class Release by Settlement Class Members.

- (1) The “Class Settlement” means the settlement and resolution of the Class Released Claims, which will be binding on all Settlement Class Members.
- (2) “Settlement Class Member” means a Class Member who does not validly opt out of the Class Settlement.
- (3) “Released Parties” means (1) Defendant; (2) Defendant’s respective past, present and future parent corporations, affiliates, affiliates’ companies, subsidiaries, divisions, d/b/a’s, predecessors, insurers, successors, franchisees, franchisors, assigns, principals, heirs, their current and former employees, accountants, auditors, attorneys, consultants, officers, managers, members, partners, directors, shareholders, agents, both individually and in their business capacities of any of the following; and (3) any individual or entity which could be jointly liable with any of the foregoing (collectively the “Released Parties” and each a “Released Party”).
- (4) “Class Released Claims” means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged in the Lawsuit, including any claims for: (1) failure to pay lawful wages including overtime wages; (2) failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation in lieu thereof; (4) failure to timely pay wages due at termination; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) violation of unfair competition law; and (7) Labor Code Private Attorney General Act, predicated on any of the violations of the California Labor Code and applicable IWC Wage Order alleged in the Lawsuit, including but not limited to compensatory damages; economic and/or special damages; premium wages; premium pay; penalties; attorneys’ fees; interest; and litigation costs.

- (5) As of the date on which the Gross Settlement Amount has been fully funded and the Final Effective Date, in exchange for the consideration set forth in this Settlement Agreement, Plaintiffs and all Settlement Class Members, on behalf of themselves, and on behalf of all those who claim by and through them, or in their stead, including, but not limited to agents, attorneys, representatives, predecessors, successors and assigns will forever release, acquit, and discharge, and covenant not to sue Released Parties from Class Released Claims.

B. PAGA Release by Aggrieved Employees.

- (1) “PAGA Settlement” means the settlement and resolution of the PAGA Released Claims, which will be binding on all Aggrieved Employees.
- (1) “PAGA Released Claims” means any and all claims for civil penalties under California Labor section 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004) arising during the PAGA Period, for Defendant’s alleged failure to, *inter alia*, pay all wages earned including failure to provide proper rest periods and meal breaks and failure to provide accurate wage statements to Plaintiff and other similarly situated aggrieved employees in violation of California Labor Code sections 201, 202, 203, 226, 226.7, 510, and any other applicable IWC Wage Orders, that were or could have been alleged based on the facts alleged in the Lawsuit and in Garcia’s PAGA notice submitted to the LWDA on March 1, 2021.
- (2) As of the date on which the Gross Settlement Amount has been fully funded and the Final Effective Date, in exchange for the consideration set forth in this Settlement Agreement, Plaintiffs and all Aggrieved Employees will release the Released Parties from all PAGA Released Claims.

- C. Representative Plaintiffs’ General Release.** As of the date on which the Gross Settlement Amount has been fully funded and the Final Effective Date, Plaintiffs will, for themselves, and for their heirs, successors, predecessors, attorneys, agents, representatives and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, restitution, penalties, liquidated damages, and attorneys’ fees and costs actually incurred) of any nature whatsoever, from the beginning of time through the date on which the Gross Settlement Amount has been fully funded, known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for such employment. Without limiting the generality of the foregoing, Plaintiffs expressly release all claims which were or could have been raised in the Lawsuit and all claims or rights arising out of alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith or fair dealing (express or implied); any tort, including

negligence, fraud, misrepresentation under California Labor Code 970, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any “retaliation” claims; any claims relating to any breach of public policy; any legal restrictions on Defendant’s right to discharge employees or refuse to hire applicants; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) sections 503 and 504 of the Rehabilitation Act of 1973 (disability discrimination); (4) Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (7) California Fair Employment and Housing Act, Cal. Gov’t Code § 12900, *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex (including pregnancy), sexual orientation, genetic, or age, including retaliation for reporting discrimination or harassment); (8) California Family Rights Act, Cal. Gov’t Code § 12945.1, *et seq.* (family/medical leave); (9) California Labor Code or any Industrial Welfare Commission Wage Order; (10) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (12) Executive Order 11141 (age discrimination); and (11) Employee Retirement Income Security Act, 29 U.S.C. § 1000, *et seq.* (employee benefits).

- D. Plaintiffs’ Waiver of Section 1542 With Respect to Released Claims.** Plaintiffs agree there is a risk that each and every injury they may have allegedly or actually suffered by reason of the Released Parties’ relationship with them might not now be known, and there is further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained by them. Nevertheless, Plaintiffs desire to forever and fully release and discharge the Released Parties of all Class Released Claims and PAGA Released Claims, and understand that as of the date on which the Gross Settlement Amount has been fully funded and the Final Effective Date, by the execution of this Settlement Agreement no further claims for any of the Class Released Claims or PAGA Released Claims that existed at the time of the execution of this Settlement Agreement may ever be asserted by them. As of the date on which the Gross Settlement Amount has been fully funded, Plaintiffs expressly waive and relinquish all rights and benefits afforded by section 1542 of the Civil Code of the State of California with respect to the Class Released Claims and PAGA Released Claims, and do so understanding and acknowledging the significance of such specific waiver of section 1542. Section 1542 of the Civil Code of the State of California states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at

the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Thus, subject to and in accordance with this Settlement Agreement, even if Plaintiffs may hereafter discover facts in addition to or different from those they now know or believe to be true, Plaintiffs shall be deemed to have fully, finally, and forever settled and released any and all Class Released Claims and PAGA Released Claims against the Released Parties, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that now exist, upon any theory of law or equity, including without limitation, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

4. Settlement Payment. In exchange for the releases set forth in this Settlement Agreement, Defendant agrees to pay Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) (the “Gross Settlement Amount”) in full and complete settlement of this matter, as follows:

- A.** Within thirty (30) calendar days after the Court enters the Preliminary Approval Order, Defendant will transfer the entire Gross Settlement Amount into a Qualified Settlement Fund (“QSF”) established by the Settlement Administrator, plus an amount sufficient to cover the Employer Taxes on the payments. In the event that the Class Settlement is not granted Final Approval, or the Settlement Agreement does not become Final, any funds deposited into the QSF by Defendant shall be returned within fifteen (15) days of a Court Order or other decision denying final approval of the Settlement Agreement. The term “Final” and “Final Effective Date” means: (i) that the Final Approval Order and Judgment is entered by the Court and there were no timely objections or intervener requests filed after Preliminary Approval, or that any such timely objections and/or interveners have been withdrawn by the date the Court entered the Final Approval Order and Judgment; or, (ii) in the event that one or more timely objections or intervener request(s) has/have been filed after Preliminary Approval and not withdrawn, then upon the passage of the applicable date for an objector or intervener to seek appellate review of the Court’s Final Approval Order and Judgment, without a timely appeal having been filed; or, (iii) in the event that a timely appeal of the Court’s Final Approval Order and Judgment has been filed, then the Settlement Agreement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the Court’s Final Approval Order and Judgment without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.
- B.** This is not a “claims-made” settlement. Class Members need not make a claim to share in the settlement. This is a common fund, non-reversionary settlement. The Gross Settlement Amount includes:

- (1) All payments to Settlement Class Members and their share of payroll tax withholdings;
- (2) All reasonable costs of the Settlement Administrator associated with the administration of the Settlement ("Settlement Administration Costs"), which are anticipated to be no greater than Nine Thousand Dollars and Zero Cents (\$9,000.00);
- (3) Up to Six Thousand Dollars and Zero Cents (\$6,000.00) each for Diaz and Garcia for the Plaintiffs' Enhancement Payment, subject to Court approval, in recognition of Plaintiffs' general release of claims including a Civil Code section 1542 waiver, contributions to the Lawsuit, creating the Gross Settlement Amount, and service to the Class. In the event that the Court reduces or does not approve the requested Enhancement Payment, the Settlement Agreement remains in full force and effect, Plaintiffs shall not have the right to revoke the Settlement Agreement for that reason, it shall remain binding, and any unapproved amount shall be part of the Net Settlement Fund;
- (4) Up to thirty-three and one-third (33.33) percent (i.e., \$117,000.00) of the Gross Settlement Amount in attorneys' fees to Class Counsel and up to Fifteen Thousand Dollars and Zero Cents (\$15,000) for reimbursement of litigation costs and expenses to Class Counsel related to the Lawsuit (together, "Attorneys' Fees and Costs"), including all such fees and costs incurred in documenting the Settlement, securing the Court's approval of the Settlement and the amended complaint, and administering the Settlement, as supported by declaration. In the event that the Court reduces or does not approve Class Counsel's requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiffs shall not have the right to revoke the Settlement Agreement for that reason, it shall remain binding, and any unapproved amount shall be part of the Net Settlement Fund (although Plaintiffs shall retain the right to appeal any reduction in attorneys' fees or costs awarded);
- (5) Fifteen Thousand Dollars and Zero Cents (\$15,000.00) of the Gross Settlement Amount that shall be set aside by the Parties as PAGA civil penalties ("PAGA Payment"). Per California Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Eleven Thousand Two Hundred Fifty Dollars and Zero Cents (\$11,250.00) will be payable to the Labor & Workforce Development Agency ("LWDA Payment"), and the remaining twenty-five percent (25%), or Three Thousand Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00) ("Employee PAGA Amount"), will be part of distributed to Aggrieved Employees on a *pro rata* basis; and
- (6) Under no circumstances will Defendant be required to pay any additional monies in order to receive the release of claims as set forth herein, with

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the exception of Defendant's required FICA, FUTA, and other payroll tax payments resulting from payment of the Individual Settlement Shares to Settlement Class Members ("Employer Taxes"), which shall be paid separately and in addition to the Gross Settlement Amount.

C. Confidential. This settlement shall remain confidential until the Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") is filed with the Court. Until that time, Plaintiffs and Class Counsel expressly agree that they shall not reveal, disclose, divulge, advertise, post on the Internet or social media, or discuss, directly or indirectly, with any person or any entity, in public or in private, the manner in which the Lawsuit has been resolved, the nature of the Lawsuit, or any terms of the Settlement Agreement whatsoever. Plaintiffs and Class Counsel further expressly agree that they will not publicize this settlement or Settlement Agreement in any manner, even anonymously, including, without limitation, reporting to Jury Verdicts or any other reporting services. After the Motion for Preliminary Approval is filed with the Court, Plaintiffs and Class Counsel expressly agree not to publicize the name of the Defendant and settlement amount in any manner and shall refrain from posting Defendant's name on Class Counsel's website or using Defendant's name to advertise any alleged recovery or settlement agreement by Class Counsel. Nothing in this Settlement Agreement shall restrict Class Counsel from disclosing and including all publicly available information regarding this case and the Settlement in any documents filed with any court and/or judicial submissions (e.g., CV's, declarations regarding adequacy or experience, etc.).

5. Settlement Payment Procedures. Settlement Class Members will receive a *pro rata* share of the Net Settlement Fund ("Individual Settlement Share") based on the pro rata number of workweeks that each of them worked for Defendant as an hourly-paid or non-exempt employee during the Class Period ("Class Workweeks") and Aggrieved Employees will receive a *pro rata* share of the Employee PAGA Amount ("Individual PAGA Payment") based on the number of pay periods that each of them worked for Defendant as an hourly-paid or non-exempt employee during the PAGA Period ("PAGA Pay Periods"). Class Workweeks and PAGA Pay Periods will be calculated based on Defendant's payroll records by determining the number of weeks during which the Class Member or Aggrieved Employee worked at least one (1) day during the workweek and/or pay period. Class Members and Aggrieved Employees are not required to submit a claim form to receive their Individual Settlement Shares or Individual PAGA Shares for which they may be eligible. The Net Settlement Amount and Employee PAGA Amount will be distributed as follows:

A. Distribution of Net Settlement Amount

- (1) The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Settlement Administration Costs to the Settlement Administrator, Enhancement Payment to Plaintiffs, Attorneys' Fees and Costs to Class Counsel, and the PAGA Payment. The remaining amount shall be known as the "Net Settlement Fund."
- (2) From the Net Settlement Fund, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Share based on the following formula: the Net Settlement Fund will be multiplied by a

fraction, the numerator of which is the Settlement Class Member's number of Class Workweeks, and the denominator of which is the total Class Workweeks of all Settlement Class Members.

- (3) For purposes of calculating applicable taxes and withholdings for the Settlement Class Members, thirty-three and one-third percent (33.33%) of each Individual Settlement Share shall be designated as wages subject to W-2 reporting and normal payroll withholdings; and thirty-three and one-third percent (33.33%) of each Individual Settlement Share shall be designated as penalties/other payments and thirty-three and one-third percent (33.33%) of each Individual Settlement Share shall be designated as interest, subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans. Defendant shall not be responsible for making any employer contributions to any fringe benefit plan for any amounts paid to Class Members under this Settlement Agreement. Defendant shall have no responsibility for the tax treatment of the non-wage components of the settlement payments. The net payment of the Individual Settlement Share to a Settlement Class Member is his or her "Individual Settlement Payment."

B. Distribution of Employee PAGA Amount

- (1) From the Employee PAGA Amount, the Settlement Administrator will calculate each Aggrieved Employee's Individual PAGA Payment based on the following formula: the Employee PAGA Payment will be multiplied by a fraction, the numerator of which is the Aggrieved Employee's number of PAGA Pay Periods, and the denominator of which is the total PAGA Pay Periods of all Aggrieved Employees.
- (2) Each Individual PAGA Payment shall be allocated as 100% non-wage penalties and subject to IRS Form 1099 reporting. The Settlement Administrator will not undertake any payroll tax deductions or withholdings in connection with the Individual PAGA Payments.

- C. No later than thirty (30) calendar days after the Final Effective Date, the Settlement Administrator shall issue payments due under the Settlement and approved by the Court, in the following order of priority: (1) payment of Individual Settlement Payments to Settlement Class Members; (2) payment of Individual PAGA Payments to Aggrieved Employees; (3) payment of the Court-approved Enhancement Payment to Plaintiffs; (4) payment of Court-approved Settlement Administration Costs to the Settlement Administrator; (5) payment of the LWDA Payment to the LWDA; and (6) payment to Class Counsel for the Court-approved Attorneys' Fees and Costs. When issuing payments, the

Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA Payment into one check if the intended recipient for both payments is one individual.

- D. Individual Settlement Payment checks issued to Settlement Class Members and Individual PAGA Payment checks issued to Aggrieved Employees that remain uncashed for one hundred eighty (180) calendar days after such checks are mailed by the Settlement Administrator (“Check Expiration Date”) shall become void. The funds associated with such voided checks, plus any accrued interest that has not otherwise been distributed, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500, *et seq.*, for the benefit of those individuals who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no “unpaid cash residue,” or “unclaimed or abandoned funds” under California Civil Procedure Code section 384, as amended effective January 1, 2019, as the entire Net Settlement Fund will be paid out to the Settlement Class Members, whether or not they all cash their payment checks. Therefore, Defendant will not be required to pay any interest on said amount.
- E. The receipt of funds under the Settlement Agreement shall not entitle any Settlement Class Member or Aggrieved Employee to additional compensation or benefits of any kind under any of Defendant’s compensation or benefits plans, nor will it entitle any Settlement Class Member or Aggrieved Employee to any increased retirement or 401k plan benefits of any kind.
- F. Neither Plaintiffs nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

6. Class Counsel’s Attorneys’ Fees and Costs. Defendant will not object to a request for a total award of attorneys’ fees to Class Counsel of up to thirty-three and one-third percent (33.33%) of the Gross Settlement Amount, which is One Hundred Seventeen Thousand Dollars and Zero Cents (\$117,000.00), plus up to Fifteen Thousand Dollars and Zero Cents (\$15,000) for reimbursement of litigation costs and expenses related to the Lawsuit as supported by declaration. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court’s approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the Attorneys’ Fees and Costs award as approved by the Court. With respect to the Attorneys’ Fees and Costs to Class Counsel, the Settlement Administrator may purchase an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel. Any additional expenses for the purchase of an annuity by the Settlement Administrator shall be paid separately by Class Counsel and shall not be included within the Settlement Administration Costs. Defendant and

Defendant's counsel shall not be liable for any expenses associated with the purchase of an annuity by the Settlement Administrator.

7. Plaintiffs' Enhancement Payment. Defendant will not object to a request for an Enhancement Payment to Plaintiffs of Six Thousand Dollars and Zero Cents (\$6,000.00) each to Diaz and Garcia in exchange for their general release of their claims and waiver of Civil Code section 1542 with respect to the Released Claims, their time and risks in prosecuting the Lawsuit, and their service to the Class. This payment will be in addition to Plaintiffs' Individual Settlement Payment as Settlement Class Members and shall be reported on an IRS Form 1099 by the Settlement Administrator. It is the intent of the Parties that the Enhancement Payment to the Plaintiffs is for their services in connection with this Lawsuit and is not wages, therefore the Settlement Administrator shall not withhold any taxes from the Enhancement Payment and shall report it on an IRS Form 1099, which shall be provided to Plaintiffs and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Enhancement Payment does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Enhancement Payment constitutes wages for income tax and withholding purposes. Plaintiffs agree to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant from the Enhancement Payment paid under this Settlement Agreement. In addition, Plaintiffs shall hold Defendant, Released Parties and Class Counsel harmless and indemnify Defendant, Released Parties and Class Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendant by reason of any claims relating to the non-withholding of taxes from the Enhancement Payment.

8. Settlement Administration Costs. The Parties have agreed to utilize Simpluris, Inc. as the third-party Settlement Administrator and will seek Court approval to pay up to Nine Thousand Dollars and Zero Cents (\$9,000.00) from the Gross Settlement Amount for its services. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. The Settlement Administrator shall be responsible for sending all required notices, calculating the Net Settlement Fund, calculating Individual Settlement Shares and Individual PAGA Payments, preparing all checks and mailings, and disbursing all funds as set forth in Section 4. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount as set forth in Section 4(C).

9. Preliminary Approval Process. The Parties agree to cooperate and move expeditiously for approval of the Settlement by filing a Motion for Preliminary Approval of the Settlement within forty-five (45) calendar days from the date of execution of this Agreement. Following Preliminary Approval and the close of the Response Deadline under this Settlement Agreement, and after Plaintiffs have provided drafts of the moving papers to Defendant's counsel at least five business days prior to their filing with the Court, Plaintiffs shall apply to the Court for the entry of an order preliminarily approving the Settlement ("Preliminary Approval Order" or "Preliminary Approval") and providing as follows:

A. Conditionally certifying the Class;

- B. Conditionally appointing Simpluris, Inc. as Settlement Administrator, Plaintiffs as representatives of the Class, and Plaintiffs' counsel as counsel for the Class;
- C. Preliminarily approving the Class Settlement and its terms as fair, reasonable, and adequate;
- D. Approving the form and content of the Class Notice, and directing the mailing of same, and approving the procedures for opting out of the Class Settlement, objecting to the Class Settlement, and submitting Workweeks and Pay Periods Disputes; and
- E. Scheduling a Final Approval Hearing.

10. Notice Procedures. Following Preliminary Approval, the Class shall be notified as follows:

- A. Subject to approval by the Court, the Class Notice attached hereto as **Exhibit A**, shall be provided to Class Members in both English and Spanish. Since individuals who are Aggrieved Employees are also included within the group of individuals who are considered to be Class Members, the Class Notice will also contain information about the PAGA Settlement for Aggrieved Employees.
- B. Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator with a data spreadsheet including the names, last known addresses, telephone numbers (if available), and Social Security numbers (in password-protected or encrypted electronic format) of Class Members, as well as the number of Class Workweeks of each Class Member and the number of PAGA Pay Periods of each Aggrieved Employee ("Class List").
- C. Within ten (10) business days from receipt of the Class List, the Settlement Administrator shall: (i) run the names of all Class Members through the National Change of Address ("NCOA") database to determine any updated addresses for Class Members; (ii) update the addresses of any Class Member for whom an updated address was found through the NCOA search; (iii) calculate initial estimates of Class Members' Individual Settlement Shares and Aggrieved Employees' Individual PAGA Payments; and (iv) mail the Class Notice to each Class Member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- D. The Settlement Administrator shall use its best professional efforts, including utilizing a "skip trace," to track any Class Member's mailing returned as undeliverable, and will re-send the Class Notice promptly upon identifying updated mailing addresses through such efforts. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

- E.** Any Class Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Class Notice. If an updated mailing address is identified, the Settlement Administrator shall resend the Class Notice to the Class Member immediately, and in any event within three (3) business days of obtaining the updated address. Class Members to whom Class Notices are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) days from the postmarked date of re-mailing, or until the Response Deadline, whichever is later, to submit a Request for Exclusion, objection to the Class Settlement, or dispute regarding Workweeks and Pay Periods to the Settlement Administrator.
- F. Request for Exclusion Procedures.** All Class Members will automatically participate in the Class Settlement unless they affirmatively opt out by submitting a timely and valid written request to be excluded from the Class Settlement (“Request for Exclusion”). Any Class Member who wishes to opt out of the Class Settlement must complete and mail a valid Request for Exclusion to the Settlement Administrator within forty five (45) calendar days of the date of the initial mailing of the Class Notice (the “Response Deadline”).
- (1) For a Request for Exclusion to be valid, it must: (1) contain the case name of the Lawsuit; (2) contain the name, and last four digits of the Social Security number of the Class Member; (3) be signed by the Class Member; (4) contain a clear statement that the Class Member wishes to exclude himself or herself from the Class Settlement; and (5) be mailed to the Settlement Administrator at the address specified in the Class Notice and postmarked by the Response Deadline. A Request for Exclusion that fails to meet these requirements will not be valid.
 - (2) The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted.
 - (3) Any Class Member who validly and timely requests to be excluded from the Class Settlement will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Class Settlement or have any right to object, appeal or comment thereon.
 - (4) If a Class Member is also an Aggrieved Employee, he or she will be bound to the PAGA Settlement, thereby releasing the Released Parties from the PAGA Released Claims, and will be issued an Individual PAGA Payment, regardless of whether he or she opts out of the Class Settlement. Aggrieved Employees cannot opt out of the PAGA Settlement.

- G. Objections.** Class Members who do not opt out of the Class Settlement (i.e., Settlement Class Members) may object to this Class Settlement by submitting a written objection to the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, and counsel shall file them with the Court). Class Counsel and/or Defendant shall file any responses with the Court within five (5) court days of the Final Approval Hearing. To be valid, any written objection to the Class Settlement must: (1) state the case name of the Lawsuit; (2) contain the objecting Settlement Class Member's full name, signature, , and last four digits of his or her Social Security number, as well as contact information for any attorney representing the objecting Settlement Class Member for purposes of the objection to the Class Settlement; (3) include all objections to the Class Settlement and the factual and legal bases for same; (4) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (5) be postmarked no later than the Response Deadline. Class Members may also object at the final approval hearing.
- H. Disputes Regarding Credited Workweeks and Pay Periods.** Class Members and Aggrieved Employees will have the opportunity, should they disagree with Defendant's records regarding the number of eligible Class Workweeks, PAGA Pay Periods, or other information stated in their Class Notice, to challenge the data provided. In order to challenge Defendant's data, the disputing individual shall mail a dispute to the Settlement Administrator ("Workweeks/Pay Periods Dispute"), postmarked by the Response Deadline that: (1) states the case name the Lawsuit; (2) contains the name, current address, telephone number, and last four digits of the Social Security number of the disputing individual; (3) clearly states that the individual disputes the number of Class Workweeks and/or PAGA Pay Periods credited to him or her; and (4) provides documentation and/or an explanation demonstrating that Defendant's data is incorrect and evidencing the correct number of eligible Class Workweeks, PAGA Pay Periods, or other information that the disputing individual believes he or she should have been credited with. The Settlement Administrator shall provide a copy of the challenge and any supporting documentation to counsel for the Parties within five (5) calendar days of receipt.
- I. Dispute Resolution.** Where the information submitted by Defendant from its records differs from the information submitted by a disputing Class Member or Aggrieved Employee, the Settlement Administrator shall communicate with Class Counsel, and defense counsel to discuss and resolve the Workweeks/Pay Periods Dispute, including providing all available relevant information to all counsel. The Parties will resolve all disputes jointly, which shall be final and binding on any Class Member or Aggrieved Employee Workweeks/Pay Periods Dispute, and shall thereafter instruct the Settlement Administrator how to proceed in processing the dispute. If the Parties cannot reach an agreement, the Workweeks/Pay Periods Dispute shall be referred to the Settlement Administrator for a final determination and the Settlement Administrator's determination shall be binding upon the Class Member and/or Aggrieved Employee and the Parties.

11. Right to Revoke. Defendant shall have the right at its sole discretion to rescind and terminate this Settlement Agreement without prejudice to its pre-settlement positions and defenses in the Lawsuit if more than 15 Class Members or a number of Class Members whose share of the Net Settlement Fund is ten percent (10%) or more submit timely and valid Requests for Exclusion, by communicating that decision to both the Settlement Administrator and Class Counsel within fourteen (14) calendar days of the Response Deadline. The Parties agree that they will not in any manner take any actions to encourage Class Members to opt out of the Class Settlement. Should the threshold for opt-outs be exceeded, the Settlement Administrator shall notify counsel for all parties via email immediately.

12. Final Approval Process. Following Preliminary Approval and the close of the Response Deadline under this Settlement Agreement, and after Plaintiffs have provided drafts of the moving papers to Defendant's counsel at least five business days prior to their filing with the Court, Plaintiffs shall apply to the Court for the entry of an order and judgment providing for the following ("Final Approval Order and Judgment"):

- A. Certifying the Settlement Class;
- B. Appointing Simpluris, Inc. as Settlement Administrator, Plaintiffs as representatives of the Settlement Class, and Plaintiffs' counsel as counsel for the Settlement Class;
- C. Granting final approval to the Class Settlement and adjudging its terms to be fair, reasonable, and adequate;
- D. Approving the PAGA Settlement and distribution of the PAGA Payment;
- E. Approving Plaintiffs' application for Settlement Administration Costs to the Settlement Administrator, Enhancement Payment to Plaintiffs, and Attorneys' Fees and Costs to Class Counsel; and
- F. Entering judgment in the Lawsuit.

If for any reason the Settlement Agreement does not become Final, this Settlement Agreement will be inadmissible and will have no effect in this or any other matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

13. Non-Admission. Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, that it has any liability to anyone under the claims asserted in the Lawsuit, and that, but for this settlement, a class should not be certified in this Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability, fault or wrongdoing by Defendant. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If

Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

14. Amendments or Modifications. The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties or their counsel of record, and approved by the Court. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

15. Notices. All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery or by e-mail at the addresses set forth on below, or such other addresses as the Parties may designate in writing from time to time:

If to Plaintiffs:

James R. Hawkins
Isandra Fernandez
James Hawkins APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
james@jameshawkinsaplc.com
isandra@jameshawkinsaplc.com

If to Defendant:

Scott K. Dauscher
Jon M. Setoguchi
Atkinson, Andelson, Loya, Ruud & Romo APC
12800 Center Court Drive South, Suite 300
Cerritos, CA 90703-9364
SDauscher@aalrr.com
JSetoguchi@aalrr.com

16. Voluntary Agreement. The Parties acknowledge that they have entered into this Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress, or undue influence of any Party, and not in reliance on any promises, representations, or statements made by the other Parties other than those contained in this Settlement Agreement. Each of the Parties hereto expressly waives any right he/it might ever have to claim that this Settlement Agreement was in any way induced by fraud.

17. Opportunity to Consult with Counsel. Prior to execution of this Settlement Agreement, each party has read this entire Settlement Agreement and has been given the opportunity to consult with independent counsel of their choosing and to have such independent counsel advise as to the meaning of this Settlement Agreement and its legal effect.

18. Authorization to Act. The signatories hereby represent that they are fully authorized to enter into this Settlement and to bind the Parties hereto to the terms and conditions hereof.

19. Mutual and Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may be reasonably necessary to implement the

terms of this Settlement Agreement. The Parties shall use reasonable best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein.

20. Fair Settlement and Cooperation in Drafting. The Parties agree that this Settlement Agreement is the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which that Party has participated in the drafting of this Settlement Agreement.

21. No Reliance on Representations. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Settlement Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Settlement Agreement, or with respect to any such matters that would alter or change the terms of this Settlement Agreement. No representations, warranties, or inducements have been made to any party concerning this Settlement Agreement other than those expressly set forth or referred to herein.

22. Enforcement and Continuing Jurisdiction of the Court. To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties, Settlement Class Members, and Aggrieved Employees, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken and based on an alleged violation of any material term of the Settlement Agreement.

23. Settlement Agreement Binding on Successors. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors in interest of each of the Parties.

24. Meet and Confer Regarding Disputes. Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Settlement Agreement, a representative of Class Counsel and Defendant's counsel shall meet and confer in good faith in an attempt to resolve such disputes prior to submitting such disputes to the Court.

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

26. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof, that are not stated herein.

27. **Counterparts and Fax or Electronic Signatures.** This Settlement Agreement may be executed by the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

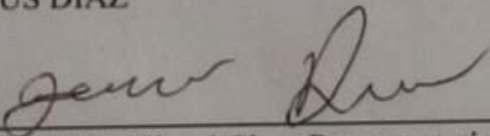
28. **No Collateral Attack.** This Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member, Aggrieved Employee, or any recipient of the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall include but not be limited to claims that the Settlement Class Member or Aggrieved Employee failed for any reason to receive timely notice of the procedure for disputing the calculation of her or his Individual Settlement Share and/or Individual PAGA Payment.

29. **Governing Law.** This Settlement Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

EXECUTION BY PARTIES AND COUNSEL:

DATED: 11-18-21

JESUS DIAZ

By: 
Plaintiff and Class Representative

DATED:

HECTOR GARCIA

By: _____
Plaintiff and Class Representative

DATED:

CAL PLATE

By: _____
By: Ray O'Brien
Its: Chief Executive Officer

27. Counterparts and Fax or Electronic Signatures. This Settlement Agreement may be executed by the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

28. No Collateral Attack. This Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member, Aggrieved Employee, or any recipient of the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall include but not be limited to claims that the Settlement Class Member or Aggrieved Employee failed for any reason to receive timely notice of the procedure for disputing the calculation of her or his Individual Settlement Share and/or Individual PAGA Payment.

29. Governing Law. This Settlement Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

EXECUTION BY PARTIES AND COUNSEL:

DATED: JESUS DIAZ

By: _____
Plaintiff and Class Representative

DATED: 10/28/2021

HECTOR GARCIA

By: _____
Plaintiff and Class Representative

DocuSigned by:
Hector Garcia
DCB90DFCECB2436...

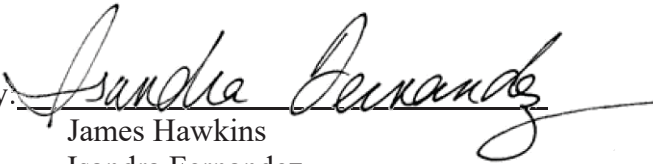
DATED: CAL PLATE

By: _____
By: Ray O'Brien
Its: Chief Executive Officer

APPROVED AS TO FORM:

DATED: October 28, 2021

JAMES HAWKINS, APLC

By: 
James Hawkins
Isandra Fernandez
Attorneys for Plaintiffs and Class Representatives,
and Class Counsel

DATED:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: _____
Scott K. Dauscher
Jon M. Setoguchi
Attorneys for Defendant