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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **COUNTY OF SAN BERNARDINO**

22 **SAN BERNARDINO JUSTICE CENTER**

23 ESTEBAN FLORES, individually, and on
24 behalf of all other aggrieved employees,

25 Plaintiff,

26 v.

27 SKILLED STAFFING, INC., a California
28 corporation; SMART WAREHOUSING,
LLC., a Kansas Limited Liability
Company; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: CIVSB2121280

[Hon. Joseph Ortiz, Dept. S-17]

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE**

Action Filed: August 10, 2021
Trial Date: None Set

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1 This Class Action and PAGA Settlement and Release ("Settlement Agreement") is entered
2 into by and among Plaintiff Esteban Flores ("Plaintiff"), on behalf of himself and the Class, and
3 Defendants Skilled Staffing Inc. ("Skilled"), Smart Warehousing, LLC ("Smart"). Plaintiff and
4 Defendants are collectively referred to herein as "Parties" and individually referred to herein as
5 "Party."

6 In consideration of the mutual covenants, promises, and agreements set forth herein, the Parties
7 agree that, pursuant to the terms and conditions set forth herein, which are subject to approval of the
8 Court, this Action and the Released Claims shall be settled and compromised as between Plaintiff and
9 the Class on the one hand and Defendants on the other hand.

10 DEFINITIONS

11 1. "Action" means *Flores v. Skilled Staffing, Inc., et al.*, Superior Court of the State of
12 California for the County of San Bernardino, Case No. CIVSB2121280.

13 2. "Class" means: All non-exempt employees who were employed directly by Smart
14 Warehousing, LLC or employed and placed by Skilled Staffing, Inc. to work at Smart Warehousing,
15 LLC, in the State of California, at any time from July 23, 2017 through the date of preliminary
16 approval.

17 3. "Class Counsel" means the Law Office of Scott Ernest Wheeler.

18 4. "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and
19 resolution of this Action and Class Counsel's expenses and costs incurred in connection with this
20 Action.

21 5. "Class Information" means information regarding Class Members that Defendants will
22 in good faith compile from their records and provide to the Settlement Administrator. This information
23 shall be formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include:
24 each Class Member's full name; social security number; last known address; last known telephone
25 number; and number of Compensable Work Weeks and Compensable PAGA Work Weeks.

26 6. "Class Member" means each person who is a member of the Class defined above and
27 who is eligible to participate in this Settlement.

1 7. “Class Period” means the time period from July 23, 2017, through the date that the
2 Court grants preliminary approval of the class action settlement.

3 8. “Class Representative Service Award” means the amount that the Court authorizes to
4 be paid to Plaintiff in recognition of, *inter alia*, Plaintiff’s efforts and risks in assisting with the
5 prosecution of the Action and in return for executing a general release with Defendants.

6 9. “Compensable Work Week” or “Compensable Work Weeks” mean a reasonable
7 estimate of weeks worked by each Class Member as a non-exempt employee in California for
8 Defendants individually and collectively by all Class Members during the Class Period based on
9 Defendants’ records and used as a value to calculate Individual Settlement Payments. The number of
10 Compensable Work Weeks for each Class Member will be determined by adding all the calendar days
11 within the inclusive dates of employment for the employee and dividing that number by seven. Any
12 partial workweek will be expressed as a percentage of a full workweek. If it can be readily determined,
13 workweeks where someone was employed but did not record any hours can be excluded from this
14 calculation.

15 10. “Compensable PAGA Work Week” or “Compensable PAGA Work Weeks” means a
16 reasonable estimate of weeks worked by each PAGA Member, as a nonexempt employee in California
17 for Defendant, individually and collectively by all PAGA Members, during the period from May 19,
18 2020, through preliminary approval of the settlement, based on Defendants’ records and used as a
19 value to calculate PAGA Payments. The number of Compensable PAGA Work Weeks for each PAGA
20 Member, will be determined by adding all the calendar days within the inclusive dates of employment
21 for the employee and dividing that number by seven. Any partial workweek will be expressed as a
22 percentage of a full workweek. If it can be readily determined, workweeks where someone was
23 employed but did not record any hours can be excluded from this calculation.

24 11. “Court” means the Superior Court for the County of San Bernardino, State of
25 California.

26 12. “Cross Claims” means all the claims that were asserted or could have been asserted
27 based on the facts alleged in the Cross Complaints.

1 13. “Cross Complaints” means the cross complaint filed by Skilled in this Action on
2 January 24, 2022, and the cross complaint filed by Smart in this Action on March 22, 20022.

3 14. “Defendants” means Skilled Staffing, Inc. and Smart Warehousing, LLC.

4 15. “Effective Date” means the date on which the Superior Court’s Final Approval Order
5 and Judgment becomes final. The Superior Court’s Final Approval Order and Judgment “becomes
6 final” upon the latest of: (a) if there is no Objection to the Settlement, or if there is an Objection but
7 it is withdrawn, then, the date that the Final Approval Order and Judgment is entered by the Court;
8 (b) if there is an Objection to the Settlement that is not withdrawn, but no appeal is commenced
9 thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and
10 Judgment is filed by the Court; or (c) if there is an Objection to the Settlement, that is not withdrawn,
11 and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed within
12 sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is filed
13 by the Court, then, when any such appeal, writ, or other appellate proceeding opposing the validity of
14 the Settlement has been resolved finally and conclusively with no right to pursue further remedies or
15 relief.

16 16. “Final Approval Order and Judgment” means an order and judgment that the Court
17 will file which finally approves this Settlement and enters a judgment in favor of Plaintiff.

18 17. “Gross Settlement Amount” means the maximum amount which Defendants are
19 obligated to pay under this Settlement Agreement, which is Three Hundred Thousand Dollars
20 (\$300,000.00). Defendant Smart Warehousing, LLC will pay Two Hundred and Ten Thousand
21 Dollars (\$210,000.00) of the Gross Settlement and Defendant Skilled Staffing, Inc. will pay Ninety
22 Thousand Dollars (\$90,000.00) of the Gross Settlement. This is an “all in” non-reversionary
23 Settlement in which Defendants are required to pay the entire Gross Settlement Amount. No portion
24 of the Gross Settlement Amount will revert to Defendants under any circumstances. Payments of any
25 appropriate and lawfully-required employer’s share of the payroll taxes on the taxable portion of the
26 settlement payments shall be paid separately from the Gross Settlement Amount by Defendants at the
27 time the Gross Settlement Amount is funded. Skilled Staffing, Inc. shall pay thirty percent (30%) and
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Smart Warehousing, LLC shall pay seventy percent (70%) of the employer's share of the payroll taxes on the table portion of the settlement payments.

18. "Individual Settlement Payment" means the amount payable from the Net Settlement Amount to each Settlement Class Member.

19. "LWDA" means the California Labor and Workforce Development Agency.

20. "Net Settlement Amount" means the Gross Settlement Amount, less the Class Counsel Award, Class Representative Service Award, payment to the LWDA and PAGA Members for PAGA penalties, and Settlement Administration Costs.

21. "Notice of Class and PAGA Settlement" means the notice, substantially in the form attached hereto as **Exhibit 1**, which the Settlement Administrator will mail to each Class and PAGA Member, and which explains, *inter alia*, the terms of this Settlement Agreement, the settlement process, and each Class Member's estimated Individual Settlement Payment. Notice of Class Settlement will be provided to the Class in English, Spanish and Mandarin.

22. "Operative Complaint" means the First Amended Class Action Complaint on file in this action.

23. "Objection" means a letter or other written communication submitted by a Class Member to the Settlement Administrator that contains a clear statement by the Class Member that he or she is objecting to any of the terms of the Settlement.

24. "PAGA Member" or "PAGA Members" means any Class Member who was employed or has been employed by Defendants at any time during the time period of May 19, 2020, through the date the Court grants preliminary approval of this settlement.

25. "Parties" means Plaintiff and Defendants, collectively, and "Party" means either Plaintiff or Defendants, individually.

26. "Payment Ratio" means the respective Compensable Work Weeks for each Settlement Class Member divided by the total Compensable Work Weeks for all Settlement Class Members.

27. "PAGA Payment Ratio" means the respective Compensable PAGA Work Weeks for each PAGA Member divided by the total Compensable PAGA Work Weeks for all PAGA Members.

1 28. “PAGA Period” means the time period from May 19, 2020, through the date that the
2 Court grants preliminary approval of the class action settlement.

3 29. “Plaintiff” refers to Esteban Flores.

4 30. “Preliminary Approval Date” means the date upon which the Court files an order
5 substantially in the form attached hereto as **Exhibit 2**; and which grants preliminary approval of the
6 Settlement.

7 31. “Request for Exclusion” means a letter or other written communication submitted by
8 a Class Member to the Settlement Administrator that contains a clear statement by the Class Member
9 that he or she is electing to be excluded from the Settlement.

10 32. “Released Claims by Plaintiff” is set forth in paragraph 51 below. Plaintiff releases
11 the “Released Claims by Plaintiff” as of the Effective Date of this Settlement.

12 33. “Released Claims by Settlement Class Members” means: As of the Effective Date,
13 Settlement Class Members shall fully and finally release and discharge Released Parties, from July
14 23, 2017, through the date that the Court grants preliminary approval of the class action settlement,
15 from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,
16 attorneys’ fees, damages, or causes of action contingent or accrued for, that are pleaded, or that could
17 have been pleaded, based on the facts and claims alleged in the Operative Complaint, including any
18 claims for: (a) failure to provide required meal periods, California Labor Code §§ 226.7, 510, 512,
19 1194, and 1197 and all applicable Industrial Welfare Commission Wage Orders; (b) failure to provide
20 required rest periods, California Labor Code §§ 226.7 and 512, California Business & Professions
21 Code §§ 17200, *et seq.*, and all applicable Industrial Welfare Commission Wage Orders; (c) failure to
22 pay overtime wages, California Labor Code §§ 200, 203, 226, 510, 558, 1194, 1197.1, and 1198 and
23 all applicable Industrial Welfare Commission Wage Orders; (d) failure to pay minimum wages,
24 California Labor Code §§ 200, 203, 226, 558, 1194, 1197, and 1197.1 and all applicable Industrial
25 Welfare Commission Wage Orders; (e) failure to timely pay all wages during employment and to
26 discharged and quitting employees, California Labor Code §§ 201-204, 210; (f) failure to furnish
27 accurate, itemized wage statements, California Labor Code §§ 226, 226.3, 1174.5; (g) failure to
28 maintain required records, California Labor Code §§ 226, 226.3, 1174, and 1174.5 and all applicable

1 Industrial Welfare Commission Wage Orders; and any other benefit, wages, restitution, liquidated
2 damages, penalties (including any penalties arising under the California Labor Code, California Civil
3 Code, or California Business & Professions Code), equitable relief, or other amounts claimed on
4 account of the allegations or the primary rights asserted in the Operative Complaint. This release shall
5 apply to all claims arising at any point during the Class Period. Upon entry of the Final Approval
6 Order and funding of the total Gross Settlement Amount, all Participating Class Members will forever
7 completely release and discharge the Released Parties from the Released Claims for the Release
8 Period. Plaintiff and Defendants intend that the Settlement described in this Settlement Agreement
9 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
10 arbitration, demand, or other action of any kind, by each and all of the Participating Class Members
11 to obtain a recovery to any and all of the Released Claims. This release excludes the release of claims
12 not otherwise permitted by law, i.e., Worker's Compensation and unemployment insurance benefits.

13 34. "Released Parties" collectively mean: (i) Defendants; (ii) Defendants' respective past,
14 present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and
15 assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members,
16 agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing.

17 35. "Response Deadline" means forty-five (45) days after the postmark date of the Notice
18 of Class Settlement that the Settlement Administrator shall mail to Class Members, and the last date
19 on which Class Members may: (a) submit a Request for Exclusion; or (b) submit an Objection to the
20 Settlement.

21 36. "Settled PAGA Claims" means penalties only under the Private Attorneys General Act
22 ("PAGA"), based upon the Released Claims by PAGA Members that serves the basis for penalties
23 only pursuant to Labor Code § 2699 *et seq.*, for the following: (a) failure to provide required meal
24 periods, California Labor Code §§ 226.7, 510 and 512 and all applicable Industrial Welfare
25 Commission Wage Orders; (b) failure to provide required rest periods, California Labor Code §§
26 226.7 and 512 and all applicable Industrial Welfare Commission Wage Orders; (c) failure to pay
27 overtime wages, California Labor Code §§ 510, 1194 and 1198 and all applicable Industrial Welfare
28 Commission Wage Orders; (d) failure to pay minimum wages, California Labor Code §§ 1194, 1197,

1 and 1197.1 and all applicable Industrial Welfare Commission Wage Orders; (e) failure to timely pay
2 all wages due during employment and to discharged and quitting employees, California Labor Code
3 §§ 201-204, 210 and all applicable Industrial Welfare Commission Wage Orders; (f) failure to furnish
4 accurate, itemized wage statements, California Labor Code §§ 226 and 226.3 and all applicable
5 Industrial Welfare Commission Wage Orders; (g) failure to maintain required records, California
6 Labor Code §§ 226, 1174, and 1174.5 and all applicable Industrial Welfare Commission Wage Orders;
7 (h) failure to comply with California Labor Code § 2810.5; and primary rights alleged in Plaintiff's
8 Operative Complaint and in Plaintiff's PAGA Notice dated May 18, 2021.

9 37. "Settlement" means the disposition of the Action pursuant to this Agreement.

10 38. "Settlement Administration Costs" means the amount to be paid to the Settlement
11 Administrator from the Gross Settlement Amount for the administration of this Settlement.

12 39. "Settlement Administrator" means Phoenix Settlement Administrators ("Phoenix").
13 The Settlement Administrator shall be responsible for, *inter alia*: (a) performing Spanish and
14 Mandarin translations of the Notice of Class Settlement; printing and mailing the Notice of Class
15 Settlement to the Class in English, Spanish, and Mandarin; (b) receiving and reporting the Requests
16 for Exclusion and Objections submitted by Class Members; (c) providing declaration(s) as necessary
17 in support of preliminary and/or final approval of this Settlement; (d) processing and mailing
18 payments to Plaintiff, Class Counsel, the LWDA, and Settlement Class Members; and (e) any other
19 tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The
20 Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement
21 Administrator responsibilities. The Parties agree that they have no financial interest or other
22 relationship with Phoenix that could create a conflict of interest. Should a conflict of interest or other
23 issue lead to the disqualification of the selected Settlement Administrator, the Parties will meet and
24 confer as to a suitable replacement.

25 40. "Settlement Class" or "Settlement Class Members" means all Class Members who
26 have not opted out of the Class by submitting a valid and timely Request for Exclusion.

27 41. "Skilled" means Skilled Staffing, Inc.

28 42. "Smart" means Smart Warehousing, LLC.

1 RECITALS

2 43. Procedural History. On July 23, 2021, Plaintiff filed a complaint against Defendants
3 in San Bernardino Superior Court, Case No. CIVSB2121280. On December 10, 2021, Plaintiff filed
4 his First Amended Class Action Complaint, and Defendants filed their respective answers to
5 Plaintiff's First Amended Complaint. On January 24, 2022, Skilled filed a cross-complaint against
6 Smart, seeking indemnification for any losses related to Plaintiff's claims against Defendants. On
7 March 22, 20022, Smart filed a cross-complaint against Skilled, seeking indemnification for any
8 losses related to Plaintiff's claims against Defendants.

9 44. Investigation and Discovery. The Parties have conducted significant investigation of
10 the facts and law during the prosecution of this Action and before this Settlement was reached. Such
11 discovery and investigation included, inter alia, the exchange of information and extensive documents
12 pertaining to Plaintiff and the Class, and numerous meetings and informal conferences wherein the
13 Parties exchanged information, class data, and theories of the case. Plaintiff has also investigated the
14 law as applied to the facts of Plaintiff's claims and Defendants' potential defenses thereto.

15 45. Mediation. The Parties participated in a private mediation session with the highly
16 experienced mediator, Jeff Krivis, Esq., on October 10, 2022. After a full day of mediation, the parties
17 were able to resolve the matter after accepting a "Mediator's Proposal" regarding the material terms
18 for a proposed class action and PAGA settlement that would fully resolve this matter.

19 46. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
20 expense and length of continued proceedings necessary to litigate Plaintiff's claims through trial and
21 any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of
22 further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel
23 are also aware of the burdens of proof necessary to establish liability for the claims asserted in the
24 Action, both generally and in response to Defendants' defenses thereto, and the difficulties in
25 establishing damages for the Class. Plaintiff and Class Counsel have also taken into account
26 Defendants' agreement to enter into a settlement that confers substantial relief upon the members of
27 the Class. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
28 set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement, and is in the

1 best interests of the Class.

2 47. Benefits of Settlement to Defendants. Defendants have concluded that any further
3 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
4 Defendants' time, energy, and resources have been and, unless this Settlement is completed, will
5 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants have also taken
6 into account the risks of further litigation in reaching its decision to enter into this Settlement. Even
7 though Defendants continue to contend that they are not liable for any of the claims alleged by Plaintiff
8 in this Action, Defendants have agreed, nonetheless, to settle in the manner and upon the terms set
9 forth in this Settlement Agreement to put to rest the claims in this Action.

10 **STIPULATION AND AGREEMENT**

11 48. NOW THEREFORE, in consideration of the mutual covenants, promises, and
12 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

13 49. It is agreed by and among Plaintiff and Defendants that this Settlement shall bind the
14 Plaintiff, Settlement Class Members, and Defendants, subject to the terms and conditions hereof.

15 50. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
16 the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an
17 "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written
18 communication or disclosure between or among the Parties or their attorneys and other advisers, is or
19 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
20 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
21 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its
22 own, independent legal and tax counsel for advice (including tax advice) in connection with this
23 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
24 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
25 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty
26 that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party
27 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
28 strategies (regardless of whether such limitation is legally binding) upon disclosure by the

1 acknowledging party of the tax treatment or tax structure of any transaction, including any transaction
2 contemplated by this Agreement.

3 51. Released Claims by Plaintiff. As of the Effective Date, Plaintiff, as a Class Member,
4 agrees to the Release of Claims by Settlement Class Members, which is set forth in paragraph 32
5 above. In addition to Release of Claims by Settlement Class Members and as a material inducement
6 to Defendants to enter into this Settlement Agreement, Plaintiff does hereby, for himself and for his
7 spouse, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
8 conservators, guardians, personal representatives, and assigns, forever and completely release and
9 discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations,
10 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
11 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
12 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the
13 beginning of time through the execution of this Settlement Agreement, whether known or unknown,
14 suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating
15 to Plaintiff's employment with or work for Defendants or the remuneration for or termination of such
16 employment.

17 Without limiting the generality of the foregoing, Plaintiff expressly releases all claims arising
18 under the California Labor Code (including, but not limited to, sections 201, 201.3, 202, 203, 204,
19 210, 216, 218.6, 221, 222, 225.5, 223.2, 224, 225, 225.5, 226.7, 227.3, 246, 248.1, 248.2, 248.3, 248.6,
20 450, 510, 511, 512, 558, 1174, 1174.5, 118.12, 1194, 1197, 1197.1, 1197.2, 1198, 2698 *et seq.*, and
21 2802); the Wage Orders of the California Industrial Welfare Commission; the California Private
22 Attorneys General Act of 2004 ("PAGA"); California Business and Professions Code section 17200
23 *et seq.*; the California Civil Code, to include, but not limited to, section 3336 and 3294; the California
24 common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*; federal common law;
25 and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* Plaintiff's Released
26 Claims also include all claims for lost wages and benefits, emotional distress, retaliation, punitive
27 damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination,
28 harassment, and wrongful termination, such as by way of example only, (as amended) 42 U.S.C.

1 section 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age
2 Discrimination in Employment Act, and the California Fair Employment and Housing Act; and the
3 law of contract and tort. This release excludes the release of claims not permitted by law. As to the
4 Plaintiff's Released Claims only, Plaintiff expressly waives all rights and benefits under the terms
5 of section 1542 of the California Civil Code. Section 1542 reads as follows:

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

10 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full
11 and complete release and discharge of all parties, Plaintiff and Class Counsel expressly acknowledge
12 that this Settlement Agreement is intended to include in its effect, without limitation, all claims that
13 Plaintiff knew of, as well as all claims that they do not know or suspect to exist in their favor against
14 the Released Parties, or any of them, for the time period from the beginning of time to the execution
15 of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment
16 of any such claims. Plaintiff and Plaintiff's Counsel do not currently intend to pursue any claims
17 against Defendants, including, but not limited to, any and all claims relating to or arising from
18 Plaintiff's employment with Defendants, and that Plaintiff's Counsel is not currently aware of any
19 facts or legal theories upon which any claims or causes of action could be brought against
20 Defendants, except for those facts or legal theories alleged in the Operative Complaint in this
21 Action.

22 52. Class Certification. For settlement purposes only, Defendants will stipulate
23 that the Settlement Class Members described herein who do not request exclusion from the Settlement
24 Class may be conditionally certified as a settlement class. This stipulation to certification is in no way
25 an admission that class action certification is proper and shall not be admissible in this or in any other
26 action except for the sole purposes of enforcing this Agreement. Should the Court fail to issue Final
27 Approval for any reason, the Parties' stipulation to class certification as part of the Settlement
28 Agreement shall become null and void ab initio and shall have no bearing on any other civil, criminal,
or administrative action against Defendants or any of the other Released Parties, including any

1 proceeding regarding whether a class action should be certified or whether Defendants are liable to
2 Plaintiff or any Class Member, and remains protected by California Evidence Code Section 1152 and
3 shall not be admissible in connection with, the issue of whether or not certification would be
4 appropriate in a non-settlement context. Defendants expressly reserve their rights and declare that
5 Defendants will continue to oppose class certification and contest the substantive merits of the case
6 should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares that
7 he will continue to pursue class certification and a trial should the Court fail to grant Final Approval.

8 53. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final
9 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
10 have this matter presented to the Court for preliminary and final approval.

11 54. Release of Claims by Settlement Class Members. Settlement Class Members release
12 the "Released Claims by Settlement Class Members," as defined, as of the Effective Date.

13 55. Release of Settled PAGA Claims. PAGA Members release the "Settled PAGA
14 Claims," as defined, as of the Effective Date.

15 56. Mutual Release of Cross Claims. As of the Effective Date, Skilled and Smart shall
16 fully and finally release and discharge Released Parties from any and all claims, debts, liabilities,
17 demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action
18 contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and
19 claims alleged in the cross complaints filed on or about January 24, 2022 and March 22, 2022,
20 including any claims for: (a) equitable indemnity; (b) comparative indemnity; (c) contribution; (d)
21 breach of contract; (e) apportionment; (f) complete indemnity; and (g) declaratory relief. Skilled and
22 Staffing intend that the mutual release described herein will release and preclude any further claim,
23 whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind,
24 by Skilled and Staffing to obtain a recovery to any and all of the Cross Claims.

25 57. Settlement Administration. Within twenty (20) calendar days after the Preliminary
26 Approval Date, Defendants shall provide the Settlement Administrator with the Class Information.

27 58. Notice to the Class. Upon receipt of the Class Information, the Settlement
28 Administrator will perform a search based on the National Change of Address Database to update and

1 correct any known or identifiable address changes. Within ten (10) calendar days after receiving the
2 Class Information, the Settlement Administrator shall mail copies of the Notice of Class Settlement
3 to all Class Members via regular First Class U.S. Mail. The Settlement Administrator shall exercise
4 its best judgment to determine the current mailing address for each Class Member. The address
5 identified by the Settlement Administrator as the current mailing address shall be presumed to be the
6 best mailing address for each Class Member.

7 a. Undeliverable Notices. Any Notice of Class Settlement returned to the
8 Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to
9 the forwarding address affixed thereto within ten (10) calendar days. For any undeliverable Notice of
10 Class Settlement returned for which no forwarding address is affixed, the Settlement Administrator
11 will conduct its investigation for an updated address of the Class Member and re-mail the Notice of
12 Class Action Settlement. If an updated address is found, the Settlement Administrator shall have
13 seven (7) days to re-mail the Notice of Class Action Settlement from receipt of the undelivered
14 envelope. The Settlement Administrator will provide a cover letter notifying the Class Member of the
15 extended Response Deadline. Any Class Member who receives a re-mailed Notice of Class Settlement
16 shall have forty-five (45) days after the postmark date of the re-mailed Notice of Class Settlement to:
17 (a) submit a Request for Exclusion; or (b) submit an Objection to the Settlement. If these procedures
18 are followed, notice to Class Members shall be deemed to have been fully satisfied, and if the intended
19 recipient of the Notice of Class Settlement does not receive the Notice of Class Settlement, the
20 intended recipient shall nevertheless remain a Class Member and shall be bound by all terms of the
21 Settlement and the Judgment.

22 b. Determination of Individual Settlement Payments. The Settlement
23 Administrator shall determine the eligibility for, and the amount of, each Individual Settlement
24 Payment under the terms of this Agreement. The Settlement Administrator's determination of the
25 eligibility for and amount of each Individual Settlement Payment shall be binding upon the Class
26 Member and the Parties, yet subject to review by Plaintiff's Counsel, Defense Counsel, and the Court.
27 In the absence of fraud or gross negligence, Defendants' records shall be presumed accurate.
28

1 c. Disputes Regarding Individual Settlement Payments. Class Members will have
2 the opportunity, should they disagree with Defendants' records regarding the dates of employment
3 stated in the Notice of Class Settlement, to provide documentation and/or an explanation to show
4 contrary information by the Response Deadline. The dispute form must: (a) contain the full name,
5 address, and telephone number of the Class Member, and the last four digits of the Class Member's
6 social security number or full employee ID number; (b) contain the case name and case number; (c) a
7 clear statement by the Class Member that he or she is disputing the number of Compensable
8 Workweeks and/or Compensable PAGA Work Weeks and the basis for the dispute; (d) any
9 documentation demonstrating that the number of Compensable Workweeks and/or Compensable
10 PAGA Work Weeks listed in the Notice of Class Settlement is incorrect; (e) be signed by the Class
11 Member; and (f) be postmarked by the Response Deadline. The date of the postmark on the return
12 mailing envelope on the dispute form shall be the exclusive means used to determine whether it has
13 been timely submitted. If there is a dispute, the Settlement Administrator will consult with the Parties
14 to determine whether an adjustment is warranted. In addition to U.S. Mail, a Class Member may also
15 submit a dispute form by facsimile or email to the Settlement Administrator within the Response
16 Deadline. The Settlement Administrator shall then determine the eligibility for, and the amounts of,
17 any Individual Settlement Payments under the terms of this Agreement. In the absence of
18 circumstances indicating fraud, manipulation or destruction, Defendants' records shall be given a
19 rebuttable presumption of accuracy.

20 d. Request for Exclusion. Class Members who wish to exclude themselves from
21 the Settlement must submit to the Settlement Administrator a Request for Exclusion by the Response
22 Deadline. The Request for Exclusion must: (a) contain the full name, address, and telephone number
23 of the Class Member, and the last four digits of the Class Member's social security number or full
24 employee ID number; (b) contain the case name and case number; (c) a clear statement by the Class
25 Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class
26 Member; and (e) be postmarked by the Response Deadline if submitted by U.S. Mail. The date of the
27 postmark on the return mailing envelope on the Request for Exclusion submitted by U.S. Mail shall
28 be the exclusive means used to determine whether it has been timely submitted. In addition to U.S.

1 Mail, a Class Member may also submit a Request for Exclusion by facsimile or email to the Settlement
2 Administrator within the Response Deadline. A Request for Exclusion shall not be presumptively
3 invalid if it does not contain the requirements of (a) through (d) if the Settlement Administrator can
4 ascertain the identity of the Class Member who wants to exclude themselves from the Settlement. Any
5 Class Member who requests to be excluded from the Settlement Class shall not be entitled to any
6 recovery under the Settlement and shall not be bound by the terms of the Settlement or have any right
7 to object, appeal or comment thereon except as to any distribution based upon PAGA penalties.
8 PAGA Members will receive their share of the PAGA Payment and the Settled PAGA Claims will be
9 released even if the Class Member submits a timely Request for Exclusion. Class Members who fail
10 to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound
11 by all terms of the Settlement and any Final Approval Order and Judgment entered in this Action.

12 e. Objections. Class Members who wish to object to the Settlement can either
13 mail or send by facsimile or email to the Settlement Administrator a written Objection by the Response
14 Deadline. The Objection should: (a) contain the full name, address, and telephone number of the Class
15 Member, and the last four digits of the Class Member's social security number; (b) contain the case
16 name and case number; (c) the dates of employment of the Class Member; (d) be signed by the Class
17 Member; (e) state the basis for the Objection, including any legal briefs, papers or memoranda in
18 support of the Objection; and (f) be postmarked by the Response Deadline. The date of the postmark
19 on the return mailing envelope on the Objection shall be the exclusive means used to determine
20 whether the Objection has been timely submitted. Class Members who submit a timely Objection will
21 have a right to appear at the final approval hearing in order to have their Objection heard by the Court.
22 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
23 Members to submit Objections to the Settlement or appeal from the Final Approval Order and
24 Judgment. Class Counsel shall not represent any Class Members with respect to any such Objections.
25 The Settlement Administrator will provide the Parties with any Objection within five (5) calendar
26 days of receipt of the Objection. Plaintiff will file any and all Objections with the Court in advance of
27 the Final Approval Hearing. Oral or written Objections may also be made at the Final Approval
28

1 hearing without a written objection being submitted, but only with the Court's express permission. If
2 the Court rejects the objection, the individual will be bound by the terms of the Settlement.

3 f. If greater than five percent (5%) of the Class Members opt out or object to this
4 Settlement Agreement or a number of Class Members whose share of the Net Settlement Amount is
5 five percent (5%) or more, Defendants will have the right to rescind and terminate the Settlement
6 without prejudice to its pre-settlement positions and defenses in the litigation. In such a case, the
7 Parties and any funds to be awarded shall be returned to their respective statuses as of the date and
8 time immediately prior to the execution of this Agreement.

9 g. Except for those Settlement Class Members who exclude themselves in
10 compliance with the Request for Exclusion procedures set forth above, all Settlement Class Members
11 will: (i) be deemed to be Participating Class Members for all purposes under this Settlement
12 Agreement; (ii) will be bound by the terms and conditions of this Settlement Agreement, the
13 Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be
14 deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy
15 of the Settlement.

16 h. The Parties have the right to monitor and review the administration of the
17 Settlement to verify that the monies allocated under the Settlement are distributed in the correct
18 amount, as provided for in this Stipulation.

19 59. Funding Gross Settlement Amount. Within thirty (30) days of the Effective Date of
20 the Settlement, Defendant Smart Warehousing, LLC shall wire transfer approximately \$210,000 of
21 the Gross Settlement and Defendant Skilled Staffing, Inc. shall wire transfer \$40,000 of the Gross
22 Settlement and their respective share of the payroll taxes to the Settlement Administrator as follows:
23 Skilled Staffing, Inc. shall pay thirty percent (30%) and Smart Warehousing, LLC shall pay seventy
24 percent (70%) of the employer share of the payroll taxes on the taxable portion of the Settlement
25 Payment. Within twelve (12) months after the final approval of this Settlement, Defendant Skilled
26 Staffing, Inc. shall wire transfer \$50,000 of the remaining balance of the Gross Settlement along with
27 the amount of the applicable payroll taxes. The Settlement Administrator shall make two (2)
28 distributions based upon the percentages and funding of the Gross Settlement Amount. For instance,

1 83.333% of the Settlement will be funded and distributed based upon that percentage within thirty
2 (30) days of final approval.

3 60. Allocation of Settlement. Individual Settlement Payments will be paid from the Net
4 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual
5 Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members'
6 last known mailing address.

7 a. The Settlement Administrator shall calculate the total Compensable Work
8 Weeks and Compensable PAGA Work Weeks for all Settlement Class Members based on the Class
9 Information provided by Defendants. The respective Compensable Work Weeks for each Settlement
10 Class Member will be divided by the total Compensable Work Weeks for all Settlement Class
11 Members, resulting in the Payment Ratio for each Settlement Class Member; a similar calculation will
12 apply to determining the Payment Ratio for Compensable PAGA Work Weeks. Each Settlement Class
13 Member's Payment Ratio will then be multiplied by the Net Settlement Amount to determine his or
14 her Individual Settlement Payment.

15 b. Individual Settlement Payments due to each Settlement Class Member shall be
16 designated as follows:

17 1. Thirty-Three and One-Third Percent ($33\frac{1}{3}\%$) of the Individual
18 Settlement Payment shall represent payment for alleged unpaid wages. This payment shall be subject
19 to the withholding of all applicable local, state, and federal taxes. Applicable payroll taxes and/or
20 contributions will be deducted from the amount paid to Settlement Class Members. The Settlement
21 Administrator will issue a W-2 Form to each Settlement Class Member in relation to this payment.
22 The Settlement Administrator shall calculate the amount of the Employer's Share of Payroll Taxes
23 and shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing
24 authorities in a timely manner.

25 2. Thirty-Three and One-Third Percent ($33\frac{1}{3}\%$) of the Individual
26 Settlement Payment shall represent payment of all penalties. These payments will not be subject to
27 withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form
28 1099 to each Settlement Class Member in relation to these payments.

1 3. Thirty-Three and One-Third Percent (33⅓%) of the Individual
2 Settlement Payment shall represent payment of all interest. These payments will not be subject to
3 withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form
4 1099 to each Settlement Class Member in relation to these payments.

5 (a). Class Members with Missing/Unverifiable Social Security
6 Numbers and Withholdings of Taxes and Applicable Penalties. In the event that an Individual
7 Settlement Payment exceeds the threshold amount that must be reported to the Internal Revenue
8 Service by means of a Form 1099, Class Counsel, and the Settlement Administrator, will take all
9 necessary and reasonable steps to obtain W-9's from Class Members and to comply with applicable
10 IRS regulations on issuing 1099's without a social security number or tax entity identification number,
11 and shall take all reasonable and necessary steps to avoid imposition of IRS penalties against the Gross
12 Settlement Amount, including, but not limited to limiting payments below the reportable threshold
13 and/or withholding of taxes and any applicable penalties. The Settlement Administrator will contact
14 Class Members who are entitled to payments that exceed the taxable income threshold twice, with at
15 least 30 days between the two contacts.

16 c. Uncashed Settlement Checks. Individual Settlement Payment checks shall
17 remain negotiable for one hundred and eighty (180) days from the postmark date of issuance. If the
18 Settlement Check is not cashed, deposited, or otherwise negotiated within the 180-day deadline, the
19 check will be voided, and the funds associated with any such voided checks shall be distributed to the
20 State of California Controller's Office, Unclaimed Property Division, in the name of the affected Class
21 Member. The Release will be binding upon all Participating Class Members, including those who do
22 not cash their checks within the 180-day period. The Parties agree that this disposition results in no
23 "unpaid cash residue," or "unclaimed or abandoned funds" as the entire Net Settlement Amount will
24 be paid out to the Participating Class Members, whether or not they all cash their payment checks.

25 d. Certification By Settlement Administrator. The Parties have the right to
26 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
27 Administrator concerning the administration of the Settlement will be resolved by the Court, under
28 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties

1 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon
2 completion of administration of the Settlement, the Settlement Administrator shall provide written
3 certification of such completion to counsel for the Parties, and which shall be filed with the Court as
4 necessary.

5 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
6 by Settlement Class Members shall be deemed to be income to such Settlement Class Members solely
7 in the year in which such awards actually are received by the Settlement Class Members. It is expressly
8 understood and agreed that the receipt of such Individual Settlement Payments will not entitle any
9 Settlement Class Member to additional compensation or benefits under any company compensation
10 or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle
11 any Settlement Class Member to any increased pension and/or retirement, or other deferred
12 compensation benefits. It is the intent of this Settlement that any Individual Settlement Payments
13 provided for in this Agreement are the sole payments to be made by Defendants to the Settlement
14 Class Members in connection with this Settlement, and that the Settlement Class Members are not
15 entitled to any new or additional compensation or benefits as a result of having received the Individual
16 Settlement Payments (notwithstanding any contrary language or agreement in any benefit or
17 compensation plan document that might have been in effect during the period covered by this
18 Settlement).

19 f. Class Representative Service Award. Defendants agree not to oppose or object
20 to a Class Representative Service Award to Plaintiff of up to Six Thousand Dollars (\$6,000.00),
21 subject to Court approval. The Settlement Administrator shall issue an IRS Form 1099 – MISC to
22 Plaintiff in connection with the Class Representative Service Award payment. Plaintiff shall be solely
23 and legally responsible to pay any and all applicable taxes on his Class Representative Service Award
24 and shall hold harmless Defendants and Class Counsel from any claim or liability for taxes, penalties,
25 or interest arising as a result of the Class Representative Service Award payment. The Class
26 Representative Service Award shall be in addition to Plaintiff's Individual Settlement Payment. This
27 Settlement is not contingent upon the Court awarding Plaintiff a Class Representative Service Award
28 in any amount, and any amount requested by Plaintiff for the Class Representative Service Award that

1 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
2 Class Members as provided in this Amended Agreement.

3 g. Class Counsel Award. Defendants agree not to oppose or object to any
4 application or motion by Class Counsel for attorneys' fees not to exceed one-third of the Gross
5 Settlement Amount, which is equivalent to One Hundred Thousand Dollars (\$100,000.00).
6 Defendants further agree not to oppose any application or motion by Class Counsel for the
7 reimbursement of any costs or expenses associated with Class Counsel's prosecution of this matter
8 from the Gross Settlement Amount not to exceed Twenty Thousand Dollars (\$20,000.00). Class
9 Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made
10 pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to
11 Class Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent
12 upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any
13 amount requested by Class Counsel for the Class Counsel Award and costs that is not granted by the
14 Court shall return to the Net Settlement Amount and be distributed to Settlement Class Members as
15 provided in this Agreement.

16 h. Settlement Administration Costs. The Settlement Administrator shall be paid
17 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
18 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
19 Twenty-Four Thousand Dollars (\$24,000.00). Prior to the filing of a motion for final approval of this
20 Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the costs
21 of administration.

22 i. PAGA Payment. Fifty Thousand Dollars (\$50,000) from the Gross Settlement
23 Amount will be allocated to penalties under the Private Attorneys General Act of 2004. Seventy-five
24 percent (75%) of that amount, equivalent to \$37,500, will be paid to the LWDA and twenty-five
25 percent (25%) of that amount, equivalent to \$12,500, will be paid to the PAGA Members based upon
26 Compensable PAGA Work Weeks as determined by the PAGA Payment Ratio as set forth in
27 Paragraph 27. This PAGA Payment is made pursuant to California Labor Code § 2699(i).

28 61. Tax Liability: Class Counsel and Defendants make no representation as to the tax

1 treatment or legal effect of payments called for hereunder, and Plaintiff and the Settlement Class
2 Members are not relying on any statement or representation by Class Counsel or Defendants in this
3 regard. Plaintiff and Participating Class Members understand and agree that they will be solely
4 responsible for the payment of any taxes and penalties assessed on their respective payments described
5 herein. Plaintiff and Participating Class Members shall hold the Parties, Plaintiffs' Counsel, and
6 Defense Counsel free and harmless from and against any claims resulting from the treatment of such
7 payments as non-taxable, including the treatment of such payments as not subject to withholding or
8 deduction for payroll and employment taxes. The amount of federal income tax withholding will be
9 based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. §
10 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant
11 to applicable state and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will
12 be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code")
13 and consistent with this Settlement Agreement. If the Code, the regulations promulgated thereunder,
14 or other applicable tax law, is changed after the date of this Settlement Agreement, the processes set
15 forth in this Section may be modified in a manner to bring the Parties into compliance with any such
16 changes.

17 62. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
18 Class Members, the Class Representative Service Awards, the Class Counsel Award, Settlement
19 Administration Costs, Defendant's share of employer payroll taxes and PAGA Payment, shall all be
20 distributed by the Settlement Administrator within fourteen (14) calendar days of receipt of the two
21 payments of the Gross Settlement Amount from Defendants. Prior to the distribution of Individual
22 Settlement Payments to the Settlement Class Members and PAGA Members, the Settlement
23 Administrator shall update the Class and PAGA Members' addresses using the National Change of
24 Address Database.

25 63. Work Week Differential. It is currently estimated that there were 1,811 Class
26 Members. If it is determined by Plaintiff's counsel and confirmed by the Settlement Administrator
27 that more than 1,993 (10% more than 1,811) Class Members are identified up to the date that Plaintiff
28 files the Motion for preliminary approval, the Class Period shall end on the date the Settlement Class

1 included no more than 1, 993 Class Member, i.e., if the actual number of Class Members is 10%
2 higher than 1,811, at the time of preliminary approval, the Class Period shall end on the date the
3 Settlement Class included no more than 1,993 Class Members.

4 64. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration of
5 the Response Deadline, a final approval hearing shall be conducted to determine, inter alia, final
6 approval of the Settlement and amounts properly payable for: (a) Individual Settlement Payments; (b)
7 the Class Counsel Award; (c) the Class Representative Service Awards; (d) PAGA Payment; and (e)
8 the Settlement Administration Costs.

9 65. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the
10 Order for preliminary approval of the Settlement; (b) the Court does not finally approve the
11 Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein; (d)
12 the Settlement does not become final for any other reason; or (e) the Court fails or refuses to approve
13 any material condition of this Settlement Agreement which effects a fundamental change of the
14 Settlement Agreement, this entire Settlement Agreement shall be null and void and unenforceable as
15 to all Parties herein at the option of any Party but remains protected by California Evidence Code
16 Section 1152, and any order or judgment entered by the Court in furtherance of this Settlement shall
17 be treated as void from the beginning. In such cases, the Parties and any funds to be awarded under
18 this Settlement shall be returned to their respective statuses as of the date and time immediately prior
19 to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement
20 had not been executed, except that any fees already incurred by the Settlement Administrator shall be
21 paid by Defendants. Further, if the Settlement Agreement is voided or fails for any reason, Plaintiff
22 and Defendants will have no further obligations under the Settlement Agreement, including any
23 obligation by Defendants to pay the Settlement Amount, or any amounts that otherwise would have
24 been owed under this Settlement Agreement. In the event an appeal is filed from the Court's Final
25 Approval Order and Judgment, or any other appellate review is sought, administration of the
26 Settlement shall be stayed pending final resolution of the appeal or other appellate review, and any
27 fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from
28 the Court's Final Approval Order and Judgment, or any other appellate review, shall be paid to the

1 Settlement Administrator by the party or person that filed the appeal, within thirty (30) calendar days
2 of said notification.

3 66. No Admission by Defendants. Defendants deny any and all claims alleged in this
4 Action and deny all wrongdoing whatsoever. This Settlement Agreement is not a concession or
5 admission and shall not be used against Defendants as an admission or indication with respect to any
6 claim of any fault, concession, or omission by any Defendants.

7 67. No Publicity. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize the
8 settlement, including the Memorandum of Understanding, the fact of the Settlement, its terms or
9 contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly,
10 to any person or entity, except Class Members and as shall be contractually required to effectuate the
11 terms of the Settlement as set forth herein. For the avoidance of doubt, this section means Plaintiff
12 and Class Counsel will not issue press releases, communicate with, or respond to any media or
13 publication entities, publish information in manner or form, whether printed or electronic, on any
14 medium or otherwise communicate, whether by print, video, recording or any other medium, with any
15 person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents
16 and the negotiations underlying the Settlement, except as shall be contractually required to effectuate
17 the terms of the Settlement as set forth herein. However, for the limited purpose of allowing Class
18 Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the name of
19 the Parties in this action and the venue/case number of this action (but not any other settlement details)
20 for such purposes.

21 68. Exhibits and Headings. The terms of this Settlement Agreement include the terms set
22 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
23 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any
24 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
25 constitute a part of this Agreement.

26 69. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
27 except such proceedings necessary to implement and complete the Settlement, holding the Action in
28 abeyance pending the final approval hearing to be conducted by the Court.

1 70. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the
2 interpretation, calculation, or payment of Settlement claims, or other disputes regarding compliance
3 with this Agreement shall be resolved as follows:

4 a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
5 Member, or Defendants' Counsel, on behalf of Defendants, at any time believe that the other Party
6 has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of
7 the alleged violation.

8 b. Upon receiving notice of the alleged violation or dispute, the responding Party
9 shall have ten (10) calendar days to correct the alleged violation and/or respond to the initiating Party
10 with the reasons why the Party disputes all or part of the allegation.

11 c. If the response does not address the alleged violation to the initiating Party's
12 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
13 differences.

14 d. If Class Counsel and Defendants' Counsel are unable to resolve their
15 differences after twenty (20) calendar days, either Party shall first contact the mediator (Jeff Krivis)
16 to try to resolve the dispute. If that proves unsuccessful, the party may file an appropriate motion for
17 enforcement with the Court.

18 71. Notice. Unless otherwise specifically provided herein, all notices, demands or other
19 communications given hereunder shall be in writing and shall be deemed to have been duly given as
20 of the third business day after (i) emailing and (ii) mailing by United States registered or certified
21 mail, return receipt requested, addressed:

22 To the Settlement Class:

23 LAW OFFICE OF SCOTT ERNEST WHEELER
24 Scott Ernest Wheeler
25 Justin A. Wheeler
26 250 West First Street, Suite 216
27 Claremont, California 91711
28 Telephone: (909) 621-4988
 Facsimile: (909) 621-4622
 Email: sew@scottwheelerlawoffice.com
 jaw@scottwheelerlawoffice.com

1 To Defendants:

2 HUSCH BLACKWELL, LLP
3 Andrew J. Weissler
4 190 Carondelet Plaza, Suite 600
5 St. Louis, MO 63105
6 Tel: (314) 480-1500
7 Fax: (314) 480-1505
8 Email: AJ.Weissler@huschblackwell.com

6 HUSCH BLACKWELL, LLP
7 Allison M. Scott (SBN 305989)
8 355 South Grand, Suite 2850
9 Los Angeles, California 90071
10 Telephone: (213) 337-6550
11 Facsimile: (213) 337-6551
12 Email: Allison.Scott@huschblackwell.com

10 Attorneys for Defendant, Smart Warehousing, LLC

11 LAW OFFICE OF MARC E. GROSSMAN
12 Marc E. Grossman (SBN 197627)
13 Nathaniel R. Wood (SBN 333743)
14 100 North Euclid Avenue, 2nd Floor
15 Upland, California 91786
16 Telephone: (909) 608-7426
17 Facsimile: (909) 949-0119
18 Email: marc@wefight4you.com

16 Attorneys for Defendant, Skilled Staffing, Inc.

17 72. Amendment or Modification. This Agreement may be amended or modified only by
18 a written instrument signed by counsel for all Parties and approved by the Court.

19 73. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
20 the entire Agreement among these Parties, and no oral or written representations, warranties, or
21 inducements have been made to any Party concerning this Agreement or its Exhibits other than the
22 representations, warranties, and covenants contained and memorialized in the Agreement and its
23 Exhibits.

24 74. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
25 represent they are expressly authorized by the Parties whom they represent to negotiate this
26 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
27 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
28 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other

1 and use their best efforts to affect the implementation of the Settlement. In the event the Parties are
2 unable to reach agreement on the form or content of any document needed to implement the
3 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of
4 this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such
5 disagreement. The persons signing this Agreement on behalf of Defendants represent and warrant that
6 they are authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants
7 that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,
8 covered by this Settlement to a third party.

9 75. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
10 to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11 76. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
12 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
13 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
14 or rights released and discharged by this Settlement Agreement.

15 77. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
16 Order and Judgment, nothing contained herein, nor the consummation of this Settlement Agreement,
17 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
18 part of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into
19 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
20 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it,
21 along with all related documents such as the notices, and motions for preliminary and final approval,
22 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
23 inadmissible as evidence in any proceeding, except an action or proceeding to approve the Settlement,
24 and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part
25 of this Settlement Agreement is for settlement purposes only, and if for any reason, the Settlement is
26 not approved, the stipulation will be of no force or effect.

27 78. California Law Governs. All terms of this Settlement Agreement and the Exhibits
28 hereto shall be governed by and interpreted according to the laws of the State of California.

1 79. Counterparts. This Settlement Agreement may be executed in one or more
2 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
3 instrument.

4 80. This Settlement is Fair, Adequate and Reasonable. The Parties believe this Settlement
5 is a fair, adequate, and reasonable settlement of this Action and have arrived at this Settlement after
6 extensive arms-length negotiations, taking into account all relevant factors, present and potential.

7 81. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section 664.6,
8 the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement
9 of the terms of this Settlement Agreement and all orders and judgments entered in connection
10 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes
11 of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders
12 and judgments entered in connection therewith. All terms of this Settlement Agreement are subject to
13 approval by the Court.

14 82. Construction. The Parties hereto agree that the terms and conditions of this Settlement
15 Agreement are the result of lengthy, intensive arms'-length negotiations among the Parties and that
16 this Settlement Agreement shall not be construed in favor of or against any Party based on the extent
17 to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff
18 and Defendants expressly waive the common-law and statutory rule of construction that ambiguities
19 should be construed against the drafter of an agreement and further agree, covenant, and represent that
20 the language in all parts of this Settlement Agreement shall be in all cases construed as a whole,
21 according to its fair meaning.

22 83. Captions and Interpretations. Paragraph titles or captions contained herein are inserted
23 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope
24 of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is
25 contractual and not merely a recital.

26 84. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
27 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
28 successors and assigns.

85. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the release provided herein and such Release shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

86. 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 they might ever have to claim that this Settlement Agreement was in any way induced by fraud.

87. Opportunity to Consult with Counsel. Prior to the 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.

88. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

89. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible and consistent with applicable precedents so as to define all provisions of this Agreement as valid and enforceable.

Dated: 1/4/2023

By:

Esteban Flores

DocuSigned by:

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Skilled Staffing, Inc.

Dated: _____

By: _____

Title: _____

Smart Warehousing, LLC

Dated: _____

By: _____

Title: _____

APPROVED AS TO FORM:

January 4, 2023
~~DATED: December __, 2022~~

LAW OFFICE OF SCOTT ERNEST WHEELER

[Signature]
By: _____
Scott Ernest Wheeler
Justin A. Wheeler

Attorneys for Plaintiff Esteban Flores and the Putative Class

DATED: December __, 2022

HUSCH BLACKWELL, LLP

By: _____
Andrew J. Weissler
Allison M. Scott

Attorneys for Defendant, Smart Warehousing, LLC.
LAW OFFICE OF MARC E. GROSSMAN

DATED: December __, 2022

By: _____
Marc E. Grossman
Nathaniel R. Wood

Attorneys for Defendant, Skilled Staffing, Inc.

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Skilled Staffing, Inc.

Art Nieto

By: ID: aE6GaAQp2zhgoXxmpP4nxC3

Dated: January 5, 2023

Title: President / CEO

Smart Warehousing, LLC

Dated: _____

By: _____

Title: _____

APPROVED AS TO FORM:

DATED: December __, 2022

LAW OFFICE OF SCOTT ERNEST WHEELER

By: _____

Scott Ernest Wheeler
Justin A. Wheeler

Attorneys for Plaintiff Esteban Flores and the Putative Class

DATED: December __, 2022

HUSCH BLACKWELL, LLP

By: _____

Andrew J. Weissler
Allison M. Scott

Attorneys for Defendant, Smart Warehousing, LLC.
LAW OFFICE OF MARC E. GROSSMAN

DATED: ~~December __, 2022~~
January 5, 2023

By: Nathaniel R. Wood

Marc E. Grossman
Nathaniel R. Wood

Attorneys for Defendant, Skilled Staffing, Inc.

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Skilled Staffing, Inc.

Dated: _____

By: _____

Title: _____

Smart Warehousing, LLC

Dated: 1/5/2023

By: Anna Hockey

Title: CFO

APPROVED AS TO FORM:

DATED: December ____, 2022

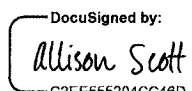
LAW OFFICE OF SCOTT ERNEST WHEELER

By: _____
Scott Ernest Wheeler
Justin A. Wheeler

Attorneys for Plaintiff Esteban Flores and the Putative Class

DATED: December ^{1/5/2023} ____, 2022

HUSCH BLACKWELL, LLP

By: 

Andrew J. Weissler
Allison M. Scott

Attorneys for Defendant, Smart Warehousing, LLC.
LAW OFFICE OF MARC E. GROSSMAN

DATED: December ____, 2022

By: _____
Marc E. Grossman
Nathaniel R. Wood

Attorneys for Defendant, Skilled Staffing, Inc.

EXHIBIT 1

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

ESTEBAN FLORES V. SKILLED STAFFING, INC., SMART WAREHOUSING, LLC. ET AL.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO, CASE NO. CIVSB2121280

PLEASE READ THIS NOTICE

The court has preliminarily approved a settlement in the class and representative action under the Private Attorneys General Act, California Labor Code sections 2699-2699.5 ("PAGA") entitled *Esteban Flores v. Skilled Staffing, Inc., Smart Warehousing, LLC. et al.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2121280 (the "Action"). The purpose of this Notice of Class Action and PAGA Settlement is to briefly describe the Action, and to inform you of your rights and options in connection with the Action and preliminarily approved settlement. This settlement will resolve all claims in the Action.

Class Member(s) are defined as: All non-exempt employees who were employed directly by Smart Warehousing, LLC, or employed and placed by Skilled Staffing, Inc. to work at Smart Warehousing, LLC, in the State of California, at any time from July 23, 2017, through the date of Preliminary Approval ("Class Period" and collectively, the Class Members are referred to as the "Class").

You have been identified by Defendants Skilled Staffing, Inc. and Smart Warehousing, LLC's (collectively "Defendants") records as a Class Member in the above-entitled action, and as such, you are subject to the terms of the Class Action and PAGA Settlement Agreement And Release ("Settlement"), preliminarily approved by the Court. Please read this notice carefully. It may affect your legal rights. Defendants will not retaliate against you for any actions you take with respect to the settlement.

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO THE SETTLEMENT	
Participate in the Settlement	If you want to remain in the Class, be bound by the Settlement and receive your Individual Settlement Payment, and if eligible, PAGA Payment , then you need not do anything.
Exclude Yourself From the Settlement	If you do not want to be bound by the Settlement, you must follow the instructions in Section 6 to exclude yourself. If you exclude yourself, you will not receive your Individual Settlement Payment, and you will not release the Settled Claims against Released Parties defined in Section 4 below. If this Settlement is approved by the Court, and you are a PAGA Member, you will receive your PAGA payment and the Settled PAGA Claims will be released even if you exclude yourself from the Settlement.
Object to the Settlement	If you want to object to the Settlement, you must follow the instructions in Section 7. If you object, you will still be bound by the terms of the Settlement, if approved by the Court.

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Defendants' records reflect that you are a Class Member as defined above. This Notice provides you with information about (1) the terms of the Settlement, including the claims that are being released, (2) the total monetary amount of the Settlement, (3) your estimated Individual Settlement Payment provided you remain a Settlement Class Member, and (4) where to find additional information regarding the case and the Settlement.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you do nothing, then you will be automatically included in the Settlement and do not need to take any further action to receive a payment.

2. WHAT IS THIS CASE ABOUT?

In the Action, Plaintiff alleged on behalf of himself and the Class the following claims against Defendants: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay all wages due to discharged and quitting employees; (6) failure to furnish accurate, itemized wage statements; (7) failure to maintain records; and (8) violation of PAGA, predicated on the violations of the California Labor Code and applicable Industrial Welfare Commission ("IWC") Wage Orders as alleged in the operative Complaint.

The resolution of the PAGA claim ("PAGA Settlement") includes any Class Members who are employed or have been employed by Defendants in the State of California during the time period from May 19, 2020, through preliminary approval of this Settlement ("PAGA Members").

Defendants deny any liability or wrongdoing of any kind. Defendants contend, among other things, that they complied at all times with the California Labor Code, IWC Wage Orders, and the Business and Professions Code, and that employees were correctly and timely paid all wages, and that meal periods and rest breaks were provided as required by applicable law.

The Court has not ruled on the merits of Plaintiff's claims. By preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine on a preliminary basis that the proposed Settlement is fair, adequate, and reasonable and any final determination of those issues will be made at the final approval hearing.

3. THE SETTLEMENT TERMS AND CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENTS AND PAGA PAYMENTS.

Without admitting any wrongdoing, and to avoid the business disruptions caused by litigating these claims, Defendants have agreed to pay a Gross Settlement Amount of Three Hundred Thousand Dollars (\$300,000.00) to settle the Action if approved by the Court.

The following amounts will be paid from the Maximum Settlement Amount:

- Service Payment to Plaintiff for his service as Class Representative in the amount of up to Six Thousand Dollars and Zero Cents (\$6,000.00);
- Attorneys' Fees not to exceed One Hundred Thousand Dollars (\$100,000.00) (i.e., 1/3 of the Gross Settlement Amount) to Class Counsel and up to Twenty Thousand Dollars and Zero Cents (\$20,000.00) for reimbursement of litigation costs and expenses ("Attorneys' Costs");
- The amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated to the payment of civil penalties under PAGA (the "PAGA Allocation");
- The costs associated with administration of the Settlement, estimated to be Twenty-Four Thousand Dollars and Zero Cents (\$24,000.00) ("Settlement Administration Costs").

Individual Settlement Payment: The amount remaining from the Gross Settlement Amount after the above deductions is called the "Net Settlement Amount". The Net Settlement Amount will be allocated to all Class Members who do not request to be excluded from the Settlement ("Settlement Class Members") on a *pro rata* basis, based on their number of Compensable Work Weeks. Each payment is called an "Individual Settlement Payment" and will be calculated as follows:

1. The Settlement Administrator will determine the value of a single Compensable Work Week by dividing the Net Settlement Amount by the total number of Compensable Work Weeks for each Settlement Class Member resulting in a payment ratio; and
2. Each Settlement Class Member shall receive a gross Individual Settlement Payment equal to his or her Compensable Work Week payment ratio multiplied by the Net Settlement Amount.

Based on your Compensable Work Weeks, your individual settlement payment as a Settlement Class Member is estimated to be \$_____.

PAGA Payment: A total of Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount has been allocated to PAGA Settlement. Of this amount, 75% equivalent to Thirty-Seven Thousand Five Hundred Dollars (i.e., \$37,500.00) will be paid to California's Labor & Workforce Development Agency, and 25% equivalent to Twelve Thousand Five Hundred Dollars (i.e., \$12,500.00) (the "Net PAGA Distribution Amount") will be paid on a *pro-rata* basis to PAGA Members.

1. The Settlement Administrator will determine the value of a single Compensable PAGA Work Week by dividing the Net PAGA Distribution Fund by the total number Compensable PAGA Work Weeks by all PAGA Members.
2. Each PAGA Member shall receive a PAGA Payment equal to his or her Compensable PAGA Work Weeks multiplied by the value of a single Compensable PAGA Work Week.

Based on these PAGA Compensable Work Weeks, your PAGA Payment is estimated to be \$_____.

If you dispute the above information, you may submit a written dispute to the number of Compensable Work Weeks and/or Compensable PAGA Work Weeks allocated to you ("Dispute") to the Settlement Administrator. Your Dispute must: (1) contain your name, address,

and telephone number and the case name and number of this action, *Esteban Flores v. Skilled Staffing, Inc., Smart Warehousing, LLC, et. al.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2121280; (2) be signed by you; (3) be postmarked, emailed or fax stamped on or before (INSERT DATE) and returned to the Settlement Administrator at the address, email or fax number listed below; (4) clearly state the number of Compensable Work Weeks and/or Compensable PAGA Work Weeks you believe are correct; and (5) attach any documentary evidence you have to prove the number of contented Compensable Work Weeks and/or Compensable PAGA Work Weeks.

PHOENIX CLASS ACTION ADMINISTRATION SOLUTIONS

Re: *Esteban Flores v. Skilled Staffing, Inc., et. al.*

INSERT ADDRESS

Phone: (800)

Facsimile:

Email: INSERT EMAIL ADDRESS

Thirty-three and one-third percent (33.33%) of each Individual Settlement Payment will be allocated to wages and subject to all applicable employee state and federal tax withholdings; thirty-three and one-third percent (33.33%) of each Individual Settlement Payment will be considered penalties and any other non-wage related amount; and thirty-three and one-third percent (33.33%) of each Individual Settlement Payment will be considered interest. The amount allocated as wages will be reported on an IRS form W-2, and the remaining amount allocated as penalties, liquidated damages, interest and other non-wage payments will be reported on an IRS form 1099. One hundred percent (100%) of each PAGA Payment will be allocated as penalties and be reported on an IRS form 1099.

In addition to the Gross Settlement Amount, Defendants will pay all employer-payroll taxes and contributions in connection with the portion of the Settlement allocated towards wages at the time the Gross Settlement Amount is funded.

Class Members are responsible for paying taxes on any amounts received. This Notice is not tax advice and you should consult your tax advisor. Checks will be valid and negotiable for one-hundred and eighty (180) days; after that checks will become void and a stop payment will be placed on the uncashed checks. Settlement checks that are not cashed within one-hundred and eighty (180) days of mailing, or are returned to the Settlement Administrator, will be cancelled and the Settlement Administrator shall send the funds associated with uncashed checks to the State of California Controller's Office, Unclaimed Property Division, in the name of the affected Class Member. **Class Members will be bound by the Settlement even if they do not cash their settlement checks.**

4. WHAT AM I RELEASING AS A CLASS MEMBER UNDER THE SETTLEMENT?

If you do nothing, you will receive your Individual Settlement Payment.

If and when the Court grants final approval of the Settlement, as of the Effective Date, all Class Members who do not opt out of the Settlement ("Settlement Class Members") hereby do and shall fully and finally release and discharge Released Parties, from July 23, 2017, through the date of Preliminary Approval, from 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 Operative Complaint, including any claims for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to timely pay all wages during employment and due to discharged and quitting employees; (6) failure to furnish accurate, itemized wage statements; (7) failure to maintain required records; and (8) any other benefit, wages, penalties, or other amounts claimed on account of the allegations or the primary rights asserted in the Operative Complaint.

"Released Parties" collectively mean: (i) Defendants; (ii) Defendants respective past, present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing.

5. WHAT AM I RELEASING AS A PAGA MEMBER UNDER THE SETTLEMENT?

As of the Effective Date, all PAGA Members, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims.

"Settled PAGA Claims" means penalties under PAGA only, and not for underlying wage and hour claims which the claims for penalties are based upon, as alleged in the operative Complaint and the PAGA Notice filed by Plaintiff, and as described in section 4, above.

Released Parties is defined in section 4 of this Notice above.

PAGA MEMBERS CANNOT OPT-OUT OR EXCLUDE THEMSELVES FROM THE PAGA SETTLEMENT OR RELEASE OF SETTLED PAGA CLAIMS AND WILL RECEIVE A PAGA PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.

6. WHAT IF I DON'T WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

You have the right to request exclusion from the Settlement as a Class Member and with regards to the settlement of Settled Claims, but you are not able to exclude yourself as a PAGA Member. To exclude yourself as a Settlement Class Member, you must submit a written Request for Exclusion to the Settlement Administrator ("Opt-Out Request") at the address, email or fax number listed in section 3 of this Notice above.

A valid and complete Opt-Out Request must (1) contain the name, address, and telephone number of the Class Member requesting exclusion and the case name and number of the Action (i.e., *Esteban Flores v. Skilled Staffing, Inc., Smart Warehousing, LLC. et. al.* Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2121280); (2) be signed by the Class Member; (3) be postmarked, emailed or fax stamped on or before [INSERT DATE] and returned to the Settlement Administrator at the specified address, email address or fax number listed in section 3 of this Notice above; and (4) contain a statement something substantially similar to:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN THE ESTEBAN FLORES V. SKILLED STAFFING, INC., SMART WAREHOUSING, LLC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT FROM THE SETTLEMENT OF THE LAWSUIT. I UNDERSTAND THAT THE PAGA CLAIM WILL STILL BE RELEASED AND SETTLED."

It is your responsibility to ensure that the Settlement Administrator timely receives your request to be excluded from the Settlement. Unless you timely request to be excluded from the Settlement, you will be bound by the judgment upon final approval of the Settlement.

Class Members who request to be excluded from the Settlement will NOT receive their Individual Settlement Payment and will not release any of the Settled Claims. However, Class Members who are also PAGA Members will receive their PAGA Payment and release the Settled PAGA Claims regardless of whether they submit an Opt-Out Request.

7. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Settlement Class Member may object to the Settlement or to any settlement term if the Settlement Class Member believes that the Settlement is not fair, reasonable, or adequate. If the Court denies approval, no payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

If you wish to object, you must submit the written objection to the Settlement Administrator ("Objection") to the following address or fax number listed in section 3 of this Notice above. A valid and timely Objection must (1) contain the name, address, and telephone number of the Settlement Class Member objecting and the case name and number of the Action (i.e., *Esteban Flores v. Skilled Staffing, Inc., Smart Warehousing, LLC. et. al.* Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2121280 (2) be signed by the Settlement Class Member; (3) give the legal and factual basis for the objection; and (4) be postmarked, emailed or fax stamped on or before [INSERT DATE] and returned to the Settlement Administrator at the specified address, email address or fax number in section 3 of the Notice above. Any written objection will not be presumptively invalidated if the objections do not comply with requirements (1), (2) and (3) as long as the written objection is timely received pursuant to requirement (4).

The submission of an objection will **not** exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still receive an Individual Settlement Payment and will be barred from pursuing the Settled Claims. **Do not file both an Objection and Opt Out Request.** If you file both an Objection and an Opt Out Request, you will be excluded from the Settlement and the Objection will not be considered.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on [INSERT DATE AND TIME] in Department S-17 of the Superior Court of the State of California, San Bernardino Superior Court – Civil Justice Center, located at 247 West 3rd Street, San Bernardino, California 92415. The final approval hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing in order to receive payment under the Settlement.

9. WHO ARE THE ATTORNEYS?

Attorneys for Plaintiff and the Class are:

LAW OFFICE OF SCOTT ERNEST WHEELER
Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622

Attorneys for Defendants are:

HUSCH BLACKWELL, LLP
Andrew J. Weissler (Bar No. 343145)
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Tel: (314) 480-1500
Fax: (314) 480-1505
Email: AJ.Weissler@huschblackwell.com

Allison M. Scott (SBN 305989)
355 South Grand, Suite 2850
Los Angeles, California 90071
Telephone: (213) 337-6550
Facsimile: (213) 337-6551
Email: Allison.Scott@huschblackwell.com

Attorneys for Defendant, Smart
Warehousing, LLC

LAW OFFICE OF MARC E. GROSSMAN
Marc E. Grossman (197627)
100 North Euclid Avenue, 2nd Floor
Upland, California 91786
Telephone: (909) 608-7426
Facsimile: (909) 949-0119
Email: marc@wefight4you.com

Attorneys for Defendant Skilled Staffing, Inc.

The Court has decided that the Attorney for Plaintiff and the Class are qualified to represent the Settlement Class Members. Other than the Attorneys' Fees and Attorneys' Costs approved by the Court, which will be paid out of the Gross Settlement Amount, you will not be charged for their services.

10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one, but you will have to pay for that lawyer yourself.

11. FURTHER INFORMATION.

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the Superior Court of the State of California, San Bernardino Superior Court – Civil Justice Center, located at 247 West 3rd Street, San Bernardino, California 92415 or at the Court's website at: <https://www.SB-court.org>. Documents regarding this Settlement may also be found on the Internet at: [https:// https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales](https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales).

12. SAN BERNARDINO COUNTY SUPERIOR COURT SOCIAL DISTANCING PROCEDURES

Please go to www.sb-Court.org for all updates regarding the Court's current social distancing procedures for attendance at hearings and review of court files.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

EXHIBIT 2

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

2 Scott Ernest Wheeler (SBN 187998)

3 Justin A. Wheeler (SBN 342226)

4 250 West First Street, Suite 216

5 Claremont, California 91711

6 Telephone: (909) 621-4988

7 Facsimile: (909) 621-4622

8 Email: sew@scottwheelerlawoffice.com

9 jaw@scottwheelerlawoffice.com

10 *Attorney for Plaintiff and the Putative Class*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN BERNARDINO**

13 **SAN BERNARDINO JUSTICE CENTER**

14
15 ESTEBAN FLORES, individually, and on
16 behalf of all other aggrieved employees,

17 Plaintiff,

18 v.

19 SKILLED STAFFING, INC., a California
20 corporation; SMART WAREHOUSING,
21 LLC., a Kansas Limited Liability
22 Company; and DOES 1 through 50,
23 inclusive,

24 Defendants.

CASE NO. CIVSB2121280

[Hon. Joseph Ortiz, Dept. S-17]

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Action Filed: July 23, 2021

Trial Date: None Set

1 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

2 The Court now has before it, Plaintiff's unopposed Motion for Preliminary Approval of Class
3 Action Settlement ("Motion"). After reviewing the Motion, the Class Action and PAGA Settlement
4 Agreement and Release ("Settlement Agreement") and exhibits attached thereto, and good cause
5 appearing, therefore, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the settlement memorialized in the
7 Settlement Agreement appears to be fair and adequate, and falls within the range of reasonableness,
8 and therefore meets the requirement for preliminary approval.

9 2. The Court conditionally certifies for settlement purposes the following class (the
10 "Class" or "Settlement Class"):

11 All non-exempt employees who were employed directly by Smart Warehousing, LLC
12 or employed and placed by Skilled Staffing, Inc. to work at Smart Warehousing, LLC,
13 in the State of California, at any time from July 23, 2017, through the date of
 preliminary approval.

14 The Class Period is from July 23, 2017, through the date of preliminary approval.

15 3. The Court conditionally approves for settlement purposes the PAGA allocation of this
16 settlement to the California Labor and Workforce Development Agency ("LWDA") and PAGA
17 Members. The PAGA Period is from May 19, 2020 through preliminary approval.

18 4. The Court finds, for settlement purposes only, that the Class meets the requirements
19 for certification under California Code of Civil Procedure § 382 in that: (1) the Class is so numerous
20 that joinder is impractical; (2) there are questions of law and fact that are common, or of general
21 interest, to the Class, which predominate over any individual issues; (3) Plaintiff's claims are typical
22 of the claims of the Class; (4) Plaintiff and Plaintiff's counsel will fairly and adequately protect the
23 interests of the Class; and (5) a class action is superior to other available methods for the fair and
24 efficient adjudication of the controversy.

25 5. The Court appoints, for settlement purposes only, Plaintiff Esteban Flores as
26 Representative for the Class.

27 6. The Court appoints, for settlement purposes only, the Law Office of Scott E. Wheeler
28 as Counsel for the Class.

1 7. The Parties are ordered to carry out the Settlement according to the terms of the
2 Settlement Agreement.

3 8. The Court appoints Phoenix Class Action Administration Solutions ("Phoenix") as the
4 Settlement Administrator and is ordered to carry out the administration of the settlement according to
5 the terms of the Settlement Agreement.

6 9. The Court approves as to form and content of the Class Action and PAGA Settlement
7 Notice. The Court finds that the dates selected for the mailing and distribution of the Notice Packet
8 meet the requirements of due process, provide the best notice practicable under the circumstances,
9 and shall constitute due and sufficient notice to all persons entitled thereto.

10 10. If any Class Member objects to the Settlement Agreement, the objecting party is not
11 required, either personally or through counsel: 1) to appear at the hearing on the motion for final
12 approval for that party's objection to be considered; or 2) to file or serve, or to state in the objection,
13 a notice of intention to appear at the hearing on the motion for Final Approval of the Class Settlement.

14 11. Phoenix, the Settlement Administrator, shall provide notice to any objecting party of
15 any continuance of the hearing of Plaintiff's Motion for Final Approval.

16 12. The Parties are ordered to carry out the Settlement according to the following
17 implementation schedule:

Event	Date
Last day for Defendants to provide the Settlement Administrator with the Class Information	
Last day for Settlement Administrator, CPT to mail Class Notice	
Last day for Class Members to submit a dispute regarding Workweeks, Request for Exclusion, or written Objection	
Last Day for Plaintiff to file Motion for Final Approval of the Class Settlement, Attorneys' Fees and Costs and Class Representative Service Award	Per Code.
Final Approval Hearing	

1 13. The Court finds that the method of giving notice to the Class constitutes the best means
2 practicable of providing notice under the circumstances. The Court further finds that the Notice Packet
3 and the method of giving notice to the Class meet the requirements of California Code of Civil
4 Procedure § 382, California Rules of Court, Rules 3.766 and 3.769, and due process under the
5 California and United States Constitutions, and other applicable law.

6 14. At the Final Approval Hearing, the Court will consider whether the Settlement should
7 be finally approved as fair, reasonable and adequate, whether a final judgment should be entered, and
8 whether the payments provided for under the Settlement, including attorneys' fees and costs and class
9 representative service award, should be finally approved and granted.

10 15. Pending the Final Approval Hearing, all proceedings in this Action, other than
11 proceedings necessary to implement the Settlement and this Order, are stayed.

12 **IT IS SO ORDERED.**

13
14 DATED: _____

HONORABLE JOSEPH ORTIZ
JUDGE OF THE SUPERIOR COURT