

JOINT STIPULATION OF SETTLEMENT

I. INTRODUCTION

1. This Joint Stipulation of Settlement (hereinafter “Settlement Agreement”) is made and entered into by and between the following parties: Plaintiff Roberto Rivera (“Plaintiff”), individually and on behalf of all others similarly situated, Defendant J.B. Wholesale Roofing and Building Supplies, Inc. (“Defendant”) (collectively, the “Parties”), and their respective counsel of record. This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court. This Settlement Agreement supersedes any and all prior memoranda of understanding and accurately sets forth the Parties’ class action settlement to resolve all claims as detailed below. The Parties agree that the consideration described herein constitute adequate consideration for the Settlement and releases described herein.

II. DEFINITIONS

2. “Action” means the lawsuit entitled *Roberto Rivera v. J.B. Wholesale Roofing and Building Supplies, Inc.*, Case No. 21TRCV00503, pending in the Los Angeles County Superior Court.

3. “Class Counsel” or “Plaintiff’s Counsel” means Heather Davis or Amir Nayebdadash of Protection Law Group, LLP and Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, P.C.

4. “Class Member” means all current and former non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the Class Period.

5. “Class Period” means the period commencing on May 6, 2020 and ending on July 26, 2022.

6. “Class Representative” means Plaintiff Roberto Rivera, who is to be designated as the Class Representative for settlement purposes subject to Court approval.

7. “Complaint” means the Second Amended Complaint in this Action.

8. “Court” means the Superior Court for the State of California, County of Los

Angeles.

9. “Date of Preliminary Approval” means the date the Court approves this Stipulation of Settlement, and the exhibits thereto, and enters an Order providing for notice to the Class Members, an opportunity to opt-out of being a Participating Class Member, an opportunity to submit timely objections to the settlement, and setting a hearing for Final Approval of the Settlement, including approval of attorneys’ fees and costs.

10. “Defendant” means J.B. Wholesale Roofing and Building Supplies, Inc.

11. “Defendant’s Counsel” means Morgan, Lewis & Bockius LLP.

12. “Deficient Opt-Out” means a Class Member that has submitted a Deficient Request for Exclusion and has failed to cure its deficiencies within the time required by this Settlement Agreement.

13. “Deficient Request for Exclusion” means a Request for Exclusion that is not signed by the Class Member submitting the Request for Exclusion or cannot be verified by the Settlement Administrator as being an authentic submission by the Class Member.

14. “Final Approval” means the date on which the Court enters the Final Approval Order.

15. “Final Approval Hearing” means the hearing to be scheduled by the Court after granting preliminary approval of the Settlement.

16. “Final Approval Order” means the Court’s order approving the Settlement after the Final Approval Hearing.

17. “Gross Settlement Amount” is the sum of Seven Hundred and Fifty Thousand U.S. Dollars (\$750,000.00), which represents the maximum amount payable in this Settlement by Defendant, and includes all attorneys’ fees, litigation costs, Settlement Administration Expenses, Incentive Payment to the Class Representative, LWDA PAGA Amount, PAGA Member Payment, Settlement Class Payment, and all taxes except the employer’s share of payroll taxes.

18. “Incentive Payment” means the incentive payment in an amount not to exceed

\$7,500.00 total to the Class Representative.

19. “Judgment” means the judgment to be rendered by the Court pursuant to this Stipulation.

20. “Late Request for Exclusion” means a Request for Exclusion that is submitted to the Settlement Administrator after the end of the Notice Period.

21. “LWDA” means the California Labor and Workforce Development Agency.

22. “LWDA PAGA Amount” is the 75% share of the \$50,000 (or \$37,500) allocated from the Gross Settlement Amount for PAGA penalties that will be paid to the LWDA.

23. “Named Plaintiff” means Plaintiff Roberto Rivera.

24. “Net Settlement Amount” is the portion of the Gross Settlement Amount eligible for distribution to Participating Class Members. It equals the Gross Settlement amount less Class Counsel’s attorneys’ fees and actual litigation costs as ordered to be paid by this Court, Settlement Administration Expenses, Incentive Payment to the Class Representative, LWDA PAGA Amount, PAGA Member Payment, and all taxes except the employer’s share of payroll taxes.

25. “Notice Period” shall mean the period of sixty (60) days following the mailing of the Notice of Settlement by the Settlement Administrator. If the 60th day falls on a Sunday or holiday, the Notice Period shall end on the next business day that is not a Sunday or holiday.

26. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code §§ 2698 *et seq.*

27. “PAGA Member” means any current or former non-exempt employee of Defendant who is or was employed by Defendant in the state of California at any time during the PAGA Period.

28. “PAGA Member Payment” is the 25% share of the \$50,000 (or \$12,500) allocated from the Gross Settlement Amount for PAGA penalties that will be paid to the PAGA Members.

29. “PAGA Period” means the period commencing on May 6, 2020 and ending on

July 26, 2022.

30. “Participating Class Member” means any Class Member who does not opt out of the settlement or who opts out but subsequently rescinds the opt-out in a timely manner.

31. “Parties” means collectively Plaintiff and Defendant herein.

32. “Qualified Settlement Fund” means the Qualified Settlement Fund (“QSF”) created under Internal Revenue Code Section 468B, to be overseen by the Settlement Administrator.

33. “Released Parties” means Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors (including but not limited to SRS Distribution, Inc.), assigns, and joint venturers.

34. “Request for Exclusion” means a signed request from a Class Member to be excluded from the non-PAGA portions of this Settlement.

35. “Settlement Administration Expenses” are those expenses incurred by the Settlement Administrator in effectuating the Settlement and are not to exceed \$8,250.00.

36. “Settlement Administrator” means Phoenix Settlement Administrators.

37. “Settlement Documents” means the Notice of Settlement attached hereto as Exhibit A.

38. “Settlement Effective Date” means the latter date of: (1) the date of final affirmance of an appeal of the Final Approval Order, or the expiration of the time for a petition for a writ of certiorari to review the Final Approval Order and, if certiorari be granted, the date of final affirmance of the Final Approval Order following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the Final Approval Order or the final dismissal of any proceeding on certiorari to review the Final Approval Order; or (3) if no appeal is filed, the 61st day since the entry of the Final Approval Order. The Settlement Effective Date cannot occur unless and until there is no possibility of an appeal or further appeal (by anyone who has the

right to, or claims to have the ability to, take an appeal) that could potentially prevent this Settlement Agreement from becoming final and binding. The Parties intend that the Final Approval Order will extinguish all released claims, including but not limited to PAGA claims, for the periods covered by this Settlement upon Final Approval of the Settlement and the issuance of payment to the Class/PAGA Members. The Court will retain jurisdiction to enforce the Settlement after the Settlement Effective Date.

39. “Settlement Class Payment” is the allocation from the Net Settlement Amount paid to Participating Class Members and does not include the PAGA Member Payment to the PAGA Members.

40. “Stipulation of Settlement” and “Settlement Agreement” shall mean this Joint Stipulation of Settlement.

41. “Workweek” means any weekly pay period in which a Class Member worked at least one day during the Class Period.

III. LITIGATION BACKGROUND

42. On or about May 6, 2021, Plaintiff submitted a notice with the LWDA alleging Labor Code violations by Defendant. The allegations in the notice included: (1) Failure to Pay Overtime; (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Pay Minimum Wages; (5) Failure to Timely Pay Wages Upon Termination; (6) Failure to Timely Pay Wages During Employment; (7) Failure to Provide Complete and Accurate Wage Statements; (8) Failure to Keep Complete and Accurate Payroll Records; (9) Failure to Reimburse Necessary Business-Related Expenses and Costs.

43. On or about July 12, 2021, Plaintiff filed a lawsuit in the Los Angeles County Superior Court, asserting a single cause of action under PAGA on behalf of himself and other allegedly aggrieved employees.

44. On November 23, 2021, the Court sustained Defendant’s demurrer with leave to amend as to Plaintiff’s expense reimbursement theory and overruled Defendant’s demurrer as to

the other theories underlying Plaintiff's PAGA claim.

45. On or about December 29, 2021, Plaintiff filed his First Amended Complaint, re-asserting the same PAGA claim as in his original complaint and adding factual allegations in support of his expense reimbursement theory.

46. Defendant denies Plaintiff's claims, and asserts that, during all relevant times, it complied with the California Labor Code and related authorities, and that Plaintiff and Class Members are not entitled to any recovery.

47. On May 9, 2022, the Court granted the Parties' stipulation to stay discovery in the action pending mediation.

48. On May 27, 2022, the Parties participated in a full-day mediation with mediator Kimberly S. Deck, Esq. and were able to reach a resolution subject to a stipulation to permit Plaintiff leave to file a Second Amended Complaint to add class claims.

49. On or about August 11, 2022, pursuant to the Court's August 10, 2022, order following the Parties' stipulation, Plaintiff filed his Second Amended Complaint (*i.e.*, the operative Complaint) and added class claims based on the same theories as he had previously asserted in support of his PAGA claim. Specifically, Plaintiff asserted claims against Defendant on behalf of himself and the Class for failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to timely pay wages during and upon termination of employment, failure to provide accurate wage statements, failure to reimburse necessary business-related expenses, failure to maintain accurate records, violation of California's unfair competition law, and recovery of penalties under the Private Attorneys General Act ("PAGA"). Plaintiff seeks alleged unpaid wages, unreimbursed business expenses, civil penalties under the California Labor Code and PAGA, interest, attorneys' fees, costs, and expenses.

50. On or about September 8, 2022, Defendant filed its Answer to Plaintiff's Second Amended Complaint.

51. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims against the Released Parties arising from or related to the

Action.

52. It is the intention of the Parties that this Settlement Agreement shall constitute a full and complete settlement and release of the claims averred in the Action. This release includes in its effect a release of all Released Parties.

IV. JURISDICTION AND VENUE

53. This Court has jurisdiction over the Parties and the subject matter of this Action. This Court will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations provided for herein have been fully executed.

V. TERMS OF SETTLEMENT

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

- a. **Non-Admission.** Nothing in this Settlement shall be construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward the Class Representative, the Class Members, or any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward the Class Representative, the Class Members, or any other person, or that class certification or proceeding on a representative basis is appropriate. Each of the Parties have entered into this Stipulation of Settlement with the intention to avoid further disputes and litigation with the attendant risk, inconvenience, expenses, and contingencies. This Settlement and any settlement-related court documents or orders between the Parties may not be cited or otherwise admitted as evidence of liability or that class or collective certification is appropriate or that a representative action could ever be manageably tried before a court. There has been no final determination by any Court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class should be certified,

other than for settlement purposes only. Furthermore, nothing in this Settlement shall be considered any form of waiver of any alternative dispute resolution provisions, including but not limited to any arbitration agreements, if any, signed by any Class Members.

- b. **Certification.** The Parties stipulate, for settlement purposes only, to the certification of the Class described in Paragraph II.4 above as to all claims asserted in the Complaint. If for any reason the Court does not approve this Stipulation, fails to enter the Final Approval Order, or fails to enter the Judgment or Final Judgment, or if this Settlement Agreement and Stipulation is lawfully terminated for any other reason, Defendant shall retain the absolute right to dispute the propriety of class or conditional certification and/or the ability of this action to proceed as a representative action on all applicable grounds.
- c. The Parties further stipulate that, for settlement purposes only, Plaintiff's Counsel may be appointed Class Counsel and that Named Plaintiff may be appointed as Class Representative. The Settlement Class may be provisionally certified as a class action for the purposes of the monetary relief provided in this Settlement Agreement. Plaintiff's Counsel, Protection Law Group, LLP and Lawyers for Justice, P.C. may be preliminarily and conditionally appointed as Class Counsel.
- d. **Non-Approval By The Court.** In the event that this Settlement Agreement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court:
 - i. The Parties will meet and confer or attend mediation again in an effort to reach a settlement approved by the Court. Plaintiff may not withdraw from the Settlement if the Court reduces any amount of attorneys' fees, costs, or expenses or the enhancement payment

- to Plaintiff;
- ii. The Settlement Agreement shall have no force or effect, other than the confidentiality and non-disclosure provisions in Section XVI and the non-admission provisions in Paragraph V.54.a;
 - iii. The Settlement Agreement shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
 - iv. The preliminary and conditional certification of the class shall become null and void, and the fact of certification shall not be cited to or admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
 - v. None of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments with respect to the issue of class certification or the merits of Plaintiff's claims.
- e. **Settlement Payments.** Defendant agrees to pay a non-reversionary Gross Settlement Amount of Seven Hundred and Fifty Thousand U.S. Dollars (\$750,000), inclusive of all Settlement Payments, fees and costs identified in this Settlement Agreement, including Incentive Payment to the Class Representative, Settlement Administration Expenses, attorneys' fees and out-of-pocket litigation expenses, PAGA penalties (both the LWDA PAGA Amount and the PAGA penalties paid to the PAGA Members), and all taxes except the employer's share of payroll taxes. The Parties agree, subject to Court approval, to the following allocations to be paid from the Gross Settlement Amount:
- i. From the Gross Settlement Amount, provided there is no breach of

this Settlement Agreement by Named Plaintiff or his counsel, Class Counsel may seek from the Court a maximum of \$250,000.00 (1/3) of the Gross Settlement Amount in attorneys' fees in addition to actual litigation costs of up to \$15,000.00, for serving as Class Counsel, which Defendant will not oppose.

- ii. From the Gross Settlement Amount, provided there is no breach of this Settlement Agreement by Named Plaintiff or his counsel, Named Plaintiff may seek from the Court an Incentive Payment not to exceed \$7,500.00 for serving as Class Representative, which Defendant will not oppose. The Incentive Payment is in addition to whatever monetary settlement Plaintiff is entitled to recover from the Net Settlement Amount and PAGA Member Payment as a Participating Class Member and PAGA Member. Any amount of the Incentive Payment not approved by the Court shall become part of the Net Settlement Amount.
- iii. From the Gross Settlement Amount, a payment of \$37,500.00 to the California Labor and Workforce Development Agency (the LWDA PAGA Amount), representing the LWDA's 75% share of the settlement attributable to PAGA penalties. In connection with settlement approval, Plaintiff's counsel shall notify the LWDA of the existence of the settlement. Should the LWDA object to the amount of this payment, the Parties agree to work in good faith to negotiate another agreeable amount.
- iv. From the Gross Settlement Amount, a payment of \$12,500.00 to be allocated among the PAGA Members, calculated on a proportional basis by dividing the number of Workweeks worked by each PAGA Member by the total Workweeks of all PAGA Members,

with a 3x multiplier for the Workweeks between May 6, 2020 and March 24, 2021, and multiplying the resulting fraction by the PAGA Member Payment.

- v. From the Gross Settlement Amount, Settlement Administration Expenses in a reasonable amount, which are not to exceed \$8,250.00. To the extent that Settlement Administration Expenses are less than \$8,250.00, the remainder shall become part of the Net Settlement Amount.
- vi. If the Court approves a lesser amount of attorney's fees or costs than those sought by Named Plaintiff or Class Counsel, the amount shall become part of the Net Settlement Amount, except that in the event Class Counsel appeals a reduction in the award of fees or costs by the Court: (1) for any appellate reduction of attorney fees and costs that is greater than \$25,000.00, any such amount shall become part of the Net Settlement Amount and Plaintiff's counsel will cover, and shall be solely responsible for, any and all costs associated with a second distribution; and (2) for any appellate reduction of attorney fees and costs that is \$25,000 or less, the amount will be allocated *cy pres* to CASA of Los Angeles (Court Appointed Special Advocates of Los Angeles). The amount of reduction at issue in the appeal shall be held by the Settlement Administrator in trust pending the outcome of the appeal.
- vii. The Settlement Administrator will administer the notice, challenges, and opt-outs, informing Class Members of their rights in regard to the proposed settlement as specified below; will disburse monies from the Qualified Settlement Fund as and when authorized in this Settlement Agreement and by order of the Court;

and will inform the Parties and the Court of its fulfillment of the duties imposed by this Settlement Agreement. Settlement Administrator Expenses shall be paid from the Gross Settlement Amount.

- viii. The Net Settlement Amount is the balance of the Gross Settlement Amount including interest accruing to it, after payments have been made for attorneys' fees and litigation expenses including interest earned on those amounts, Settlement Administration Expenses, Class Representative's Incentive Payment, PAGA penalties (both the LWDA PAGA Amount and the PAGA Member Payment), and all taxes except the employer's share of the employer's share of payroll taxes.
- ix. The Settlement Administrator shall, after Final Approval of the Settlement Agreement by the Court and after the Settlement Effective Date, pay each Participating Class Member from the Net Settlement Amount based on a proportional basis according to the number of Workweeks worked during the Class Period, with a 3x multiplier for the Workweeks between May 6, 2020 and March 24, 2021. The Settlement Administrator will also conduct a similar proportional calculation for each PAGA Member to determine their share of the PAGA Member Payment, as set forth in Section VIII, and pay those amounts in a separate check to all PAGA Members, including any individuals who opt out of becoming Participating Class Members.
- x. The total Workweeks worked by each Class Member and PAGA Member during the period of May 6, 2020 to March 24, 2021, and the period of March 25, 2021 and the end of the Class Period shall

be provided by Defendant to the Settlement Administrator. The Administrator shall also check the number of Workweeks during the Class Period and inform counsel for the Parties if the total is greater than 20,111 Workweeks (*i.e.*, exceeding by more than 10% the 18,282 Workweeks that Class Members had worked as of May 27, 2022, as represented by Defendant in advance of the Parties' May 27, 2022, mediation). Class Members shall have the right to challenge the number of Workweeks reflected in Defendant's records as set forth in Paragraph 75.

- xi. Class Members entitled to recover under this Settlement Agreement will include only those individuals who are identified in Defendant's records as having worked as Class Members in California during the Class Period, or those additional individuals who can provide to the Settlement Administrator evidence that they worked in that capacity notwithstanding the absence of Defendant's records confirming such employment.
- xii. Within ten (10) days of the Settlement Effective Date, the Settlement Administrator shall issue Settlement Class Payment checks to Participating Class Members under this Settlement Agreement, as well as an Incentive Payment to the Class Representative, attorneys' fees and expenses awarded to Class Counsel, the LWDA PAGA Amount, and the PAGA Member Payment by sending such payments by mail or other reliable means to the respective recipients as specified below.
- f. **Objections.** Only Participating Class Members who do not opt-out may object to the Settlement. Plaintiff may not object to the Settlement. Class Members who opt-out of the Settlement are not eligible to object. All

written objections must be sent no later than sixty (60) days after the mailing of the Settlement Documents and must include: (a) the Participating Class Member's full name, (b) the Participating Class Member's last four digits of their social security number, and (c) a clear statement explaining why the Participating Class Member objects to the Settlement. Such deadline applies notwithstanding any argument regarding non-receipt of the Settlement Documents. Notwithstanding this deadline to submit a written objection, Class Members shall retain the right to appear at the Final Approval Hearing regardless of whether they have submitted a written objection to the settlement. Anyone who fails to send timely written objections or make an oral objection at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from filing any appeal from any Final Approval Order issued by the Court. The Parties may file a response to any objections submitted by objecting Class Members at or prior to the Final Approval Hearing. Class Members shall be permitted to withdraw their objections in writing by submitting a withdrawal statement to the Settlement Administrator not later than one (1) business day prior to the Final Approval Hearing, or as otherwise ordered by the Court.

- g. **Opt Outs.** Class Members who wish to “opt out” of and be excluded from the non-PAGA portion of this Settlement must submit a written Request for Exclusion from the Settlement bearing a post-mark from a date within the Notice Period. Class Members are still bound by the release of PAGA claims even if they submit a valid Request for Exclusion and will receive a check with their PAGA Member Payment allocation from the \$12,500.00 in PAGA penalties if they are a PAGA Member. The Request for Exclusion must include: (a) the Class Member's name; (b) a

statement that the Class Member desires to exclude himself or herself from the case; and (c) the last four digits of the Class Member's social security number. If a Class Member submits a Deficient Opt-Out, the Settlement Administrator shall notify the Class Member of the deficiency within five (5) business days of receipt. The Class Member shall have until the end of the Notice Period or five (5) business days after the close of the Notice Period if the notice of deficiency is sent by the Settlement Administrator within (5) business days of the end of the Notice Period to cure said deficiencies, at which point his or her Request for Exclusion will be rejected if not received. Class Members with Deficient Opt-Outs shall be bound by the Settlement and its releases and will be considered Participating Class Members for settlement distribution purposes. Class Members shall be permitted to rescind their Request for Exclusion in writing by submitting a rescission statement to the Settlement Administrator not later than one (1) business day prior to the Final Approval Hearing, or as otherwise ordered by the Court. The Settlement Administrator shall not accept Late Requests for Exclusion without the written authorization of the Parties. Plaintiff may not opt out of the Settlement.

- h. **Released Claims.** Upon Final Approval and the issuance of payment to the Participating Class Members and PAGA Members, the Class Representative, PAGA Members, and Participating Class Members who did not opt out of the Settlement, shall be deemed to have fully, finally, and forever released the Released Parties from the released claims as set forth in Sections IX through XI below.
- i. **Entry of Judgment.** At the Final Approval Hearing, the Parties will request that the Court, among other things: (a) certify the Settlement

Class for purposes of settlement only; (b) enter a Final Approval Order in accordance with the terms of this Settlement Agreement; (c) approve the settlement as fair, adequate, reasonable, and binding on all Participating Class Members; (d) enter an order whereby Participating Class Members shall release the Released Class Claims; and (e) enter an order whereby the PAGA Members and LWDA shall release the Released PAGA Claims.

VI. SETTLEMENT ADMINISTRATION

55. The Parties have agreed to the appointment of Phoenix Settlement Administrators to perform the duties of Settlement Administrator.

56. Within seven (7) days of the Final Approval Order, the Settlement Administrator shall calculate, and inform Defendant's counsel of, the employer's share of payroll taxes. Defendant shall provide all information necessary for the Settlement Administrator to calculate the employer's share of payroll taxes.

57. Within thirty (30) days of the Final Approval Order, Defendant shall fund the settlement with the Gross Settlement Amount and the employer's share of payroll taxes by wire transfer or otherwise transmit to a depository bank designated by the Settlement Administrator in an account titled in the name of "J.B. Wholesale/Rivera Wage and Hour Settlement Fund." The account will be organized and existing under the laws of the State of California, intended by the Parties to be a "Qualified Settlement Fund" as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *et seq.* The monies so transferred, together with any interest subsequently earned thereon, shall constitute the Qualified Settlement Fund. The \$750,000.00 for the Gross Settlement Amount and the employer's share of payroll taxes transferred into the Qualified Settlement Fund by Defendant shall constitute the total Settlement cash outlay by Defendant in connection with: (1) the resolution of this matter; (2) this Settlement Agreement; and (3) the entry of Judgment in this Action. This sum is inclusive of payment for the Gross Settlement Amount (and all payments to be made from the Gross

Settlement Amount as described herein).

58. The Settlement Administrator shall serve as Trustee of the Qualified Settlement Fund and shall act as a fiduciary with respect to the handling, management and distribution of the Qualified Settlement Fund, including with regard to payment of valid claims and reporting and paying taxes on such awards. The Settlement Administrator shall act in a manner necessary to qualify the Qualified Settlement Fund as a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *et seq.*, and to maintain that qualification.

59. The Settlement Administrator shall be responsible for: (a) calculating each Class Member’s potential recovery of the Net Settlement Amount and PAGA Member Payment amount; (b) preparing and mailing to all Class Members the Settlement Documents with estimated Settlement Class Payment amounts and (if applicable) a PAGA Member Payment amount, and instructions on how to opt out of or object, and will take appropriate steps to trace, update and locate any individual Class Members whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated; (c) receiving and serving on Class Counsel and Defendant’s Counsel, and the Court, Requests for Exclusion and any withdrawal and rescission statements; (d) providing to Class Counsel and Defendant’s Counsel a weekly report of activity; (e) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members; (f) determining and paying the final amounts due to be paid to Participating Class Members after adjustment for funds due to Class Members who opt out; (g) reporting to Class Counsel, Defendant’s Counsel, and the Court regarding the completion of the tasks identified in this paragraph; and (h) carrying out other related tasks including the proper maintenance of the QSF and reporting required for that account, in accordance with the terms of this Settlement Agreement. The weekly report of activity should include: (a) the number of Class Members who have submitted valid Requests for Exclusion, (b) the number of Notices returned and re-mailed, and (c) whether any Class Member

has submitted a dispute to any information contained in the Notice.

60. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully executed.

61. When and if the Court grants Final Approval of the Settlement, and the Settlement Effective Date as defined herein has passed, the Settlement Administrator shall prepare a final list of all Participating Class Members and PAGA Members. The Settlement Administrator shall provide a redacted list to the Parties within ten (10) days after the Final Approval Order. For each Participating Class Member on this list, the Settlement Administrator will re-calculate the amounts due to each Participating Class Member. The Settlement Administrator shall also provide a non-redacted list to only Defendant within ten (10) days after the Final Approval Order.

62. Except for the Incentive Payment described above to be paid to the Class Representative, all Settlement Class Payments to Participating Class Members shall be allocated as follows: 1/3 allocation for wages to be reported on IRS Form W-2; 1/3 allocation as interest, and 1/3 allocation for penalties. All PAGA Member Payments will be allocated entirely to penalties. The Settlement Administrator shall provide Participating Class Members, PAGA Members, and the Class Representative with an IRS Form 1099 as appropriate for the portions allocated to interest and penalties, if required. The Class Representative, Participating Class Members, and PAGA Members, shall be exclusively liable for any and all tax liability, if any, resulting from any failure on their part to pay any taxes normally paid by an employee due on their Settlement Class Payments or PAGA Member Payments. All Parties represent that they have not received, and shall not rely on, advice or representations from other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or local law.

63. The Incentive Payment to the Class Representative shall be treated as compensation for non-wage related claims, injuries, and reimbursement, and shall be reported on

an IRS Form 1099 without withholdings.

64. After all payments have been disbursed from the QSF, the Settlement Administrator shall dissolve the QSF and file a return (SF-1120) with the IRS.

VII. NOTICE TO THE CLASS MEMBERS AND LWDA

65. Within fourteen (14) days after the Date of Preliminary Approval by the Court, and subject to the Settlement Administrator executing any privacy and security-related agreements required by Defendant, Defendant shall provide the Settlement Administrator only with a Microsoft Excel spreadsheet containing the following for each Class Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendant in the state of California; (6) the total Workweeks worked by each Class Member during the period of May 6, 2020 to March 24, 2021 and the period of March 25, 2021 and July 26, 2022; and (7) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement. Class Counsel will not be provided with the aforementioned data (including names, contact information, and payroll data for Class Members). This is a material term of Settlement, and if Defendant fails to comply, Plaintiff shall have the right to void the Settlement.

66. Class data shall only be used by the Settlement Administrator for the purpose of calculating settlement shares and finding and notifying Class Members of the settlement. Class data for Class Members shall not be disclosed to the Named Plaintiff, or any other Class Members without the prior written consent of Defendant and will be subject to the Settlement Administrator's confidentiality agreement and redaction.

67. Prior to mailing the Settlement Documents, the Settlement Administrator will update the addresses for the Class Members using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. Any returned envelopes from the initial mailing that are returned no later than sixty (60) days after the initial mailing shall be remailed on one occasion. Those envelopes returned with forwarding addresses will be used by the Settlement Administrator to locate Class Members and re-mail the Settlement

Documents to the correct or updated address. For envelopes without a forwarding address, the Settlement Administrator will use all appropriate tracing methods, including skip tracing, to ensure that the Settlement Documents are received by the Class Members. The Settlement Administrator shall also take reasonable steps including skip tracing to locate any Class Member whose Notice of Settlement is returned as undeliverable. Individuals who receive a remailed envelopes shall be entitled to an additional 15 days beyond the response deadline to submit written objections or opt-out of the settlement.

68. Within seven (7) days of receiving the class data from Defendant and after it has completed all of the address updates for Class Members (including any skip tracing), the Settlement Administrator shall mail the Notice of Settlement to Class Members. The Notice of Settlement shall be in both English and Spanish providing a summary of the provisions of the Settlement. The Settlement Administrator shall translate the Notice of Settlement (attached as Exhibit A) to Spanish and seek the approval of Class Counsel and Defendant's Counsel. The Notice of Settlement shall also list the amount of Workweeks worked by the Class Member and the estimated individual payment each Class Member will receive as a Class Member and PAGA Member. The Notice shall provide instructions to employees regarding how to request to be excluded from the settlement, how to object to the settlement, how to submit a dispute regarding the number of Workweeks stated on the Settlement Documents, and the date of the final approval hearing. At least five (5) business days prior to this mailing, the Settlement Administrator shall provide the Parties with a report listing the estimated Settlement Class Payment amounts to each Class Member.

69. Class Members shall have sixty (60) days from the date of mailing of the Settlement Documents to opt out of the Class, object to the Settlement, or submit a dispute. If the 60th day falls on a Sunday or holiday, the deadline will be the next business day that is not a Sunday or holiday. After recalculating estimated settlement allocations to account for disputed claims, Participating Class Members will receive their allocation from the Qualified Settlement Fund agreed upon pursuant to this Settlement Agreement and calculated by the Settlement

Administrator. The Settlement Administrator shall provide Participating Class Members, PAGA Members, and the Class Representative with an IRS Form 1099 as appropriate for the portions allocated to interest and penalties, if required

70. Plaintiff's counsel shall provide notice of the Settlement to the LWDA.

VIII. CALCULATION OF SETTLEMENT PAYMENTS AND DISTRIBUTION OF NET SETTLEMENT AND PAGA MEMBER PAYMENT FUNDS

71. **Calculation of Settlement Class Payments.** The Settlement Administrator will calculate pro rata Settlement Class Payments to Class Members based on each Class Member's number of eligible Workweeks during the Class Period as reflected on Defendant's payroll records with a 3x multiplier for the Workweeks between May 6, 2020, and March 24, 2021. That pro rata Settlement Class Payments shall be determined as follows: (1) the Settlement Administrator will divide the number of Workweeks worked by each Class Member by the total Workweeks of all Class Members, with a 3x multiplier for the Workweeks between May 6, 2020 and March 24, 2021, and (2) multiply the resulting fraction by the Net Settlement Amount allocated for distribution to Participating Class Members.

72. **Calculation of the PAGA Member Payment.** The Settlement Administrator will calculate pro rata PAGA Member Payments to PAGA Members by: (1) dividing the number of Workweeks worked by each PAGA Member by the total Workweeks of all PAGA Members, with a 3x multiplier for the Workweeks between May 6, 2020 and March 24, 2021, and (2) multiplying the resulting fraction by the PAGA Member Payment.

73. **Eligibility for Settlement Class Payments.** Only Class Members who have not opted-out of the settlement will be considered Participating Class Members and eligible to receive a Settlement Class Payment.

74. Each Notice of Settlement mailed to a Class Member will identify the dates of employment that Defendant's records indicate the individual worked as a Class Member; the number of Workweeks worked by the Class Member between May 6, 2020 and March 24, 2021, and between March 25, 2021 and July 26, 2022; and an estimate of each Class Member's pro

rata share of the Net Settlement Amount including the share of any PAGA Member Payment as a PAGA Member.

75. Participating Class Members will have the right to dispute only the information described in Paragraph 65, *supra*, as shown on the Notice of Settlement. Challenges to the information listed on the Notice of Settlement shall be sent directly to the Settlement Administrator at the address indicated on the Notice of Settlement. Any dispute must be made during the Notice Period. The Settlement Administrator will inform Class Counsel and Defendant's Counsel in writing of any timely filed disputes. The information listed on the Notice of Settlement is presumed to be accurate unless the Participating Class Member submits documentation demonstrating otherwise, *i.e.*, a Participating Class Member who fails to provide written proof will have his or her challenge denied. In the event of any dispute over an individual's employment information, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Parties shall meet and confer and shall agree on a resolution for any such dispute. Upon stipulation by both Parties, any such dispute may be submitted to mediator Kimberly S. Deck, who may assist the parties in resolving the dispute. The Parties shall take into consideration any recommendation by Kimberly S. Deck (if the Parties submitted the dispute to her).

76. The Settlement Administrator shall (a) date stamp all original Requests for Exclusion that it receives; (b) serve copies on Class Counsel and Defendant's Counsel no later than five (5) business days after receipt, or immediately if received within five (5) business days of the Final Approval Hearing; and (c) file the date-stamped originals with the Clerk of the Court no later than five (5) business days prior to the date of the Final Approval Hearing or immediately if received less than five (5) business days prior to the date of the Final Approval Hearing.

77. The Settlement Administrator shall also (a) date stamp all original rescission of Requests for Exclusion it receives; (b) serve copies on Class Counsel and Defendant's Counsel no later than five (5) business days after receipt, or immediately if received within five (5)

business days of the Court's Final Approval Hearing; and (c) file the date-stamped originals with the Clerk of the Court no later than five (5) business days prior to the date of the Final Approval Hearing or immediately if received less than five (5) business days prior to the date of the Final Approval Hearing.

78. The Settlement Administrator shall make the final calculation of Settlement Class Payments and PAGA Member Payments and within seven (7) days of the Settlement Effective Date, the Settlement Administrator shall provide the Parties with a redacted report listing the Class Members by a unique identifier, the amount of Class Payment, any PAGA Member Payment, and the number of eligible Workweeks. The Settlement Administrator shall also provide a non-redacted report to only Defendant within seven (7) days of the Settlement Effective Date.

79. Within ten (10) days after the Settlement Effective Date, the Settlement Administrator shall distribute and pay Settlement Class Payment checks to all Participating Class Members, pay the Class Representative his Incentive Payment, issue a check to the LWDA for the LWDA PAGA Amount, issue checks to the PAGA Member for their PAGA Member Payments, pay Class Counsel's attorneys' fees and costs, and pay the settlement administration fees.

80. The Settlement Administrator shall be responsible for issuing and mailing the checks and any necessary tax reporting forms to Participating Class Members, PAGA Members, the Class Representative, Class Counsel, and Defendant. The Settlement Administrator shall provide a declaration of payment, which will be filed with the Court and served on Class Counsel and Defendant within thirty (30) days of mailing the payments to Participating Class Members, the Class Representatives and Class Counsel.

81. Uncashed Settlement Checks. Participating Class Members who are sent Settlement Class Payments and PAGA Members who are sent PAGA Member Payments shall have at least one-hundred eighty (180) calendar days after mailing by the Settlement Administrator to cash their checks and will be so advised of such deadline. If such Participating

Class Members and/or PAGA Members do not cash their checks within that period, those checks will become void and a stop payment will be placed on the uncashed checks. Within thirty (30) days after the expiration date of the settlement checks, the Settlement Administrator shall provide to Class Counsel and Defendant's Counsel a verification/declaration signed under penalty of perjury that it has mailed the checks for Settlement Class Payments and PAGA Member Payments, and if uncashed, that such amounts have been sent to the Controller of the State of California pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, to be held in trust for those Class Members who did not timely cash their Settlement checks. This disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as all payments to Class Members will be paid out, whether or not these individuals cash their Settlement checks. Therefore, Defendant will not be required to pay any interest on such amounts.

IX. RELEASE BY PARTICIPATING CLASS MEMBERS

82. Release by Participating Class Members. The releases agreed upon and made part of the settlement by Participating Class Members shall include a full and final release of the Released Parties, as defined above, of the Released Class Claims. The "Released Class Claims" are any and all claims which Plaintiff and/or the Participating Class Members had, or may claim to have, against Released Parties, during the Class Period arising from the violations alleged in the Complaint or which could reasonably have been raised as part of Plaintiff's claims, including factual allegations regarding unpaid straight and overtime wages (including any work off-the-clock); failure to provide reporting time pay; failure to pay employees all minimum wages and overtime wages owed including by failing to pay all overtime and double time at the correct regular rate of pay; failure to provide compliant meal and rest breaks; failure to pay all premium wages owed for short, late or missed meal and rest periods; failure to pay all wages owed at discharge or resignation failure to timely pay wages within the times permissible under Labor Code section 204; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to reimburse necessary business-related expenses;

and factual allegations regarding Defendant's violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, , 2800, and 2802, (collectively, the "Released Class Claims"). All Participating Class Members shall be bound by the release of the Released Class Claims, unless they formally opt out of the settlement. Payment of the Settlement Class Payment effectuates this release and extinguishes the Released Class Claims.

X. RELEASE BY PAGA MEMBERS AND THE LWDA

83. The PAGA Members and the LWDA shall be bound by a release, as to the Released Parties, of any and all claims for civil penalties under PAGA that were or reasonably could have been raised as part of Plaintiff's claims in the Complaint or as part of Plaintiff's allegations in the PAGA Notice provided to the LWDA, including any claim for the recovery for civil penalties, attorneys' fees and costs permissible under PAGA that could reasonably have been raised based on the facts alleged (the "Released PAGA Claims."). The Released PAGA Claims are limited to those claims which arose during the PAGA Period. Payment of the PAGA Allocation and PAGA Settlement Payment effectuates this release by PAGA Members and the LWDA. The Parties intend for this settlement to have claim preclusion, issue preclusion, or otherwise bar a PAGA action if a PAGA Member were to bring a subsequent claim on behalf of the LWDA based on the same factual predicate as this action and covering the same time period. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Court (Angelo Dairy)* 46 Cal. 4th 969 (2009) and *Cardenas v. McLane Foodservice, Inc.*, 796 F. Supp. 2d 1246 (2011), individuals otherwise meeting the definition of a PAGA Member who are eligible to receive a payment for the amount of each such individual's estimated share of the PAGA Member Payment shall be deemed to have released the Released PAGA Claims, regardless if the check is cashed or not, and may not opt out of, or object to, the release of the Released PAGA Claims or the PAGA portion of the Settlement.

XI. RELEASE BY CLASS REPRESENTATIVE

84. Settlement by Class Representative. As of the Settlement Effective Date, in

consideration of the mutual covenants and promises set forth herein and by operation of the Final Approval Order and Judgment, in the event the Court grants an Incentive Payment, the release agreed upon and made part of the settlement by the Class Representative (the “Class Representative General Release”) shall include a general release of the Released Parties, as defined above, from all claims, actions, causes of action, lawsuits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, controversies, agreements, promises, claims, charges, complaints and demands whatsoever, whether in law or equity, known or unknown, which against the Released Parties, the Class Representative and his heirs, executors, administrators, successors, and assigns, may now have or hereafter later determine that they have or had upon, or by reason of, any cause or thing whatsoever relating to his employment, including, but not limited to, claims arising under the Americans With Disabilities Act, the National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended, but not limited to, breach of fiduciary duty and equitable claims to be brought under § 1132(a)(3) (“ERISA”), the Worker Adjustment and Retraining Notification Act, as amended, Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Civil Rights Acts of 1866, 1871 and 1991, including Section 1981 of the Civil Rights Act, the Family and Medical Leave Act (to the extent permitted by law), the California Family Rights Act (“CFRA”), California’s PAGA, Cal. Bus. and Prof. Code § 17200 *et seq.* (“UCL”), the California Labor Code, and/or any other federal, state or local human rights, civil rights, wage-hour, pension or labor law, rule, statute, regulation, constitution or ordinance and/or public policy, contract or tort law, or any claim of retaliation under such laws, or any claim of breach of any contract (whether express, oral, written or implied from any source), or any claim of intentional or negligent infliction of emotional distress, tortious interference with contractual relations, wrongful or abusive or constructive discharge, defamation, prima facie tort, fraud, negligence, loss of consortium, malpractice, breach of duty of care, breach of fiduciary duty or any action similar thereto against the Released Parties, including any claim for attorneys’ fees,

expenses or costs based upon any conduct up to and including the date of Final Approval; provided, however, that the Class Representative does not waive any right to file an administrative charge with the Equal Employment Opportunity Commission (“EEOC”) or the National Labor Relations Board (“NLRB”), subject to the condition that the Class Representative agree not to seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom and agrees that he understands that such limitation does not in any way restrict his ability to file and pursue such charge consistent with the confidentiality obligations set forth in this Joint Stipulation of Settlement; and further provided, however, that the Class Representative does not waive any rights with respect to, or release the Released Parties from, any claims for California Workers’ Compensation benefits (except that the Class Representative hereby releases and waives any claims that he is entitled to additional benefits or payments); and further provided, however, that the Class Representative does not release any claim for unemployment compensation benefits; and further provided, however, that the Class Representative does not release any claim that cannot be released by private contract, or for breach of the terms of the Joint Stipulation of Settlement between the Class Representative and Defendant. It is further agreed that:

- a. The Class Representative, for the purpose of implementing a full and complete release and discharge of the Released Parties, expressly acknowledges that this Class Representative General Release is intended to include in its effect, without limitations, all claims through the date of Final Approval, which the Class Representative does not know or suspect to exist in the Class Representative’s favor at the time of execution hereof, and that this Class Representative General Release contemplates the extinguishment of any such claim or claims.
- b. The Class Representative, in connection with such waiver and relinquishment, hereby acknowledges that he or his attorneys may hereafter discover claims or facts in addition to, or different from, those

which he now knows or believes to exist, but that the Class Representative expressly agrees to fully, finally and forever settle and release any and all claims, known or unknown, suspected or unsuspected, which exist or may exist on his behalf against the Released Parties at the time of Final Approval, including, but not limited to, any and all claims relating to or arising from the Class Representative's employment with Defendant. The Parties further acknowledge, understand and agree that this representation and commitment is essential to each Party and that this Joint Stipulation of Settlement would not have been entered into were it not for this representation and commitment.

- c. The Class Representative shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits she may otherwise have had relating to the claims covered by the Class Representative General Release pursuant to Section 1542 of the California Civil Code, which provides as follows:

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

- d. The Class Representative covenants that he will not participate in or receive recovery or monies as a plaintiff in connection with any proceeding seeking penalties under PAGA, which arises during the Class Period for any known and unknown claims.
- e. As of the Settlement Effective Date, in consideration of the mutual covenants and promises set forth herein and by operation of the Final Approval Order and Judgment, in the event the Court grants an Incentive Payment, the Class Representative agrees to not disparage or impugn the reputation of any of the Released Parties. Notwithstanding the foregoing,

the Parties agree that the Class Representative will not be prohibited or restricted from reporting to Defendant's management or directors regarding conduct she believes to be in violation of the law or from providing information to or cooperating with any government agencies or any self-regulating organizations.

XII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL AND BETWEEN PRELIMINARY AND FINAL APPROVAL.

85. The Parties shall promptly submit this Settlement Agreement to the Court together with a Motion for Preliminary Approval of Settlement and Certification of Settlement Class. The motion shall also seek an order, attached as Exhibit B:

- a. Preliminarily approving the Settlement;
- b. Approving as to form and content the proposed Notice of Settlement;
- c. Directing the mailing of the Notice of Settlement by first class mail to members of the Settlement Class;
- d. Preliminarily certifying the Settlement Class for purposes of settlement and preliminarily appointing Named Plaintiff and Plaintiff's Counsel as representatives of the Settlement Class;
- e. Preliminarily approving settlement administration services to be provided by the Settlement Administrator;
- f. Preliminarily approving the proposed Incentive Payment to Named Plaintiff as Class Representative;
- g. Preliminarily approving the application for payment of reasonable attorneys' fees and costs to Plaintiff's Counsel;
- h. Enjoining Plaintiff and all Class Members and anyone acting on behalf of any Class Member, until the Class Member opts out, from: further prosecution of the Litigation; filing, or taking any action directly or indirectly, to commence, prosecute, pursue or participate on a class or

collective action basis any action, claim or proceeding against Defendant in any forum in which any of the claims subject to the Settlement are asserted, or which in any way would prevent any such claims from being extinguished; or seeking, whether on a conditional basis or not, certification of a class or collective action that involves any such claims; and

- i. Scheduling a Final Approval Hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the members of the Settlement Class.

86. The Parties shall cooperate with each other and the Settlement Administrator during the process of giving Class Members notice and opportunity to opt out of or object to the Settlement, in every way necessary and appropriate to assure effective communication to individual Class Members of information concerning their rights and obligations under this Settlement Agreement.

87. Plaintiff's Counsel shall provide the Court at least 5 days prior to the Final Approval Hearing a declaration by the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members by this Settlement Agreement, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts.

XIII. DUTIES OF THE PARTIES AFTER FINAL COURT APPROVAL

88. The Parties will submit a proposed Final Approval Order, attached as Exhibit C, which shall include findings and orders:

- a. Approving the settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing that its terms and provisions be carried out;
- b. Approving the Incentive Payment to the Named Plaintiff as Class

Representative;

- c. Approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses, and the Settlement Administrator's fees;
- d. Ordering that the settlement payments be distributed to the Participating Class Members and PAGA Members as set forth in the Agreement;
- e. Identifying the individuals who opted out of the Settlement;
- f. Releasing and extinguishing all Participating Class Members' Released Class Claims that arose during the Class Period and PAGA Members' Released PAGA Claims, and the Class Representative General Release; and
- g. Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Settlement and the Court's orders.

89. Following entry of the Court's Final Approval Order, the Parties will each act to assure its timely execution and the fulfillment of all its provisions, including but not limited to the following:

- a. Should an appeal be taken from the Final Approval Order, all Parties will support the approval order on appeal;
- b. Class Counsel and Defendant's Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating Class Members entitled to payments from the Qualified Settlement Fund;
- c. Class Counsel and Defendant's Counsel will assist the Settlement Administrator as needed or requested in responding to late requests for payments;
- d. Class Counsel and Defendant's Counsel will cooperate with each other

and assist the Settlement Administrator as needed;

- e. The Parties and Class Counsel will certify to the Court completion of all payments required to be made by this Settlement Agreement.

XIV. PRELIMINARY TIMELINE FOR COMPLETION OF SETTLEMENT

90. The preliminary schedule for notice, approval, and payment procedures carrying out this settlement is as follows. The schedule may be modified depending on whether and when the Court grants necessary approvals and orders notice to the class and sets further hearings. In the event of such modification, the Parties shall cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

Within 14 days after the Date of Preliminary Approval	Defendant shall provide the Settlement Administrator only with the information set forth in Paragraph 65.
Within 21 days after the Date of Preliminary Approval	Settlement Administrator shall inform counsel for the Parties if the number of qualifying Workweeks worked by Class Members during the Class Period is greater than 20,111 Workweeks (<i>i.e.</i> , exceeding by more than 10% the 18,282 Workweeks that Class Members had worked as of May 27, 2022, as represented by Defendant in advance of the Parties' May 27, 2022 mediation) and, if so, by how much.
Within 7 days after receipt of class data from Defendant	Settlement Administrator to complete any skip trace or other address searched for Class Members, including updating any Class Member contact information. Mailing by first class mail of Settlement Documents.
5 business days before mailing Settlement Documents.	Settlement Administrator to provide the Parties with estimated Settlement Class Payments to each Class Member and PAGA Member Payments to each PAGA Member.

60 days after mailing Settlement Documents.	Deadline for Class Members to opt-out, object in writing, or submit workweek disputes.
1 business day prior to the Final Approval Hearing.	Last day for Class Members to rescind objections or opt-outs.
Within 7 days of the Final Approval Order	Settlement Administrator to calculate and provide Defendant's counsel with the amount of the employer's share of payroll taxes.
Within 10 days of the Final Approval Order	Settlement Administrator to provide the Parties with a redacted list of all Participating Class Members and the re-calculated amounts due to each Participating Class Member. Settlement Administrator to also provide the same list in non-redacted format only to Defendant.
Within 30 days of the Final Approval Order.	Defendant to fund the Qualified Settlement Fund.
The 61 st day after the entry of the Final Approval Order, if no appeals are filed.	Settlement Effective Date
Within 7 days of the Settlement Effective Date.	Settlement Administrator to make the final calculation of Settlement Class Payments and PAGA Member Payments from the Net Settlement Amount to be distributed to the Participating Class Members and PAGA Members. Settlement Administrator to provide the Parties with a redacted report listing the Class Members with a unique identifier, the amount of Settlement Class Payment, any PAGA Member Payment, and number of eligible Workweeks. Settlement Administrator to provide the same report in non-redacted format only to Defendant.
Within 10 days after the Settlement Effective Date.	Settlement Administrator to distribute and pay Settlement Class Payment checks to all Participating Class Members, pay the Class Representative his Incentive Payment, issue a check to the LWDA for the LWDA PAGA Amount, issues checks to the PAGA Member for their PAGA Member Payments, pay Class Counsel's attorneys' fees and costs, and pay the settlement administration fees.
Within 30 days after distribution of Settlement checks.	Settlement Administrator to provide a declaration of payment, which will be filed with the Court and served on Class Counsel and Defendant

180 days after payment of first round settlement checks	Settlement Administrator to send amounts of uncashed Settlement checks to the Controller of the State of California pursuant to the Unclaimed Property Law (California Civil Code § 1500, <i>et seq.</i>), to be held in trust for those Class Members who did not timely cash their Settlement checks.
Within thirty (30) days after the expiration date of the settlement checks.	Settlement Administrator to provide to Class Counsel and Defendant's Counsel a verification/declaration signed under penalty of perjury that it has mailed the checks for Settlement Class Payments and PAGA Member Payments, and if uncashed, that such amounts have been sent to the Controller of the State of California pursuant to the Unclaimed Property Law.
After Settlement Administrator submits final declaration of distributions and within fourteen (14) days of written request by Defendant	Named Plaintiff and Class Counsel to destroy and confirm the destruction of all confidential documents produced to them for settlement purposes.

XV. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT

91. Defendant has the right to withdraw from the Settlement before Final Approval if:

(a) the Settlement is construed in such a fashion that Defendant is required to pay more than the Gross Settlement Amount (except the employer's share of payroll taxes); (b) the Court does not approve the Settlement; or (c) the Court does not order the release of the Released Class Claims, Released PAGA Claims or the Class Representative General Release, or otherwise makes an order inconsistent with any of the material terms of this Joint Stipulation of Settlement; (d) more than 5% of Class Members request to be excluded from the Settlement. In the event of Defendant's withdrawal, Defendant will pay the costs already incurred by the Settlement Administrator. The Parties shall meet and confer prior to Defendant exercising its right to withdraw and Defendant shall provide Class Counsel with written notice.

92. Either party may withdraw from Settlement if the opposing party or their Counsel materially breaches this Joint Stipulation of Settlement. The Parties shall meet and confer prior

to withdrawing from the settlement and will attempt in good faith to cure any alleged breach.

93. If the Settlement Administrator, within twenty-four (24) days after the Date of Preliminary Approval, informs counsel for the Parties that the number of qualifying Workweeks worked by Class Members during the Class Period is greater than 20,111 Workweeks (*i.e.*, exceeding by more than 10% the 18,282 Workweeks that Class Members had worked as of May 27, 2022 as represented by Defendant in advance of the Parties' May 27, 2022 mediation), then Defendant will have the option to either (a) limit the Class/PAGA Period's end date appropriately so that the cumulative workweeks in the Class Period do not exceed 20,111 (for example, if the Workweeks are too high, the Class Period and PAGA Period's definitions will change to include a group that worked through a date prior to the current end date of the Class/PAGA Period), or (b) increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10% (for example, if the number of Workweeks increases by 11% the Gross Settlement Amount will increase by 1%).

94. If for any reason the Settlement is not approved by the Court, or if Defendant or Plaintiff withdraw from the Settlement pursuant to this Section, this Settlement Agreement and any related Settlement Documents will be null and void, other than the confidentiality and non-disclosure provisions in Section XVI and the non-admission provisions in Paragraph V.54.a, and any class action certified for settlement purposes will be vacated. In such an event, neither this Settlement Agreement, nor the Memorandum of Understanding of Settlement, nor the settlement documents, nor the negotiations leading to the Settlement may be used as evidence for any purpose, and Defendant shall retain the right to challenge all claims and allegations in the action, to assert all applicable defenses, and to dispute the propriety of class or collective certification on all applicable grounds. If the Settlement is not initially approved by the Court following the filing of Plaintiff's Motion for Preliminary Approval, the parties shall meet and confer or attend mediation again in an effort to modify the settlement in a manner that addresses the Court's

concerns.

95. Other than as specified above, this Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVI. CONFIDENTIALITY AND PUBLICITY

96. The names of Participating Class Members and their allocation amounts shall be kept strictly confidential by the Settlement Administrator, who will not release such information to Class Counsel and will only file such information under seal if necessary. Class Counsel agrees that any information they receive or have received in connection with this Settlement, may be used for this action only, and may not be used for any purpose or in any other action or proceeding.

97. Named Plaintiff and Class Counsel agree not to disclose the terms of this settlement before the Motion for Preliminary Approval is filed. Thereafter the Parties agree that they shall not, directly or indirectly, issue a press release, hold a press conference, respond to any press inquiries, publish information about the settlement on any website (other than used by the Settlement Administrator for claims administration purposes) or on social media, or otherwise publicize the settlement, except that this provision will not apply to any reporting requirements by Defendant to its outside auditors or Board of Directors or as otherwise required by law.

98. Destruction of Confidential Settlement Materials. Named Plaintiff and Class Counsel agree to destroy and confirm the destruction of all confidential documents produced to them for settlement purposes in this action after the Settlement Administrator submits the final declaration of distributions and within fourteen (14) days of written request by Defendant.

99. Neutral Employment Reference. In the event that any potential or future employers of Plaintiff request a reference regarding Defendant's employment of Plaintiff, they must direct their request only to Defendant's HR team, which may be reached at 855-556-3221 or WorkdayServicesTeam@srsdistribution.com. Defendant shall only provide Plaintiff's dates of

employment and job title.

XVII. PARTIES' AUTHORITY

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

XVIII. MUTUAL FULL COOPERATION

101. The Parties agree to fully cooperate with each other to promote participation in Settlement and in seeking court approval of this Settlement Agreement, including but not limited to, working cooperatively to address any questions raised by the Court, executing documents or amending documents as required by the Court, and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement Agreement.

XIX. NOTICES

102. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff's Counsel:

Heather Davis and Amir Nayebdadash
PROTECTION LAW GROUP, LLP
237 California Street
El Segundo, CA 90245
Tel: (424) 290-3095
Fax: (866) 264-7880
heather@protectionlawgroup.com

To Defendant's Counsel:

Carrie A. Gonell and Samuel S. Sadeghi
MORGAN, LEWIS & BOCKIUS LLP
600 Anton Blvd., Suite 1800
Costa Mesa, CA 92626
Tel: 949.399.7000
Fax: 949.399.7001
carrie.gonell@morganlewis.com

If the identity of the persons to be notified for any Party changes, or their address changes, that Party shall notify all other Parties of said change in writing.

XX. MISCELLANEOUS PROVISIONS

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

104. **Drafting.** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties. Neither party shall be considered the “drafter” of the Settlement Agreement for purposes of having terms construed against that party, and this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Settlement Agreement.

105. **Extensions of Time.** If a party cannot reasonably comply with an obligation under this Settlement Agreement by the deadline set forth herein applicable to that obligation, that party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other party. The parties agree to cooperate so that the matter will be resolved with appropriate dispatch and the settlement terms carried out without unnecessary delay.

106. **Governing Law.** The rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of

California, without regard to principles of conflict of laws.

107. **No Impact on Benefit Plans.** Neither the Settlement nor any amounts paid under the Settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by the Released Parties. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under the Released Parties' sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of the Released Parties' benefit plan, policy, or bonus program. The Released Parties retain the right to modify the language of the Released Parties' benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

108. **Integration.** This Settlement Agreement, along with attached exhibits, contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

109. **No Prior Assignments.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

110. **Class Member Signatories.** It is agreed that because the members of the Class

are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement Agreement. The Notice of Settlement attached hereto will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each member of the Class.

XXI. COUNTERPARTS

111. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. 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 Settlement Agreement, which shall be binding upon and effective as to all Parties. A facsimile signature shall have the same force and effect as the original signature.

[signatures on next page]

READ CAREFULLY BEFORE SIGNING

PLAINTIFF ROBERTO RIVERA

Dated: _____

Roberto Rivera

**DEFENDANT J.B. Wholesale Roofing and
Building Supplies, Inc.**

Dated: Oct 31, 2022

Dustin Gunderson
Dustin Gunderson, Sr. Vice President and General Counsel
On behalf of Defendant J.B. Wholesale Roofing and
Building Supplies, Inc.

APPROVED AS TO FORM.

Dated: 11/2, 2022

MORGAN, LEWIS & BOCKIUS LLP

By Carrie A. Gonell
Carrie A. Gonell
Samuel S. Sadeghi
Attorneys for Defendant
J.B. WHOLESALE ROOFING AND
BUILDING SUPPLIES, INC.

Dated: _____, 2022

PROTECTION LAW GROUP, LLP

By _____
Heather Davis
Amir Nayebdadash
D. Luke Clapp
Attorneys for Plaintiff
ROBERTO RIVERA, individually and on
behalf of all others similarly situated

Dated: _____, 2022

LAWYERS FOR JUSTICE, PC

By _____
Edwin Aiwarzian
Attorneys for Plaintiff
ROBERTO RIVERA, individually and on
behalf of all others similarly situated

READ CAREFULLY BEFORE SIGNING

PLAINTIFF ROBERTO RIVERA

Dated: 10/5/2022

DocuSigned by:

986C98CD0B9A417...
Roberto Rivera

DEFENDANT J.B. Wholesale Roofing and Building Supplies, Inc.

Dated: _____

Dustin Gunderson, Sr. Vice President and General Counsel
On behalf of Defendant J.B. Wholesale Roofing and Building Supplies, Inc.

APPROVED AS TO FORM.

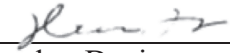
Dated: _____, 2022

MORGAN, LEWIS & BOCKIUS LLP

By _____
Carrie A. Gonell
Samuel S. Sadeghi
Attorneys for Defendant
J.B. WHOLESALE ROOFING AND BUILDING SUPPLIES, INC.

Dated: 10/3, 2022

PROTECTION LAW GROUP, LLP

By  _____
Heather Davis
Amir Nayebdadash
D. Luke Clapp
Attorneys for Plaintiff
ROBERTO RIVERA, individually and on behalf of all others similarly situated

Dated: Oct. 3, 2022

LAWYERS FOR JUSTICE, PC

By  _____
Edwin Aiwanian
Attorneys for Plaintiff
ROBERTO RIVERA, individually and on behalf of all others similarly situated