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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

RUFUS MCWILLIAMS; individually, and on
behalf of other aggrieved employees pursuant to
the California Private Attorneys General Act,

Plaintiff,

v.

KARMA AUTOMOTIVE, LLC, a California
limited liability company; and DOES 1 through
100, inclusive,

Defendants.

Case No. CVR12102922

Honorable Daniel A. Ottolia
Department 4

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

Complaint Filed: June 28, 2021
Jury Trial Date: None Set

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EXHIBIT

Notice of Class Action Settlement A

1 This Joint Stipulation of Class Action and PAGA Representative Action Settlement Agreement
2 and Release of Claims (“Agreement”) is made and entered into between (1) Defendant Karma
3 Automotive, LLC (currently known as Karma Automotive, Inc.) (“Defendant”) and (2) Plaintiff Rufus
4 McWilliams (“Plaintiff”) (collectively, the “Parties”), individually and on behalf of all current and
5 former hourly paid or non-exempt employees of Defendant in California between October 26, 2019
6 through August 8, 2023 (the “Class” or “Class Members”), subject to approval from the Court, as
7 provided below.

8 This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and
9 settle the Action (as defined below) and the Released Claims (as defined below), upon and subject to the
10 terms and conditions thereof, as follows:

11 1. DEFINITIONS

12 As used herein, for the purposes of this Agreement only, the following terms shall be defined as
13 set forth below:

14 1.1. “**Action**” refers to the following civil action: *Rufus McWilliams v. Karma*
15 *Automotive, LLC*, pending in the Superior Court of California, County of Riverside, Case No.
16 CVRI2102922 (the “Complaint”).

17 1.2. “**Agreement**” refers to this Joint Stipulation of Class and PAGA Representative
18 Action Settlement Agreement and Release of Claims, which includes all of the Recitals and the Exhibits
19 attached hereto.

20 1.3. “**Class**” refers to all current and former hourly paid or non-exempt employees of
21 Defendant in California between October 26, 2019 through August 8, 2023.

22 1.4. “**Class Data**” refers to the total of each Class Member’s most current, known
23 mailing address and telephone number (“Contact Information”), number of Workweeks during the Class
24 Period, and social security number.

25 1.5. “**Class Counsel**” refers to Lawyers for Justice, PC and Domb & Rauchwerger
26 LLP. For purposes of providing any notices required under this Agreement, Class Counsel shall refer to
27 Zack I. Domb (zack@dombrauchwerger.com), Devin E. Rauchwerger (devin@dombrauchwerger.com),
28

and Jeffrey Jackson (jeff@dombrauchwerger.com), 1055 East Colorado Blvd., Fifth Floor, Pasadena, California 91106.

1.6. **“Class Member”** refers to any individual that is a member of the Class.

1.7. **“Class Period”** refers to the period of October 26, 2019 through August 8, 2023.

1.8. **“Class Representative”** refers to the named Plaintiff in the Complaint, Rufus McWilliams.

1.9. **“Class Representative Incentive Payment”** refers to any payment, subject to Court approval, to the Class Representative from the Gross Settlement Amount in recognition of the efforts and work in prosecuting the Action on behalf of the Class Members.

1.10. **“Workweek”** refers to any workweek when a Class Member worked for Defendant during the Class Period.

1.11. **“Defendant”** refers to Defendant Karma Automotive, LLC.

1.12. **“Defendant’s Counsel”** refers to Seyfarth Shaw LLP. For purposes of providing any notices required under this Agreement, Defendant’s Counsel shall refer to Candace Bertoldi (cbertoldi@seyfarth.com), Seyfarth Shaw, 601 South Figueroa, Suite 3300, Los Angeles, CA 90017.

1.13. **“Effective Date”** refers to the 15th calendar day after the date by which the last of the following has occurred: (a) all conditions of Settlement, except for those conditions that can only be satisfied after the Effective Date, have been satisfied; (b) the Court has entered and filed the Final Approval Order and Judgment; and (c) the time period for appeal of the Judgment has been exhausted without any appeals having been filed, or all such appeals have been voluntarily or involuntarily dismissed, or the appropriate appellate court or courts have entered a final judgment affirming the Final Approval Order and Judgment of the Court and the final judgment of such appellate court or courts is no longer subject to any further appellate challenge or procedure. The Parties agree that only the Parties and/or Class Members who file a valid and timely objection maintain the right to appeal.

1.14. **“Fairness Hearing”** refers to the hearing at which the Court will make a final determination whether the terms of the Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for the entering of the Final Approval Order.

1.15. **“Final Approval Order”** refers to the final order by the Court approving the Settlement following the Fairness Hearing.

1.16. **“Gross Settlement Amount”** refers to the maximum settlement payment Defendant will be obligated to make in connection with the Settlement Agreement after the Effective Date, which in this case is \$420,000.00. This sum shall include all Individual Settlement Payments made to Class Members, all administration costs, employees’ share of payroll taxes, the Class Representative Incentive Payment, the LWDA Payment (as defined below), and attorneys’ fees and costs as set forth below. The Gross Settlement Amount does not include the employer’s share of payroll taxes, which shall be paid by Defendant outside of the Gross Settlement Amount.

The Gross Settlement Amount is a material term of this Agreement. To the extent Plaintiff or the Court seeks to require Defendant to pay more than the Gross Settlement Amount (other than as required under this Settlement Agreement), Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement Agreement.

1.17. **“Individual Settlement Payment”** refers to the pro-rata amount calculated by the Settlement Administrator to be distributed to each individual Class Member, based on Workweeks. The Individual Settlement Payments shall be paid from the Net Settlement Amount.

1.18. **“Judgment”** refers to the final judgment by the Court approving the Settlement.

1.19. **“PAGA Member”** refers to all current and former hourly paid or non-exempt employees of Defendant in California between October 26, 2019 through August 8, 2023.

1.20. **“PAGA Payment”** refers to a payment out of the Gross Settlement Amount of \$100,000.00, which shall be allocated as 75% to the California Labor & Workforce Development Agency (“LWDA Payment”) as the LWDA’s share of the settlement of civil penalties paid under this Settlement Agreement pursuant to the Private Attorneys General Act (“PAGA”), and as 25% to the Net Settlement Amount for distribution to the PAGA Members.

1.21. **“PAGA Period”** refers to the period of October 26, 2019 through August 8, 2023.

1.22. **“Net Settlement Amount”** refers to the Gross Settlement Amount minus all administration costs, the Class Representative Incentive Payments, the PAGA Payment, and Class

Counsel's fees and costs. The Net Settlement Amount shall include all Individual Settlement Payments due to the Settlement Class from which the employees' share of payroll taxes shall be deducted. The Net Settlement Amount is the maximum that shall be available for distribution to the Settlement Class.

1.23. **"Notice of Class Action Settlement And Notice of Settlement Award"** refers to the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

1.24. **"Parties"** refer collectively to (1) Plaintiff Rufus McWilliams, individually and on behalf of all current and former hourly paid or non-exempt employees of Defendant in California between October 26, 2019 through August 8, 2023; and (2) Defendant.

1.25. **"Plaintiff"** refers to Rufus McWilliams.

1.26. **"Preliminary Approval Order"** refers to the order issued and entered by the Court following a Motion for Preliminary Approval of this Settlement Agreement.

1.27. **"Released Claims"** refers to those claims defined in Paragraph 6 of this Agreement. The Released Claims shall apply to the Settlement Class.

1.28. **"Released Parties"** refers to Karma Automotive, LLC and any of its past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, as well as each of their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, and reinsurers.

1.29. **"Request for Exclusion"** refers to a timely, written, signed opt-out request by someone who otherwise would be a Class Member who elects to be excluded from the Settlement.

1.30. **"Settlement" or "Settlement Agreement"** refers to terms of this Agreement, which includes the Recitals and the Exhibit attached hereto.

1.31. **"Settlement Administrator"** refers to Phoenix Class Action Administration Solutions, the third party administrator who has been mutually selected by the Parties, subject to Court approval, to perform the notice, claims administration, and distribution of payment functions further described in this Agreement. Neither Party, nor their counsel, is affiliated with the Settlement Administrator. The Settlement Administrator shall establish its own employer identification number and file an Internal Revenue Service Form W-9. The Settlement Administrator shall meet all of the

requirements to establish a Qualified Settlement Fund (“QSF”) pursuant to U.S. Treasury Regulation Section 468B-1.

1.32. **“Settlement Class”** refers to all Class Members who do not file a timely valid Request for Exclusion.

2. PROCEDURAL HISTORY AND RECITALS

2.1. **LWDA Letter.** In April 2021, Plaintiff submitted a letter to the California Labor Workforce Development Agency (“LWDA”) alleging that Karma “required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks, and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, standing in line to clock in, and responding to work related inquiries.” He claimed employees worked off-the-clock without receiving minimum wage; worked more than 8 hours a day and more than 40 hours a week, but were not paid for all overtime hours worked; were required to work during meal and rest periods and meal and rest periods were short, late, interrupted, or missed; were not paid all wages due on time, including unpaid minimum, overtime, and premium wages; and received inaccurate wage statements. He also claimed employees were required to work in excess of six days in a workweek and not provided the opportunity to take the equivalent of one day of rest in seven during each calendar month; failed to pay reporting time pay; and failed to fully reimburse for necessary business-related expenses.

2.2. **PAGA Complaint.** In June of 2021, Plaintiff filed a civil complaint under the California Private Attorney General Act against Defendant in Riverside Superior Court based on the facts, theories, and claims alleged in the LWDA Letter.

2.3. **Mediation.** The Settlement Agreement was negotiated in light of all known facts and circumstances—including the risks of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues—and was reached after extensive arm’s-length negotiations, with the assistance of a mediation session before Paul Grossman, an experienced mediator knowledgeable of both the wage and hour laws and class, collective, and representative claims at issue in the Action. In connection with the mediation, the Parties exchanged information and documents, including payroll records, time records, and policies.

1 2.4. **Class Complaint.** On May 20, 2024 Plaintiff filed a First Amended Class Action
2 and Representative Action Complaint pleading all class and Labor Code claims that can be pled based
3 on the facts pled in the operative PAGA complaint.

4 2.5. **Class Counsel's Investigation.** Class Counsel investigated the claims against
5 Defendant in the Action and also analyzed all applicable defenses raised by Defendant. The
6 investigation included review of information and documents produced in preparation for the mediation.
7 Class Counsel believes it has obtained enough information to establish the appropriateness of
8 conditional certification of the Class for settlement purposes.

9 2.6. **Defendant's Denials.** Similarly, Defendant's Counsel believes it has obtained
10 enough information to file a Motion To Deny Class Certification, as well as a Motion For Summary
11 Judgment as to Plaintiff's individual claims. Defendant denies and continues to deny: (a) all of the
12 allegations made by the Class Representative on behalf of the Class in the Action; (b) that it violated any
13 applicable laws; (c) that it is liable or owes damages, penalties, or other compensation or remedies to
14 anyone with respect to the alleged facts or claims asserted in the Action; and, (d) that class certification
15 or representative treatment of the Action or any alleged claim is proper. The Court has not made any
16 findings of liability as to Defendant and the Court has not determined that class certification is warranted
17 in this Action.

18 Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever and without
19 admitting or conceding that class certification or representative treatment is appropriate for any purpose
20 other than for this Settlement, Defendant has agreed to settle the Action on the terms and conditions set
21 forth herein, to avoid the burden, expense, and uncertainty of continuing the Action. Any stipulations or
22 statements by Defendant contained in this Agreement are made for settlement purposes only.

23 2.7. **Class Counsel's Evaluation.** Based on Class Counsel's investigation and
24 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable,
25 adequate, and in the best interest of the Class Members. Class Counsel diligently and effectively
26 investigated Plaintiff's claims, drafted the various Complaints, prepared discovery, and reviewed and
27 analyzed documents produced.

1 2.8. **The Parties' Intent.** It is the desire of the Parties to fully, finally, and forever
2 settle, compromise, and discharge any and all claims, rights, demands, charges, complaints, causes of
3 action, obligations or liability of any and every kind that were or could have been asserted in the Action,
4 to the extent that such claims arise out of the alleged facts, circumstances, and occurrences underlying
5 the allegations as set forth in the claims asserted in the Action.

6 2.9. **Certification of Settlement Classes.** This Agreement is contingent upon
7 approval of class certification under California Code of Civil Procedure § 382 by the Court of the Class
8 asserted on behalf of the Class for purposes of this Settlement only. Defendant does not waive, and
9 instead expressly reserves, their right to challenge the propriety of class certification or representative
10 treatment for any other purpose should the Court not approve the Settlement Agreement. If for any
11 reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional
12 agreement to class certification will be inadmissible and will have no effect in this matter or in any
13 claims brought on the same or similar allegations, and the Parties shall revert to the respective positions
14 they held prior to entering into the Settlement Agreement.

15 2.10. **The Parties' Agreement to Cooperate.** The Parties agree to cooperate and to
16 take all steps necessary and appropriate to effectuate all aspects of this Settlement Agreement, to obtain
17 a Preliminary Approval Order and Final Approval Order of this Settlement Agreement, and to request a
18 Judgment upon the terms and conditions set form in this Settlement Agreement.

19 **NOW THEREFORE**, in consideration of the covenants and agreements set forth herein, and of
20 the release of all Released Claims, the Parties stipulate and agree to the terms and provisions of this
21 Settlement Agreement, subject to the approval of the Court.

22 **3. NOTICE TO CLASS MEMBERS**

23 3.1. **Disputed Workweeks On Notice of Settlement Award.** Class Members will
24 have an opportunity to dispute the number of Workweeks indicated on the Notice of Settlement and
25 Notice of Settlement Award. To do so, Class Members may submit, no later than the deadline to submit
26 the Request for Exclusion or Objection, credible written evidence to the Settlement Administrator
27 showing that such information is inaccurate. The Settlement Administrator will decide the dispute, after
28 consultation with Class Counsel and Defense Counsel. The Settlement Administrator's decision on all

1 Workweeks disputes will be final and non-appealable. Defendant's records will be presumed correct, but
2 the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make
3 the final decision as to the merits of the dispute. All disputes will be decided within 10 business days of
4 the deadline for Class Members to submit their Request for Exclusion or Objection.

5 **3.2. Settlement Administrator.** The Parties request that the Court appoint Phoenix
6 Class Action Administration Solutions as the Settlement Administrator. All disputes relating to the
7 Settlement Administrator's performance of its duties, after good-faith efforts by the Parties to first
8 resolve such disputes, will be referred to the Court, if necessary, which will have continuing jurisdiction
9 over this Agreement until all payments and obligations contemplated by this Agreement have been fully
10 completed. Notice of the final judgment will be posted on the Settlement Administrator's website.

11 **3.3. Class Data for Settlement Administrator.** Within 14 calendar days of the entry
12 of a Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement
13 Administrator.

14 **3.4. Mailing of Notice of Class Action Settlement.** The Settlement Administrator
15 shall mail the Notice of Class Action Settlement And Notice of Settlement Award to Class Members
16 within 14 calendar days of receiving the Class Data from Defendant.

17 **3.5. Confidentiality of Class Data.** The Settlement Administrator shall keep the
18 Contact Information and Social Security Numbers provided by Defendant strictly confidential and shall
19 use it only for the purposes described in this Agreement. The Notice of Class Action Settlement And
20 Notice of Settlement Award will direct Settlement Class Members to the Settlement Administrator with
21 any questions or concerns. Should a Settlement Class Member contact the Settlement Administrator with
22 questions or concerns about the Settlement that the Settlement Administrator is unable to answer, with
23 or without the assistance of Class Counsel and Defendant's counsel, the Settlement Administrator will
24 notify the Settlement Class Member that they have 48-hours to object in writing to disclosure of their
25 Contact Information to Class Counsel. If no written objection is received within 48 hours, the Settlement
26 Administrator will inform Defendant's Counsel and Class Counsel will be provided Contact Information
27 for that Settlement Class Member, and Settlement Class Member's total number of Workweeks if
28 necessary to resolve the Settlement Class Member's questions or concerns.

1 3.6. **Mailing of Notice.** The Settlement Administrator shall (i) run the names of all
2 Settlement Class Members through the National Change of Address (“NCOA”) database to determine
3 any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class
4 Member for whom an updated address was found through the NCOA search; (iii) calculate the estimated
5 Settlement Award for each Settlement Class Member; and (iv) mail a Notice Packet to each Settlement
6 Class Member at their last known address or at the updated address found through the NCOA search via
7 First Class U.S. Mail, and retain proof of mailing. Any mailing returned to the Settlement Administrator
8 as undeliverable shall be sent within 5 calendar days via First Class U.S. Mail to the forwarding address
9 affixed thereto. If no forwarding address is provided, the Settlement Administrator shall attempt to
10 determine the correct address using a computer-based skip-trace search, and it shall then perform a
11 single re-mailing via First Class U.S. Mail with 3 business days.

12 3.7. **Proof of Mailing.** At least 30 days prior to the Fairness Hearing, the Settlement
13 Administrator shall provide a declaration of due diligence and proof of mailing with regard to mailing of
14 the Notice of Class Action Settlement And Notice of Settlement Award to Class Counsel and
15 Defendant’s Counsel, which they shall in turn provide to the Court.

16 **4. CLASS MEMBERS’ OPTIONS TO RESPOND**

17 4.1. **Class Members’ Consideration Period.** Class Members shall have 60 calendar
18 days to exercise any rights with regard to the Settlement Agreement as set forth below, following the
19 postmark date of the initial mailing of the Notice of Class Action Settlement And Notice of Settlement
20 Award. Class Members to whom the Notice of Class Action Settlement And Notice of Settlement
21 Award is resent after having been returned undeliverable to the Settlement Administrator shall have an
22 additional seven calendar days to exercise any rights with regard to the Settlement Agreement as set
23 forth below, following the postmark date of the remailing. Except as specifically provided herein, no
24 Class Member responses of any kind that are postmarked more than 60 calendar days after the initial
25 mailing, or 67 days if the Class Notice has to be remailed, shall be considered.

26 4.2. **Request for Exclusion and Opt-Out Rights.** Class Members shall be given the
27 opportunity to request exclusion (“Opt-Out”) from the Settlement Agreement. Opt-Out Rights do not
28 apply to the Released PAGA Claims and will not exclude PAGA Members from the release of Released

1 PAGA Claims. That is because the Parties agree there is no statutory right for any PAGA Member to
2 object, opt out or otherwise exclude himself or herself from the PAGA part of the Settlement. Except as
3 otherwise stated, Plaintiff will vigorously defend against any attempt by any PAGA Member or by any
4 entity or agency to intervene in this matter or object to/opt-out of this settlement. The Parties further
5 agree there is no right or opportunity for any PAGA Member to appeal the approval of the Settlement by
6 the Court. The Parties will jointly defend against any appeal filed as it pertains to the PAGA part of the
7 Settlement.

8 **4.2.1 Opt-Out Procedures.** Class Members may opt out of the Settlement by
9 mailing to the Settlement Administrator a Request for Exclusion. Any such Request for Exclusion must
10 be postmarked not more than 60 calendar days after the postmark date of the initial mailing of the Notice
11 of Class Action Settlement And Notice of Settlement Award, or 67 calendar days if the Notice has to be
12 remailed. To be a valid Request for Exclusion, a Class Member must provide their name (and former
13 names, if any), current address, current telephone number, and last four digits of their social security
14 number, and a statement that they wish to be excluded from the Settlement Agreement. Any Request for
15 Exclusion that does not include all of the required information, is not signed and dated, or that is not
16 submitted in a timely manner, will be deemed null, void, and ineffective. If there is a dispute regarding
17 the timeliness or validity of a Request for Exclusion, the Settlement Administrator shall make the
18 determination, after consultation with Class Counsel and Defense Counsel. In addition to the procedures
19 set forth above, the Notice of Class Action Settlement And Notice of Settlement Award shall include an
20 exclusion form that the Class Members may use which will include spaces for all of the information
21 required above.

22 **4.2.2 Effect of Opt-Out.** Any Class Member who opts out of the Settlement
23 may not object to the Settlement, shall not receive any Individual Settlement Payment, and shall not be
24 bound by the Released Claims provisions in this Settlement Agreement. If a Class Member submits both
25 a Request for Exclusion and an Objection, the Settlement Administrator shall send a notice to the Class
26 Member indicating that it received both a Request for Exclusion and an Objection, that a Class Member
27 cannot both object and request to be excluded, and request the Class Member clarify whether the Class
28 Member elects to proceed with the Objection or Request for Exclusion within ten (10) days of receipt of

1 the Objection and Request for Exclusion. If the Class Member fails to respond to the Settlement
2 Administrator's request for clarification, the Class Member's Objection will be valid and be deemed to
3 invalidate the Request for Exclusion.

4 Each Class Member who does not opt out of the Settlement Agreement shall be
5 bound by the applicable Released Claims provisions in this Settlement Agreement.

6 4.2.3 **Defendant's Rights to Withdraw.** Defendant has the right, at its sole
7 option, to withdraw from this Settlement Agreement if the number of Class Members opting out exceeds
8 5% of the total number of Class Members. Defendant agrees to notify Class Counsel of any such
9 decision no later than 10 business days following the Class Members' Consideration Period described
10 above in Paragraph 4.1. This right to withdraw is a material term of the Agreement and Defendant has
11 the right, at its sole option, to withdraw from this Settlement Agreement if this material term is not
12 approved by the Court. If Defendant exercises this right to withdraw, it will be responsible for all
13 Settlement Administration Costs incurred by the Settlement Administrator.

14 4.3. **Objection Rights.** Because the Settlement Class will be certified by the Court,
15 only Class Members who do not opt out of the Settlement shall be entitled to object to the terms of the
16 Settlement.

17 4.3.1 **Objection Procedures.** Class Members' objections to the Settlement
18 Agreement may be made using the procedures set forth in the Notice of Class Action Settlement. Any
19 objection must be sent to the Settlement Administrator and postmarked no later than 60 calendar days
20 after the first postmark date of mailing the Notice of Class Action Settlement And Notice of Settlement
21 Award. An objection shall be deemed to be submitted as of the postmarked date. The written objection
22 must contain: (1) the name and case number of this Action: *Rufus McWilliams v. Karma Automotive,*
23 *LLC*, Riverside Superior Court Case No. CVRI2102922; (2) the full name, last four digits of their social
24 security number, and current address of the Class Member making the objection; (3) the specific
25 reason(s) for the objection; (4) any and all evidence and supporting papers (including, without
26 limitation, all briefs, written evidence, and declarations) for the Court to consider; and (5) be signed and
27 dated by the Class Member. In addition to the procedures set forth above, the Notice of Class Action
28 Settlement And Notice of Settlement Award shall include an objection form that the Class Members

1 may use which will include spaces for all of the information required above. Class Members may also
2 object by appearing at the Fairness Hearing. Class Members who submit an objection remain bound by
3 this Settlement Agreement.

4 **4.3.2 Obligations of Individuals Who Submit an Objection.** Class Members
5 who timely submit an objection must be available for deposition if Plaintiff or Defendant choose to take
6 their deposition, and the party seeking to obtain the deposition(s) appropriately seeks and obtains
7 approval from the Court to do so. The Court will determine whether objections have been waived by the
8 refusal to be deposed. Class Members may withdraw their objections at any time.

9 **4.3.3 Waiver of Objection Rights.** Class Members who fail to make objections
10 in the manner specified in the Notice of Class Action Settlement And Notice of Settlement Award may
11 be deemed to have waived any objections and foreclosed from making any objection, whether by appeal
12 or otherwise, to this Settlement Agreement, if so determined by the Court.

13 **4.4. Proof of Class Members' Responses.** By not later than 75 calendar days after the
14 initial mailing of the Notice of Class Action Settlement And Notice of Settlement Award and at least 30
15 days prior to the Fairness Hearing, the Settlement Administrator will prepare and submit a declaration
16 attesting to (by number of relevant individuals), its mailing of the Notice of Class Action Settlement
17 And Notice of Settlement Award, its inability to deliver any mailing due to invalid addresses, and its
18 receipt of valid Requests for Exclusion.

19 **4.5. Binding Effect of Settlement.** Although some Class Members might not receive
20 the Notice of Class Action Settlement And Notice of Settlement, as provided under this Settlement
21 Agreement, due to inability to locate their current address following the procedures set forth in this
22 Settlement Agreement, such individuals shall nonetheless be bound by all of the terms of this Settlement
23 Agreement and the Final Order and Judgment.

24 **5. DISTRIBUTION OF GROSS SETTLEMENT AMOUNT**

25 **5.1. Gross Settlement Amount.** Defendant agrees to pay up to a maximum potential
26 Settlement Amount of \$420,000.00, subject to the Escalator Clause as described in Paragraph 5.2. The
27 \$420,000.00 Gross Settlement Amount refers to the maximum settlement payment Defendant may be
28 obligated to make in connection with the Settlement Agreement and shall include all Individual

1 Settlement Payments made to Class Members, all administration costs, the employees' share of payroll
2 taxes, the Class Representative Incentive Payment, the PAGA Payment, and attorneys' fees and costs.
3 The Gross Settlement Amount does not include the employer's share of payroll taxes.

4 **5.2. Pay Period and Workweek Estimates and Escalator Clause.** Defendant
5 represents that there are 5,621 pay periods during the period from October 11, 2019 to May 10, 2023
6 ("Data Period"). Defendant represents that there are 10,515 workweeks during the Class Period. Should
7 the number of workweeks during the Class Release Period increase beyond 12% of the number of
8 workweeks during the Data Period, Defendant shall increase the Total Settlement Amount on a pro-rata
9 basis equal to the percentage increase in the number of workweeks worked by the Class Members above
10 12% (e.g., if the number of workweeks in the Settlement Release Period increases by 13% to 11,882
11 workweeks, the Total Settlement Amount will increase by 1%). Likewise, should the number of pay
12 periods during the Class Release Period increase beyond 12% of the number of workweeks during the
13 Data Period, Defendant shall increase the Total Settlement Amount on a pro-rata basis equal to the
14 percentage increase in the number of pay periods worked by the Class Members above 12% (e.g., if the
15 number of pay periods in the Settlement Release Period increases by 13% to 6,352 pay periods, the
16 Total Settlement Amount will increase by 1%).

17 **5.3. Administration Costs.** If the Court does not issue a Final Approval Order
18 approving the Settlement (not including a request for the Parties to submit additional information
19 necessary for the Court to issue a Final Approval Order), Class Counsel shall reimburse Defendant for
20 one-half of the Administration Costs. If Defendant withdraws from the Settlement pursuant to Paragraph
21 4.2.3 of this Agreement, Defendant shall be responsible for payment of one-half of the Settlement
22 Administration Costs incurred to the date of withdrawal.

23 **5.4. Attorneys' Fees and Costs.** Class Counsel intends to request—and Defendant
24 agrees not to oppose—that the Court approve an attorneys' fees and costs award for (a) attorneys' fees
25 in an amount up to 35% of the Gross Settlement Amount (or \$147,000); and (b) recoverable costs
26 submitted and supported by adequate documentation by Class Counsel not to exceed \$20,000. Except as
27 provided in this Agreement, Defendant shall have no liability for any other attorneys' fees or costs.
28

1 **5.4.1 Approval of Attorneys' Fees and Costs Award Not Material.** The
2 Court's approval of an attorneys' fees or costs award is not a material term of the Settlement Agreement.
3 If the Court does not approve or approves only a lesser amount than that requested by Class Counsel for
4 attorneys' fees or costs, the other terms of the Settlement and this Agreement shall still apply. The
5 Court's refusal to approve the attorneys' fees or costs award requested by Class Counsel does not give
6 the Class Representative, the Class Members, or Class Counsel any basis to abrogate the Settlement
7 Agreement. Any amount of an attorneys' fees and costs award requested by Class Counsel but
8 unapproved by the Court shall be allocated to the Net Settlement Amount.

9 **5.4.2 Timing of Payment of Attorneys' Fees and Costs.** The Settlement
10 Administrator shall pay to Class Counsel any approved attorneys' fees and costs award within 30
11 calendar days after the Effective Date. Class Counsel are responsible for allocating this payment among
12 themselves. The Settlement Administrator shall issue an Internal Revenue Service Form 1099 to Class
13 Counsel for any attorneys' fees and costs award payment. Class Counsel shall be solely and legally
14 responsible for paying all applicable taxes on any attorneys' fees and costs award payments and shall
15 indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest
16 arising as a result of the payment.

17 **5.5. Class Representative Incentive Payment.** Class Counsel intends to request—
18 and Defendant agrees not to oppose—that the Court approve a Class Representative Incentive Payment
19 of up to \$5,000 for the Class Representative Rufus McWilliams, for his additional participation in the
20 Action, and such payments shall not be subject to payroll taxes or withholdings.

21 **5.5.1 Reduction of Class Representative Incentive Payment Not Material.**
22 The Court's approval of a Class Representative Incentive Payment is not a material term of the
23 Settlement Agreement. If the Court approves only a lesser amount than that requested by Class Counsel
24 for the Class Representative Incentive Payment, the other terms of the Settlement and this Agreement
25 shall apply. The Court's refusal to approve the Class Representative Incentive Payment requested by
26 Class Counsel does not give the Class Representative or Class Counsel any basis to abrogate the
27 Settlement Agreement. Any amount of a Class Representative Incentive Payment requested by Class
28 Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

1 **5.5.2 Timing of Class Representative Incentive Payment.** The Settlement
2 Administrator shall pay to the Class Representative any approved Class Representative Incentive
3 Payments within 30 calendar days after the Effective Date. The Settlement Administrator shall issue an
4 IRS Form 1099-MISC to the Class Representative for any Class Representative Incentive Payment. The
5 Class Representative shall be solely and legally responsible for paying all applicable taxes on any Class
6 Representative Incentive Payment and shall indemnify and hold harmless Defendant from any claim or
7 liability for taxes, penalties, or interest arising as a result of the payment.

8 **5.6. Settlement Administration Costs.** Class Counsel intends to request—and
9 Defendant agrees not to oppose—that the Court approve Settlement Administration Costs of up to
10 \$6,750. Any amount of Settlement Administration Costs requested by Class Counsel but unapproved by
11 the Court shall be allocated to the Net Settlement Amount. Upon completion of administration of the
12 Settlement, the Settlement Administrator shall provide written certification of such completion to Class
13 Counsel and Defendant’s Counsel. The Parties agree to cooperate in the settlement administration
14 process and to make all reasonable efforts to control and to minimize settlement administration costs.

15 **5.7. PAGA Payment.** The Parties will seek approval for a \$100,000.00 payment out
16 of the Gross Settlement Amount (the “PAGA Payment”), which shall be allocated as \$75,000.00 to the
17 California Labor & Workforce Development Agency (“LWDA”) as the LWDA’s share of the settlement
18 of civil penalties paid under this Agreement pursuant to the PAGA (“LWDA Payment”), and as
19 \$25,000.00 to PAGA Penalties for distribution to the PAGA Members. The PAGA Penalties will be
20 divided by the total number of PAGA Workweeks worked during the PAGA Period credited to all
21 PAGA Members (“PAGA Workweek Rate”). Each PAGA Member’s Individual PAGA Payment is
22 equal to the PAGA Workweek Rate multiplied by his or her individual PAGA Workweeks pursuant to
23 the records of Defendant.

24 **5.7.1 PAGA Payment Not Material.** The PAGA Payment is not a material
25 term of the Settlement Agreement. If the Court approves only a lesser amount than that requested by
26 Class Counsel for the PAGA Payment, the other terms of the Settlement and this Agreement shall apply.
27 The Court’s reduction of or refusal to approve the PAGA Payment requested by Class Counsel does not
28 give the Class Representative, Defendant, or Class Counsel any basis to abrogate the Settlement

1 Agreement so long as the reduction of the PAGA Payment does not result in a reduction to the Gross
2 Settlement Amount. Any amount of a PAGA Payment requested by Class Counsel but unapproved by
3 the Court shall be allocated to the Net Settlement Amount.

4 **5.8. Individual Settlement Payments From the Net Settlement Amount.** This
5 Settlement shall be a non-reversionary Settlement. Each individual in the Settlement Class shall be
6 entitled to an Individual Settlement Payment consisting of their share of the Net Settlement Amount, in
7 accordance with the formula set forth below.

8 **5.8.1** 100% of the Net Settlement Amount shall be allocated to Settlement Class
9 members who worked during the Class Period, as follows: each Settlement
10 Class member shall receive a proportionate settlement share based upon
11 the pro-rata number of Workweeks they worked during the Class Period,
12 the numerator of which is the Settlement Class member's total Workweeks
13 during the Class Period, and the denominator of which is the total
14 Workweeks worked by all Settlement Class members who worked during
15 the Class Period [i.e., (individual Workweeks ÷ total Workweeks by all
16 Settlement Class members)]. Partial Workweeks will be considered full
17 Workweeks for the purposes of this Settlement. The Settlement
18 Administrator will calculate the number of Workweeks that each Class
19 Member worked during the Class Period.

20 **5.9. Distribution of Individual Settlement Payments.** Each Class Member's portion
21 of the Net Settlement Amount shall be distributed as one single check. The Administrator may send
22 Class Members a single check combining the Individual Settlement Payment and any applicable PAGA
23 Payment.

24 **5.9.1 Settlement Check.** The settlement check shall be for the amount of each
25 Class Member's Individual Settlement Payment, subject to the Administrator's option to send Class
26 Members a single check combining the Individual Settlement Payment and any Individual PAGA
27 Payment as described in Paragraph 5.9.
28

1 **5.10. Timing of Individual Settlement Payment.** The Settlement Administrator shall
2 issue the checks constituting the Individual Settlement Payments and PAGA Payments no later than 30
3 calendar days after the Effective Date.

4 **5.11. Allocation of Individual Settlement Payment.** The settlement administrator
5 shall allocate 20% of the payments made as Individual Settlement Payments as wage income to be
6 reported by IRS Form W-2. 80% of payments to the Class Members as Individual Settlement Payments
7 shall be regarded as penalties and interest to be reported on an IRS Form 1099-MISC Settlement Class
8 members shall be solely and legally responsible for paying all other applicable taxes on their respective
9 Individual Settlement Payments.

10 **5.11.1 Payments and Indemnification.** Each Settlement Class Member shall
11 indemnify and hold harmless Defendant from the Settlement Class Member's failure to timely pay for
12 taxes, penalties, or interest arising as a result of their respective Individual Settlement Payment.

13 **5.11.2 Allocation of Individual Settlement Payment Not Material.** The
14 Court's approval of the allocation of the Individual Settlement Payment for Form W-2 or 1099 income is
15 not a material term of the Settlement or this Agreement. If the Court does not approve or approves a
16 different allocation of the Individual Settlement Payments, the other terms of the Settlement and this
17 Agreement shall apply. The Court's refusal to approve the allocation for the Individual Settlement
18 Payments requested by the Parties does not give the Parties any basis to abrogate the Settlement or this
19 Agreement.

20 **5.12. Undeliverable or Uncashed Checks.** Settlement checks will remain valid for a
21 period of 180 calendar days after they are issued. A reminder postcard will be mailed to all Class
22 Members who have not cashed their check within 90 calendar days. If any checks remain uncashed or
23 not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement
24 Administrator will transfer the uncashed checks to the California Controller's Unclaimed Property Fund
25 in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
26 California Code of Civil Procedure Section 384, subd. (b).

1 **5.13. Funding of Gross Settlement Amount.** Defendant shall deposit into an the QSF
2 established by the Settlement Administrator the Gross Settlement Amount and the employer's share of
3 payroll taxes within 15 days after the Effective Date.

4 **5.14. Tax Payment Considerations.** Class Counsel and Defendant are not giving any
5 tax advice in connection with the Settlement or any payments to be made pursuant to this Agreement.

6 **5.15. No Tax Advice or Liability.** Each Class Member agrees to indemnify, and to
7 hold harmless, Defendant from any liability for taxes, fees, costs, or assessments resulting from the
8 Class Member's failure to timely pay taxes, interest, fees, or penalties owed.

9 **5.16. No ERISA Impact.** None of the payments made pursuant to the Settlement and
10 this Agreement shall be considered for purposes of determining eligibility for, vesting or participation
11 in, or contributions to any benefit plan, including, without limitation, all plans subject to the Employee
12 Retirement and Income Security Act of 1974 ("ERISA"). Any payments to Plaintiff or Settlement Class
13 members shall not be considered as a payment of wages or compensation under the terms of any
14 applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the amount of any
15 past or future contribution to, or level of benefits under any applicable benefit plan. Any amounts paid
16 will not impact or modify any previously credited hours of service or compensation taken into account
17 under any benefit plan sponsored or contributed to by Defendant or any jointly-trusted benefit plan. For
18 purposes of this Agreement, "benefit plan" means each and every "employee benefit plan," as defined in
19 29 U.S.C. Section 1002(3), and, even if not thereby included, any 401(k) plan, bonus, pension, stock
20 option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation,
21 severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit
22 plan, practice, program, or policy.

23 **6. RELEASES**

24 **6.1. Release by Settlement Class Members.** By operation of the entry of the Final
25 Approval Order and Judgment and upon funding of the Gross Settlement Amount by Defendant
26 pursuant to Paragraph 5.13, and except as to such rights or claims as may be created by this Agreement,
27 including, without limitations, individuals who submit a valid Request for Exclusion, each Settlement
28 Class member, and each of their respective executors, administrators, representatives, agents, heirs,

1 successors, assigns, trustees, spouses, or guardians, will release each of the Released Parties of and from
2 any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability that
3 were or could have been raised based on the factual allegations made in the Action through August 8,
4 2023. This includes, but is not limited to, claims for: (1) failure to pay wages (including minimum and
5 overtime wages, and as a result of issues purportedly related to rounding and bonuses); (2) failure to
6 provide meal periods and pay meal period premiums; (3) failure to provide rest periods and pay rest
7 period premiums; (4) failure to timely pay wages upon termination; (5) failure to timely pay wages
8 during employment; (6) failure to provide compliant wage statements; (7) failure to keep requisite
9 payroll records; (8) failure to reimburse necessary business expenses; (9) failure to pay reporting time
10 pay; (10) failure to provide adequate days of rest; and (11) violation of California's unfair competition
11 law based on the afore-referenced claims. This Release does not constitute a general waiver under
12 California Civil Code Section 1542.

13 **6.2. PAGA Released Claims.** By operation of the entry of the Final Approval Order
14 and Judgment and upon funding of the Gross Settlement Amount by Defendant pursuant to Paragraph
15 5.13, and except as to such rights or claims as may be created by this Agreement, each PAGA Member,
16 and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns,
17 trustees, spouses, or guardians, will release each of the Released Parties of and from all claims for
18 PAGA penalties that were or could have been raised based on the factual allegations made in the Action,
19 and in the LWDA Letter, through August 8, 2023. This includes, but is not limited to, PAGA penalties
20 based on alleged (1) failure to pay wages (including minimum and overtime wages, and as a result of
21 issues purportedly related to rounding and bonuses); (2) failure to provide meal periods and pay meal
22 period premiums; (3) failure to provide rest periods and pay rest period premiums; (4) failure to timely
23 pay wages upon termination; (5) failure to timely pay wages during employment; (6) failure to provide
24 compliant wage statements; (7) failure to keep requisite payroll records; (8) failure to reimburse
25 necessary business expenses; (9) failure to pay reporting time pay; and (10) failure to provide adequate
26 days of rest.

27 **6.3. Additional Release by Class Representative.** In addition to the above release
28 applicable to the Settlement Class members and PAGA Release, and upon funding of the Gross

1 Settlement Amount by Defendant pursuant to Paragraph 5.13, the Class Representative also generally
2 releases any and all claims against each of the Released Parties. This general release includes any and all
3 claims arising from the employment relationship with Defendant, except as to those that cannot be
4 released as a matter of law. This general release by the Class Representative also includes a waiver of
5 California Civil Code Section 1542. The Class Representative expressly waives all rights provided by
6 California Civil Code Section 1542, or other similar statutes, that the Class Representative may have
7 against each of the Released Parties. California Civil Code Section 1542 states:

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

12 **6.4. Class Representative Acknowledgements.** The Class Representative
13 acknowledges that he has read this Agreement in its entirety, including the above language from the
14 California Civil Code, and that he fully understands both this Settlement Agreement and the California
15 Civil Code Section. By executing this Agreement, Class Representative expressly waives any benefits
16 and rights granted pursuant to California Civil Code Section 1542 or any statute, rule, or principle of
17 common law or equity, in any jurisdiction, that is similar, comparable, or equivalent, in whole or in part,
18 to California Civil Code Section 1542. The Class Representative acknowledges and agrees that this
19 knowing and voluntary waiver is an essential and material term of this Agreement, and the Agreement
20 would not have been entered into without such a waiver.

21 **6.5. Injunction from Pursuing Released Claims.** As part of the preliminary approval
22 of the Settlement, Class Members whose notice mailings are not returned as undeliverable and do not
23 submit a valid Request for Exclusion shall be enjoined from filing, initiating, or continuing to prosecute
24 any actions, claims, complaints, or proceedings in any court, or with the DLSE, or with the California
25 Labor and Workforce Development Agency (“LWDA”), or with any other entity regarding the Released
26 Claims, unless otherwise prohibited by law. This provision is intended to provide all Class Members the
27 opportunity to participate in or to opt out of the Settlement, and to ensure finality of the Settlement and
28 the Released Claims to the fullest extent permitted by law.

1 This Settlement is conditioned upon the release by the Settlement Class as
2 described herein, and upon covenants by the Settlement Class whose notice mailings are not returned as
3 undeliverable and do not submit a valid Request for Exclusion that they will not participate in any
4 actions, lawsuits, proceedings, complaints, or charges brought individually by the DLSE, LWDA, or by
5 any other agency, persons, or entity in any court or before any administrative body related to the
6 Released Claims.

7 6.6. **Settlement Class Acknowledgement.** As to the Released Claims only, the
8 Settlement Class acknowledges that they may hereafter discover facts or law different from, or in
9 addition to, the facts or law they know or believe to exist. The Settlement Class agrees that this
10 Agreement and the Released Claims shall be effective in all respects regardless of the different or
11 additional facts or law discovered. These releases do not include any claims that cannot be waived as a
12 matter of law, but the Settlement Class agrees that they will not accept any monetary recovery or benefit
13 from any proceedings relating to any such claims.

14 6.7. **No Admission of Liability.** By entering into this Agreement, Defendant in no
15 way admits any violation of law or any liability whatsoever to Class Members, individually or
16 collectively, and expressly deny all such liability. Neither this Agreement, nor any other Settlement
17 documents, shall be offered in any case or proceeding as evidence of any admission by Defendant of any
18 liability on any claim for damages, penalties, restitution, or any other relief. Likewise, by entering into
19 this Agreement, Defendant in no way admits to the suitability of this case for class action, collective
20 action, or representative litigation, other than for purposes of Settlement. Rather, Defendant enters into
21 this Agreement to avoid further protracted litigation and to resolve and to settle all disputes with the
22 Settlement Class.

23 The Parties understand and agree that this Agreement and Exhibit thereto are
24 settlement documents and shall be inadmissible for any purpose in any proceeding, except an action or
25 proceeding to approve, interpret, or enforce the terms of this Agreement. The Parties agree that, to the
26 extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be
27 used as the basis for an injunction against any action, suit, or other proceeding that may be instituted,
28 prosecuted, or attempted in breach of this Agreement.

1 **7. SETTLEMENT APPROVAL PROCEDURE**

2 **7.1. Preliminary Approval.** Plaintiff shall submit to the Court a Motion for
3 Preliminary Approval of Class Action Settlement unless otherwise ordered by the Court. This motion
4 shall seek an order to preliminarily approve the proposed Settlement according to the terms in this
5 Agreement and provide for the Notice of Class Action Settlement And Notice of Settlement Award to be
6 sent to Class Members as specified in this Settlement Agreement. This motion shall include the bases for
7 the Gross Settlement Amount and why the amount is reasonable in light of the facts and controlling
8 authorities pertaining to the claims alleged in the Action. The motion shall also be accompanied by
9 signed declarations by Class Counsel, discussing the risks of continued litigation and the decision that
10 the best interests of the Parties are served by the terms of this Agreement.

11 **7.2. Effect of Failure to Obtain Preliminary Approval.** If this Settlement
12 Agreement is not preliminarily approved and the Court indicates that it will not grant preliminary
13 approval of the material terms of this Settlement, the Action shall proceed as if no settlement had been
14 attempted, unless the Parties jointly agree to seek reconsideration of the ruling or Court approval of a
15 renegotiated settlement. Defendant retains the right to contest whether any aspect of the Action should
16 be maintained as a class action or representative action, or to contest the merits of the claims being
17 asserted by the Class Representative or Class Members in the Action.

18 **7.3. Final Approval.** Plaintiff shall submit to the Court a Motion for Final Approval
19 Order 16 court days in advance of the date the Court sets for the Fairness Hearing. The motion shall
20 request the entry of a Final Approval Order, which shall include findings and orders: (a) approving the
21 Settlement Agreement; (b) adjudging the terms to be fair, reasonable, and adequate; (c) reciting the
22 release terms in full; (d) directing that the Settlement terms and provisions be carried out; and (e)
23 retaining jurisdiction to oversee administration and enforcement of the terms of this Agreement and the
24 Court's orders.

25 **7.4. Motion for Attorneys' Fees and Costs Award.** Class Counsel's Motion for
26 Final Approval shall include a request for approval of Class Counsel's attorneys' fees and costs award in
27 the amount of (a) up to 35% of the Gross Settlement Amount (or \$147,000.00); and (b) recoverable
28

costs of \$20,000 submitted by class counsel. Defendant will not oppose the motion provided it is consistent with this paragraph. Defendant will not be required to support such a motion.

7.5. **Motion for Class Representative Incentive Payment.** Class Counsel's Motion for Final Approval shall include a request for a Class Representative Incentive Payment of up to \$5,000.00 for the Class Representative. Defendant will not oppose the motion provided it is consistent with this paragraph. Defendant will not be required to support such a motion.

7.6. **Entry of Judgment.** The Fairness Hearing is expected to be set by the Court on or about that time it issues the Preliminary Approval Order. At the Fairness Hearing, the Parties shall request that the Court, among other things: (a) enter final judgment in accordance with this Agreement and without further fees or costs to any party except as expressly set forth in this Agreement; (b) approve this Agreement as fair, reasonable, adequate, and binding on all members of the Settlement Class; (c) enter an order as to Class Counsel's request for an attorneys' fees and costs award; (d) enter an order as to the request for a Class Representative Incentive Payment; and (e) enter an order permanently enjoining all members of the Settlement Class from pursuing or seeking to reopen claims that have been released by this Agreement.

7.7. **Effect of Failure to Obtain Final Judgment.** In the event the Court fails to enter final judgment in accordance with this Agreement and indicates that it will not grant final judgment based on the material terms contained in this Settlement, or such final judgment is vacated or reversed, the Action shall proceed as if no settlement had been attempted, unless the Parties jointly agree to seek reconsideration or appellate review of the ruling or Court approval of a renegotiated settlement. Defendant retains the right to contest whether any aspect of the Action should be maintained as a class action or representative action, or to contest the merits of the claims being asserted by the Class Representative or Class Members in the Action.

7.8. **Waiver of Appeal Rights.** By accepting this Settlement and upon final approval of the settlement being granted, the Parties hereby waive any and all rights they may have to appeal any judgment, ruling, or order made by the Court in this Action, including, without limitation, any order granting final approval of this Settlement. This includes all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial,

1 and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is
2 entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
3 proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for
4 consummation of the Settlement (including making payments under the Settlement) will be suspended
5 until such time as their appeal is finally resolved and the Judgment becomes final.

6 **8. MISCELLANEOUS**

7 **8.1. Interim Stay of Proceedings.** The Parties agree to refrain from further litigation,
8 except such proceedings necessary to implement and to obtain a Preliminary Approval Order and Final
9 Approval Order of the terms of the Agreement. If the Settlement is not finally approved and the Court
10 indicates that it will not grant final judgment based on the material terms contained in this Settlement,
11 the Parties agree that they will revert to their positions in the lawsuit prior to the time the Settlement was
12 reached, and no agreements set forth in this Agreement or any documents generated or orders issued
13 related to the Settlement will be admissible in any future proceeding in this or any other action.

14 **8.2. Language of Notices to Class Members.** The Notice of Class Action Settlement
15 And Notice of Settlement Award shall be in English unless otherwise directed by the Court. The Notice
16 of Class Action Settlement And Notice of Settlement Award shall identify the telephone numbers of the
17 Settlement Administrator and Class Counsel and state that Class Members may direct any questions to
18 said telephone numbers.

19 **8.3. Parties' Authority.** The signatories hereto represent that they are fully authorized
20 to enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein. It is
21 agreed that Class Members are so numerous that it is impossible or impractical to have each Class
22 Member execute this Agreement. It is agreed that this Agreement may be executed on behalf of Class
23 Members by Class Representative and Class Counsel.

24 **8.4. Entire Agreement.** This Agreement, which includes the Definitions, Recitals,
25 and all Exhibits attached hereto, constitutes the entire agreement between the Parties with regard to the
26 subject matter contained herein, and all prior and contemporaneous negotiations and understandings
27 between the Parties shall be deemed merged into this Agreement.
28

1 8.5. **Materiality of Terms.** The Parties have arrived at this Agreement as a result of
2 arm's-length negotiations. Except as otherwise stated in this Agreement, all terms and conditions of this
3 Agreement in the exact form set forth in this Agreement are material to this Agreement and have been
4 relied upon by the Parties in entering into this Agreement.

5 8.6. **Counterparts.** This Agreement may be executed in counterparts, and when each
6 party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
7 original, and when taken together with other signed counterparts, shall constitute one signed Agreement,
8 which shall be binding upon and effective as to all Parties.

9 8.7. **Facsimile or Scanned Signatures.** Any Party may sign and deliver this
10 Agreement by signing on the designated signature block and transmitting that signature page via
11 facsimile or as an attachment to an e-mail to counsel for the other Party. Any signature made and
12 transmitted by facsimile or as an attachment to an e-mail for the purpose of executing this Agreement
13 shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party
14 who transmits the signature page.

15 8.8. **Binding Effect.** This Agreement shall be binding upon the Parties and, with
16 respect to the Class Representative, Class Members, their spouses, children, representatives, heirs,
17 administrators, executors, beneficiaries, conservators, attorneys, and assigns.

18 8.9. **Waivers and Modifications to Be in Writing.** No waiver, modification, or
19 amendment of the terms of this Agreement, whether purportedly made before or after the Court's
20 approval of this Agreement, shall be valid or binding, unless in writing, signed by or on behalf of all
21 Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject
22 to any required Court approval. Any failure by any Party to insist upon the strict performance by the
23 other Party of any of the provisions of this Agreement shall not be deemed a waiver of future
24 performance of the same provisions or of any of the other provisions of this Agreement, and such Party,
25 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
26 any and all of the provisions of this Agreement. The time periods and dates provided in this Agreement
27 with respect to giving of notices and hearings are subject to Court approval and modification by the
28 Court or by written stipulation of Class Counsel and Defendant's Counsel.

1 8.10. **Construction.** The determination of the terms and conditions of this Agreement
2 has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this
3 Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be,
4 construed against any party by virtue of draftsmanship.

5 8.10.1 **Exhibits Incorporated by Reference.** The terms of this
6 Agreement include the terms set forth in any attached exhibit, which are incorporated by this reference
7 as though fully set forth herein. Any exhibit to this Agreement is an integral part of the Settlement.

8 8.10.2 **Captions.** The captions or headings of the sections and paragraphs
9 of this Agreement have been inserted for convenience of reference only and shall have no effect upon
10 the construction or interpretation of any part of this Agreement.

11 8.10.3 **Invalidity of Any Provision.** If a court finds any part of this
12 Agreement unenforceable, that part shall be modified and the rest enforced. If a court finds any such part
13 incapable of being modified, it shall be severed and the rest enforced.

14 8.11. **Further Acts and Cooperation Between the Parties.** The Parties shall cooperate
15 fully with each other and shall use their best efforts to obtain the Court's approval of this Agreement and
16 all of its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and
17 to execute and to deliver such other documents as are reasonably necessary to carry out the provisions of
18 this Agreement.

19 8.12. **No Prior Assignments or Undisclosed Liens.** The Class Representative and
20 Class Counsel represent and warrant that they have not assigned, transferred, conveyed, or otherwise
21 disposed of, or purported to assign, transfer, convey, or otherwise dispose of, any Released Claims or
22 the attorneys' fees and costs award to be paid pursuant to this Agreement. Class Representative and
23 Class Counsel further represent and warrant that there are not any liens or claims against any of the
24 amounts to be paid by Defendant pursuant to this Agreement. The Class Representative and Class
25 Counsel agree to defend, to indemnify, and to hold Defendant harmless from any liability, losses,
26 claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of
27 these representations or from any lien or assignment by the respective party.
28

1 8.13. **Waiver of Right to Object by the Class Representative.** The Class
2 Representative agrees that by signing this Agreement, the Class Representative is thereby bound by the
3 terms of this Agreement. The Class Representative further agrees that he shall not object to any of the
4 terms of this Agreement.

5 8.14. **No Solicitation of Objections.** The Parties further represent and warrant that they
6 have not and will not solicit, encourage, or assist in any fashion any effort by any entity or person to
7 object to or to seek exclusion from the Settlement set forth in this Agreement.

8 8.15. **Discovery of Confidential Documents and Information.** Class Counsel agree
9 that they will destroy all confidential documents and information provided to them by Defendant. Class
10 Counsel further agrees that none of the documents and information provided to them by Defendant shall
11 be used for any purpose other than prosecution of this Action or the defense or prosecution of a
12 malpractice action.

13 8.16. **No Tax Advice.** Neither Class Counsel nor Defendant's Counsel intend anything
14 contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall
15 anything in this Settlement Agreement be relied upon as such within the meaning of United States
16 Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

17 8.17. **Publicity and Confidentiality.** Plaintiff and his counsel agree not to issue a press
18 release or otherwise notify the media about the terms of the Settlement or advertise or market any of the
19 terms of the Settlement through written, recorded or electronic communications. In addition, counsel for
20 Plaintiff will not disclose the settlement, its terms or the parties on their website or otherwise. Plaintiff
21 and his counsel further agree that if contacted regarding this case, they will state only that the lawsuit
22 exists and has been resolved. The Settlement will remain confidential through preliminary approval.
23 However, this will not prevent Plaintiff's Counsel from undertaking required submissions and
24 disclosures that are required to obtain approval of the Settlement, including and not limited to,
25 submission of the Settlement to the LWDA in conformity with the PAGA statute. This paragraph will
26 also not prevent Plaintiff's counsel from including a reference to this case in other Class Action matters
27 to demonstrate adequacy as Class Counsel.
28

1 8.18. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the
2 implementation of this Agreement as well as any and all matters arising out of, or related to, the
3 implementation of this Agreement and Settlement. The Court shall not have jurisdiction to modify the
4 terms of the Agreement without the consent of all of the Parties.

5 8.19. **Disputes.** If the Parties have a dispute with regard to the language of this
6 Agreement, they agree to first attempt to resolve the dispute informally through good faith negotiations,
7 but if those efforts are unsuccessful, they agree to mediate any such dispute. The Parties will split the
8 costs of the mediator, and all parties will bear their own fees and costs.

9 8.20. **Governing Law.** This Settlement and Agreement was made and entered into in
10 the State of California. All terms of this Agreement shall be governed by and interpreted according to
11 the substantive laws of the State of California.

12
13 **SO AGREED AND STIPULATED:**

14
15 DATED: July 24, 2024

SEYFARTH SHAW LLP

16 By 
17 Candace Bertoldi
18 Attorneys for Defendant
KARMA AUTOMOTIVE, LLC

19 DATED: _____

KARMA AUTOMOTIVE, LLC (currently known as
KARMA AUTOMOTIVE, INC.)

21 By _____
22 _____
23

1 8.18. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the
2 implementation of this Agreement as well as any and all matters arising out of, or related to, the
3 implementation of this Agreement and Settlement. The Court shall not have jurisdiction to modify the
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10 the State of California. All terms of this Agreement shall be governed by and interpreted according to
11 the substantive laws of the State of California.

12
13 **SO AGREED AND STIPULATED:**

14
15 DATED: _____

SEYFARTH SHAW LLP

16 By _____
17 Candace Bertoldi
18 Attorneys for Defendant
KARMA AUTOMOTIVE, LLC

19 DATED: 7/12/2024
20 _____

KARMA AUTOMOTIVE, LLC (currently known as
KARMA AUTOMOTIVE, INC.)

21 Russell Riviere
22 By _____
23 Russell Riviere

1 DATED: 07/24/2024

LAWYERS FOR JUSTICE, PC

2
3 By 
4 Joanna Ghosh, Esq.
Vartan Madoyan, Esq.
Attorneys for Plaintiff Rufus McWilliams

6 DATED: 07/24/2024

DOMB & RAUCHWERGER, LLP

7
8 By 
9 Zack I. Domb
Devin E. Rauchwerger
Jeffrey P. Jackson
Attorneys for Plaintiff Rufus McWilliams

12 DATED: 07 / 24 / 2024

RUFUS McWILLIAMS

13 By 
14 Plaintiff Rufus McWilliams