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ESMERALDA C. ZARAZUA and
FRANCISCO BELLO, on behalf of
themselves and all others similarly situated;

Plaintiffs,

vs.

INDUSTRIAL CLERICAL RECRUITERS,
INC., a California corporation; KEURIG DR
PEPPER, INC., a Delaware corporation; THE
AMERICAN BOTTLING COMPANY, a
Delaware corporation, DR PEPPER/SEVEN
UP, INC. a Delaware corporation; MOTT'S
LLP, a Delaware limited liability partnership,
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2126751

**CLASS, COLLECTIVE, AND
REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

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19 Dr Pepper/Seven-up, Inc. and Mott's LLP

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27 Attorneys for Defendant
28 Industrial Clerical Recruiters, Inc.

1 This Class, Collective, and Representative Action Settlement Agreement and Release of
2 Claims is entered into by and between Plaintiffs Esmeralda Zarazua and Francisco Bello,
3 individually, on a representative basis, on behalf of all others similarly situated, aggrieved
4 employees, and the interests of the California Labor and Workforce Development Agency
5 ("LWDA"), and Defendants Keurig Dr Pepper Inc. ("KDP"), The American Bottling Company
6 ("ABC"), Dr Pepper/Seven-Up, Inc. ("Dr Pepper/Seven-Up"), Mott's LLP ("Mott's"), and
7 Industrial Clerical Recruiter, Inc. ("ICR") (collectively "Defendants"), as Defendants, subject to
8 the terms and conditions hereof and the Court's approval.

9 **A. Definitions**

10 1. "Agreement," "Settlement" or "Settlement Agreement" shall mean this Class,
11 Collective, and Representative Action Settlement Agreement and Release of Claims, including
12 any attached Exhibits.

13 2. "PAGA Group Member" means all individuals who were employed by KDP,
14 ABC, Dr Pepper/Seven-Up, and/or Mott's in the State of California or by any individual
15 employed by ICR and assigned to KDP, ABC, Dr Pepper/Seven-Up, and/or Mott's in the State of
16 California, at any time during the PAGA Period.

17 3. "Attorney's Fees and Cost Award" shall have the meaning ascribed to it in
18 Paragraph 47(f) below.

19 4. "Class Counsel" refers to Nazo Koulloukian of Koul Law Firm, Sahag Majarian
20 II of the Law Offices of Sahag Majarian II, and David D. Bibiyan, Jeffrey D. Klein, and Joshua
21 Shirian of Bibiyan Law Group, P.C.

22 5. "Class Data" means a complete list that Defendants will diligently and in good
23 faith compile from all available records and provide to the Settlement Administrator on one
24 spreadsheet and shall include the following information for the Settlement Class Members and
25 PAGA Group Members: full names; last known addresses; telephone numbers; Social Security
26 Numbers; the total Pay Periods Worked during the PAGA Period for each PAGA Group Member
27 and the total Weeks Worked during the Class Period for each Settlement Class Member.

28 6. "Class Period" is deemed to be any time during the period January 28, 2018,

1 through May 15, 2023.

2 7. "Class Representatives" or "Plaintiffs" means and refers to Esmeralda C. Zarazua
3 and Francisco Bello.

4 8. "Consolidated Action" or "Lawsuit" means and refers to the following actions:
5 *Esmeralda Zarazua v. Industrial Clerical Recruiters, Inc., et al.* (San Bernardino County
6 Superior Court, Case No. CIVSB2126751, filed on October 8, 2021) and *Esmeralda Zarazua v.*
7 *Industrial Clerical Recruiters, Inc., et al.* (San Bernardino County Superior Court, Case No.
8 CIVSB2202966, filed on January 28, 2022) (collectively the "Zarazua Action"); and *Francisco*
9 *Bello v. The American Bottling Company, et al.*, (United States District Court for the Eastern
10 District of California, Case No. 2:22-CV-01333-DJC-KJN) and *Francisco Bello v. The American*
11 *Bottling Company, et al.*, (San Joaquin County Superior Court, Case No. STK-CV-UOE-2022-
12 0007696 filed August 31, 2022) (collectively the "Bello Action").

13 9. "Consolidated Complaint" refers to the pending First Amended Complaint that
14 will be filed in the first filed Zarazua Action that will consolidate and incorporate the Bello
15 Action into the Zarazua Action and therein collectively allege the Settled Class Claims and
16 Settled PAGA Claims.

17 10. "Court" (or "Judge") means the California Superior Court, County of San
18 Bernardino.

19 11. "Defendants" means and refers to Keurig Dr Pepper Inc. ("KDP"), The American
20 Bottling Company ("ABC"), Dr Pepper/Seven-up, Inc. ("Dr Pepper/Seven-Up"), Mott's LLP
21 ("Mott's"), and Industrial Clerical Recruiter, Inc. ("ICR").

22 12. "Defendants Counsel" or "Defense Counsel" means and refers to Daniel Whang
23 and Laura Heyne of Seyfarth Shaw LLP and Diana Carloni of Diana J. Carloni Attorney at Law.

24 13. "Effective Date" means the latest of the following dates: (a) the Court enters a
25 Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final.
26 The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class
27 Member objects to the Settlement, the expiration date of the time for filing or noticing any appeal
28 of the Judgment; (b) if there is an appeal of the Judgment, the date the Judgment is affirmed on

1 appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ
2 of certiorari to the California Supreme Court; or (c) if a petition for writ of certiorari is filed, the
3 date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant
4 to such petition.

5 14. "Final Approval" refers to the order of the Court granting final approval of this
6 Settlement Agreement and entering a judgment approving this Agreement on substantially the
7 terms provided herein or as the same may be modified by subsequent agreement of the Parties.

8 15. "Final Settlement Class" means, collectively, all Settlement Class Members who
9 have not opted out of the Settlement Class by submitting a timely Request for Exclusion.

10 16. "Gross Settlement Amount" or "GSA" shall have the meaning ascribed to it in
11 Paragraph 47(a) below.

12 17. "Individual Settlement Payment" shall have the meaning ascribed to it in
13 Paragraph 47(c) below.

14 18. "Net Settlement Amount" shall have the meaning ascribed to it in Paragraph 47(b)
15 below.

16 19. "Notice" means the notice of settlement of class action that will be sent to the
17 Settlement Class Members, a copy of which is attached as Exhibit A.

18 20. "Notice Response Deadline" is 45 calendar days from the date the Notice is
19 mailed to the Settlement Class Members.

20 21. "Objecting Settlement Class Member" means a Settlement Class Member who
21 submits a valid and timely objection to the terms of this Agreement with respect to the Settled
22 Class Claims, pursuant to Paragraph 63(c) below.

23 22. "PAGA Penalties" means the amount that the Parties have agreed to pay to the
24 Labor and Workforce Development Agency ("LWDA") in connection with the California Labor
25 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"), as well
26 as the individual PAGA payment allocated to each PAGA Group Member.

27 23. "PAGA Period" is deemed to be any time during the period of July 27, 2020,
28 through May 15, 2023.

1 24. “Participating Class Member” means any and all Settlement Class Members who
2 are deemed to participate, who will receive an Individual Settlement Payment, and who do not
3 opt-out by submitting a timely valid Request for Exclusion.

4 25. “Parties” or “Settling Parties” mean Plaintiffs, the Settlement Class, and
5 Defendants, collectively.

6 26. “Pay Periods Worked” or “Eligible Pay Periods,” means all pay periods during
7 the Class Period in which the PAGA Group Member worked at least one shift for any of the
8 Defendants

9 27. “Preliminary Approval Date” means the date the Court approves the Settlement
10 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

11 28. “Preliminary Approval Order” means the judicial Order to be entered by the
12 Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement
13 and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of
14 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
15 hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and
16 costs. Defendants will not object to Plaintiffs’ motion for preliminary approval, but will be
17 provided with an opportunity to review and comment upon the motion at least seven days before
18 it is filed.

19 29. “QSF” means the Qualified Settlement Fund set up by the Settlement
20 Administrator for the benefit of the Final Settlement Class, and from which the settlement
21 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
22 Code Sec. 468.

23 30. “Released Parties” means KDP, ABC, Dr Pepper/Seven-Up, Mott’s, and ICR and
24 their current and former parents, owners, subsidiaries, divisions, predecessors, successors, and
25 affiliated or related persons or entities, and each of their respective officers, directors, members,
26 employees, partners, shareholders, attorneys, agents, executors, and assigns.

27 31. “Release” shall mean the release and discharge of the Settled Class Claims by
28 Plaintiffs and all of the Participating Class Members and the release and discharge of the Settled

1 PAGA Claims by Plaintiffs and all of the PAGA Group Members. The *res judicata* effect of the
2 Judgment will be the same as that of the Release of the Settled Class Claims and Settled PAGA
3 Claims.

4 32. "Request for Exclusion" means and refers to a valid and timely request for
5 exclusion from the Settlement of the Settled Class Claims, which may be submitted by any
6 Settlement Class Member, other than Plaintiffs, pursuant to Paragraph 63(a) below.

7 33. "Service Payment" or "Service Award" means the amount approved by the Court
8 to be paid to the Class Representatives in addition to their Individual Settlement Payment as a
9 Participating Class Member.

10 34. "Settled Class Claims" or "Class Claims" by the Participating Class Members
11 upon Final Approval of the Settlement will include all causes of action and claims, charges,
12 complaints, liens, and demands that were alleged in the Consolidated Complaint or reasonably
13 could have been alleged based on the allegations, the facts, statutory citation and/or legal theories
14 contained in the Consolidated Complaint, including all of the following claims for relief: (a)
15 failure to pay for all hours worked, including overtime wages, (b) failure to pay minimum wage,
16 (c) failure to provide compliant meal periods, (d) failure to provide compliant rest breaks, (e)
17 failure to provide proper cool-down rest periods, (f) failing to provide safe working conditions,
18 (g) failing to provide a place of employment that is safe and healthful, (h) failing to provide
19 suitable seating, (i) failing to reimburse for required business expenses, (j) failing to provide
20 accurate wage statements and maintain accurate payroll records, (k) failing to timely pay wages
21 during and upon separation of employment, (l) failing to provide paid sick leave and vacation
22 pay, and (m) all other claims for statutory penalties based on the facts or claims alleged in the
23 Consolidated Complaint. These claims include, but are not limited to the Fair Labor Standards
24 Act, California Labor Code sections 200, 201, 202, 203, 204, 212, 213, 218, 218.5, 232, 232.5,
25 226, 226.7, 227.3, 246, 432.3, 432.7, 432.8, 510, 512, 558, 559, 1102.5, 1174, 1194, 1194.2,
26 1197, 1197.1, 1197.2, 1197.5, 1198, 1199, 2802, 2810.5, 6300, 6310, 6400-6404, 6407, and all
27 related provisions of the California Code of Regulations, the California Industrial Wage Orders,
28 the California Business & Professions Code sections 17200 *et seq.* Only those Participating

1 Class Members who cash, deposit, or otherwise negotiate the settlement checks issued to them
2 pursuant to this Settlement will be deemed to have opted into a release of claims arising under
3 the Fair Labor Standards Act, 29 U.S.C. section 201, *et seq.* ("FLSA") The release of the
4 foregoing claims, extends to all theories of relief regardless of whether the claim is, was or could
5 have been alleged as separate claims, causes of action, lawsuits or based on other theories of
6 relief, or different right or duty of an alleged statute, whether under federal law, state law or
7 common law (including, without limitation, as violations of the California Labor Code, the Wage
8 Orders, applicable regulations, California's Business and Professions Code section 17200, and
9 the FLSA). "Settled Class Claims" includes all types of relief available for the above-referenced
10 claims, including, without limitation, any claims for damages, restitution, losses, penalties, fines,
11 liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or
12 liquidated damages. The time period governing the Settled Class Claims shall be the same as the
13 Class Period.

14 35. "Settled PAGA Claims" means any and all claims for civil penalties under the
15 Private Attorneys General Act, Labor Code § 2698 *et seq.*, that Plaintiffs alleged against the
16 Released Parties, on behalf of PAGA Group Members and State of California, based on the facts
17 stated in the Consolidated Complaint and in Plaintiffs' notice letters to the LWDA (including any
18 amendments thereto), or reasonably could have been alleged based on the allegations, the facts,
19 statutory citation and/or legal theories under the PAGA contained in the Consolidated
20 Complaint, including all of the following claims for relief: (a) failure to pay for all hours worked,
21 including overtime wages, (b) failure to pay minimum wage, (c) failure to provide compliant
22 meal periods, (d) failure to provide compliant rest breaks, (e) failure to provide proper cool-down
23 rest periods, (f) failure to provide safe working conditions, (g) failure to provide a place of
24 employment that is safe and healthful, (h) failure to provide suitable seating, (i) failure to
25 reimburse for required business expenses, (j) failure to provide accurate wage statements and
26 maintain accurate payroll records, (k) failure to timely pay wages during and upon separation of
27 employment, (l) failing to provide paid sick leave and vacation pay, and (m) all other claims for
28 statutory penalties based on the facts or claims alleged in the Consolidated Complaint. These

claims include, but are not limited to, California Labor Code sections 200, 201, 202, 203, 204, 212, 213, 218, 218.5, 232, 232.5, 226, 226.7, 227.3, 246, 432.3, 432.7, 432.8, 510, 512, 558, 559, 1102.5, 1174, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198, 1199, 2802, 2810.5, 6300, 6310, 6400-6404, 6407, and the California Industrial Wage Orders. The time period governing the Settled PAGA Claims shall be any time during the PAGA Period. The Settled PAGA Claims do not release any potential claims for wages or statutory penalties.

36. "Settlement Administrator" means and refers to CPT Group, Inc., the third-party class action settlement administrator based on low bid or mutually agreed to by the Parties that will provide the Notice Packet to the Class Members and distribute the settlement amounts as described in this Agreement.

37. "Settlement Administration Costs" means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Gross Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement.

38. "Settlement Class" consists of all individuals who were employed by KDP, ABC, Dr Pepper/Seven-Up, and/or Mott's in the State of California or by any individual employed by IRC and assigned to KDP, ABC, Dr Pepper/Seven-Up, and/or Mott's in the State of California at any time between January 28, 2018, and May 15, 2023.

39. "Settlement Class Member" or "Class Member(s)" refers to individual members of the Settlement Class.

40. "Weeks Worked" or "Eligible Weeks," means all weeks during the Class Period in which the Settlement Class Member worked at least one shift for any of the Defendants.

B. General Terms and Recitals

1 41. This Settlement resolves all claims brought in four concurrently pending actions:
2 *Esmeralda Zarazua v. Industrial Clerical Recruiters, Inc., et al.* (San Bernardo County Superior
3 Court, Case No. CIVSB2126751, filed on October 8, 2021) and *Esmeralda Zarazua v. Industrial*
4 *Clerical Recruiters, Inc., et al.* (San Bernardo County Superior Court, Case No. CIVSB2202966,
5 filed on January 28, 2022) (collectively the “Zarazua Action”); and *Francisco Bello v. The*
6 *American Bottling Company, et al.*, (United States District Court for the Eastern District of
7 California, Case No. 2:22-CV-01333-DJC-KJN) and *Francisco Bello v. The American Bottling*
8 *Company, et al.*, (San Joaquin County Superior Court, Case No. STK-CV-UOE-2022-0007696
9 filed August 31, 2022) (collectively the “Bello Action”). In preparation for Court approval of
10 the settlement, Plaintiffs agree to file a First Amended Complaint in the first filed Zarazua
11 Action (Case No. CIVSB2126751), consolidating all claims and parties in a single action.

12 42. Defendants deny Plaintiffs’ claims and allegations and contend that the
13 Consolidated Action is not suitable for class or conditional certification or manageable as a class
14 or representative action.

15 43. The Class Representatives believe they can proceed with their representative,
16 collective, and class claims, that the Consolidated Action is meritorious, and that class and
17 conditional certification are appropriate.

18 44. The Parties have conducted a thorough investigation into the facts of the
19 Consolidated Action. In preparation for mediation, the Parties exchanged discovery informally,
20 including Defendants’ written policies and practices and the production of payroll and
21 timekeeping records for Settlement Class Members. Class Counsel represents, and Defendants
22 understand, that each has diligently pursued an investigation of the proposed Settlement Class
23 Members’ and PAGA Group Members’ claims against Defendants and are both knowledgeable
24 about the claims and damages, and have done extensive research with respect to the applicable
25 law and potential defenses to the claims. Based on the foregoing data and on their own
26 independent investigation and evaluation, Class Counsel is of the opinion that the settlement with
27 Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair,
28 reasonable, and adequate and is in the best interest of the Settlement Class Members and PAGA

1 Group Members/LWDA in light of all known facts and circumstances, including the risk of
2 significant delay and uncertainty associated with litigation, various defenses asserted by
3 Defendants, and numerous potential appellate issues.

4 45. On February 3, 2023, Plaintiffs and Defendants participated in mediation before
5 Deborah Crandall Saxe, Esq., a highly experienced and respected class action mediator in
6 California. The matter did not resolve at mediation, and the Parties continued to actively
7 negotiate with the support of the mediator for over three months prior to reaching a
8 Memorandum of Understanding.

9 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
10 to be performed or judgments to be entered pursuant to the terms of the Settlement and
11 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
12 any statute or law or liability on the claims or allegations in the Consolidated Action.

13 47. Stipulation for Class and Conditional Certification and Representative Treatment.
14 For settlement purposes only, Defendants stipulate to class and conditional certification of the
15 Settlement Class and that the PAGA Group Members are appropriate for representative
16 treatment.

17 **C. Terms of Settlement**

18 48. The financial terms of the Settlement are as follows:

19 (a) Gross Settlement Amount: The Parties agree to settle this Consolidated
20 Action for Four Million Five Hundred Thousand Dollars and No Cents (\$4,500,000.00) ("the
21 Gross Settlement Amount"). The Gross Settlement Amount is the maximum amount that will be
22 paid by Defendants (except for the employer's share of payroll taxes and withholdings), and
23 includes Individual Settlement Payments, Attorneys' Fees and Costs Award, the Service
24 Payment to the Class Representatives, all Settlement Administration Costs, and PAGA Penalties.
25 KDP, ABC, Dr Pepper/Seven-Up, and Mott's will pay the entire amount of the Gross Settlement
26 Amount, and shall separately pay the employers' share of applicable payroll tax obligations,
27 which shall be reported through the Settlement Administrator.

28 This Settlement is based on Defendants' representations that members of the Settlement

1 Class worked approximately 476,901 workweeks between January 28, 2018, and the date of the
2 mediation (February 3, 2023). If it is determined that the number of workweeks between January
3 28, 2018, and the end of the Class Period exceeds 524,591 workweeks (476,901, plus 10% of
4 476,901), then, at their option, KDP, ABC, Dr Pepper/Seven-Up, and Mott's, acting jointly, may
5 elect to end the Class Period on the date on which the number of workweeks reached 524,591, or
6 increase the Gross Settlement Amount in proportion to the increased percentage – for example, if
7 such increase in workweeks is 15% over 476,901 workweeks, the Gross Settlement Amount will
8 increase by 5%.

9 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
10 Gross Settlement Amount less the Attorneys' Fees and Costs Award, as approved and awarded
11 by the Court, the Service Payment to the Class Representatives, as approved and awarded by the
12 Court, the Settlement Administration Costs, as approved and awarded by the Court, and PAGA
13 Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Awards, or
14 Settlement Administrator Costs, or either increases or decreases the amount allocated to the
15 PAGA Penalties, the Net Settlement Amount shall be increased or decreased accordingly, and
16 the increase or decrease shall not impact the validity and enforceability of the Settlement.

17 (c) Individual Settlement Payments for the Settlement Class: Individual
18 Settlement Payments will be calculated and apportioned from the Net Settlement Amount based
19 on the number of Eligible Weeks a Participating Class Member worked during the Class Period.
20 Specific Calculations of Individual Settlement Payments will be made as follows:

- 21 • Defendants will calculate the total number of Weeks Worked by each
22 Participating Class Member during the Class Period and the aggregate total
23 number of Weeks Worked by all Participating Class Members during the
24 Class Period.
- 25 • To determine each Settlement Class Member's estimated Individual
26 Settlement Payment, the Settlement Administrator will use the following
27 formula: The Net Settlement Amount will be divided by the aggregate total
28 number of Weeks Worked, resulting in the "Week Value." Each Participating

1 Class Member's Individual Settlement Payment will be calculated by
2 multiplying his or her total number of Weeks Worked during the Class Period
3 by the Week Value.

- 4 • Individual Settlement Payments will be reduced by any required deductions
5 for each Participating Class Member as specifically set forth herein, including
6 employee-side tax withholdings and deductions.
- 7 • For any Participating Class Member whose Individual Settlement Payment is
8 uncashed or cancelled after the void date, the Administrator shall transmit the
9 funds represented by such checks to the California Controller's Unclaimed
10 Property Fund in the name of the Participating Class Member thereby leaving
11 no "unpaid residue" subject to the requirements of California Code of Civil
12 Procedure Section 384, subd (b).

13 (d) Allocation of Individual Settlement Payments: The Individual Settlement
14 Payments will be allocated based on the allegations in the Consolidated Action as follows: 20%
15 will be allocated as wages subject to withholding of all applicable local, state and federal taxes;
16 80% to interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203,
17 210, 226, 2699) from which no taxes will be withheld. The Settlement Administrator will issue
18 to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state
19 forms with respect to the wage allocation and a Form 1099 with respect to the penalties and
20 interest allocations.

21 (e) Service Payment to Class Representatives: Defendants agree not to
22 oppose Service Payments up to the following amounts: \$10,000 to Plaintiff Zarazua and \$10,000
23 to Plaintiff Bello, to be paid out of the Gross Settlement Amount. The Class Representatives will
24 be issued IRS Form 1099 in connection with this payment and shall be solely and legally
25 responsible to pay any and all applicable taxes on this payment. Should the Court approve a
26 lesser amount for the Service Payment, the difference shall be added to the Net Settlement
27 Amount to be distributed to the Participating Class Members.

28 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a

1 request by Class Counsel to the Court for an award of attorneys' fees of not more than thirty-five
2 percent (35%) of the Gross Settlement Amount, which unless increased pursuant to paragraph
3 C(47)(a) of this Agreement, amounts to \$1,575,000, subject to Court approval, plus reasonable
4 litigation costs not to exceed \$30,000, which shall be allocated according to proof and subject to
5 Court approval ("Attorney's Fees and Cost Award"). Defendants agree not to oppose any
6 application by Class Counsel for fees up to 35% of the Gross Settlement Amount. The
7 Attorney's Fee and Cost Award shall be paid from the Gross Settlement Amount, and except for
8 this award, Defendants shall have no further obligation to pay any attorneys' fees, costs or
9 expenses to Class Counsel, unless Defendants materially breach this Agreement, including any
10 term regarding funding, and further efforts are necessary from Class Counsel to remedy said
11 breach, including, without limitation, moving the Court to enforce the Agreement. The
12 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
13 of attorneys' fees and costs awarded by the Court.

14 (g) Settlement Administration Costs: The fees and other charges of the
15 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$42,500
16 unless approved by all Parties and the Court.

17 (h) PAGA Penalties: The Parties agree that \$100,000 is allocated to PAGA
18 Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this
19 amount, \$75,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
20 Private Attorney General Act of 2004 ("PAGA") and \$25,000 (25%) will be paid to the PAGA
21 Group Members based on the number of Pay Periods Worked during the PAGA Period, which
22 will be treated entirely as civil penalties and shall be reported as required on an IRS Form 1099.
23 Class Counsel shall give proper notice to the LWDA of the Settlement.

24 (i) No Tax Advice: Neither Plaintiffs, Class Counsel, Defendants nor
25 Defendants' Counsel are providing any advice regarding taxes or taxability, nor shall anything in
26 this Settlement be relied upon as such within the meaning of United States Treasury Department
27 Circular 230 (31 CFR Part 10, as amended) or otherwise.

28 49. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under

1 no circumstances will any portion of the Gross Settlement Amount revert to Defendants.
2 Participating Class Members will not have to make a claim in order to receive an Individual
3 Settlement Payment, and PAGA Group Members will not have to make a claim in order to
4 receive their share of PAGA Penalties. Distributions, in the form of Individual Settlement
5 Payments, will be made directly to each Participating Class Member and PAGA Group Member.
6 The Settlement Administrator shall be responsible for accurately and timely reporting and
7 remittance obligations with respect to unclaimed funds as a result of a Participating Class
8 Member or PAGA Group Member not cashing an Individual Settlement Payment by the check
9 cashing deadline, as set forth herein.

10 50. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable, and
11 adequate, and will so represent same to the Court.

12 **D. Release by Participating Class Members and PAGA Group Members**

13 51. Settled Class Claims. Upon entry of the Final Approval Order and funding of the
14 Gross Settlement Amount, as well as employer side taxes, the Participating Class Members will
15 forever completely release and discharge the Released Parties from the Settled Class Claims for
16 the Class Period.

17 52. Settled PAGA Claims. Upon entry of the Final Approval Order and funding of
18 the Gross Settlement Amount, as well as employer side taxes, Plaintiffs, the Labor
19 Commissioner/LWDA on behalf of the State of California, and all PAGA Group Members will
20 forever completely release and discharge the Released Parties from the Settled PAGA Claims
21 through the PAGA Period.

22 **E. Release by Plaintiffs/Class Representatives**

23 53. As a material inducement to Defendants to enter into this Settlement Agreement,
24 Class Representatives do hereby, for themselves and for their respective spouses, heirs,
25 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
26 guardians, personal representatives, and assigns forever and completely release and discharge the
27 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
28 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,

1 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
2 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
3 from the beginning of time through the execution of this Agreement, whether known or
4 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
5 upon, or relating to Class Representatives' employment with Defendants or the remuneration for
6 or termination of such employment (collectively, the "Class Representatives' Claims").

7 54. Without limiting the generality of the foregoing, this general release by Class
8 Representatives includes all claims or rights arising out of alleged violations of any contracts,
9 express or implied (including but not limited to any contract of employment); any contract or
10 covenant of good faith or fair dealing (express or implied); any tort, including negligence, fraud,
11 misrepresentation under California Labor Code 970, negligent infliction of emotional distress,
12 intentional infliction of emotional distress, and defamation; any "retaliation" claims; any claims
13 relating to any breach of public policy; and all federal, state, local and other governmental
14 statutory claims, regulations, and ordinances, and federal and state common law claims
15 (including but not limited to those for contract, tort and equity), including without limitation the
16 Age Discrimination in Employment Act, the Fair Labor Standards Act, the California
17 Constitution, the California Unfair Competition Act (California Business and Professions Code
18 section 17200 et seq.), Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and
19 national origin discrimination or harassment, including retaliation for reporting discrimination or
20 harassment), sections 503 and 504 of the Rehabilitation Act of 1973 (disability discrimination),
21 the Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay), the Americans with Disabilities Act, 42
22 U.S.C. § 12100 et seq. (disability discrimination), the Family and Medical Leave Act, 29 U.S.C.
23 § 2601 et seq. (family/medical leave), the California Fair Employment and Housing Act, Cal.
24 Gov't Code § 12900, et seq. (discrimination or harassment in employment and/or housing,
25 including discrimination or harassment based on race, religious creed, color, national origin,
26 ancestry, physical or mental disability, marital status, sex (including pregnancy), sexual
27 orientation, genetic, or age, including retaliation for reporting discrimination or harassment), the
28 California Family Rights Act, Cal. Gov't Code § 12945.1, et seq. (family/medical leave), the

1 California Labor Code or any Industrial Welfare Commission Wage Order, Executive Order
2 11246 (race, color, religion, sex, and national origin discrimination or harassment), Executive
3 Order 11141 (age discrimination), and the Employee Retirement Income Security Act, 29 U.S.C.
4 § 1000, *et seq.* (employee benefits).

5 55. Class Representatives expressly waive and relinquish all rights and benefits
6 afforded by Section 1542 of the Civil Code of the State of California and do so understanding
7 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
8 Code of the State of California states:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
10 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
11 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
12 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
13 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
14 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
15 OR RELEASED PARTY.

16 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
17 full and complete release and discharge of all parties, Class Representatives expressly
18 acknowledge that this Settlement Agreement is intended to include in its effect, without
19 limitation, all claims whether known or unknown, suspected or unsuspected, contingent or non-
20 contingent, that now exist, upon any theory of law or equity, including without limitation,
21 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or
22 rule, without regard to the subsequent discovery or existence of such different or additional facts,
23 in favor of the Class Representatives against the Released Parties, or any of them, for the time
24 period from the beginning of time to the execution of this Settlement Agreement, and that this
25 Settlement Agreement contemplates the extinguishment of any such Class Representatives'
26 claims. Notwithstanding the above, the general release by Class Representatives shall not extend
27 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
28 that may not be released by law.

29 **F. Release of Claims by Corporate Defendants**

30 56. Upon Court approval of this Settlement, ICR will release KDP, ABC, Dr
31 Pepper/Seven-Up, and Mott's from any and all claims it has or may have against them, or any of

1 them, including a waiver of any and all provisions of California Civil Code section 1542, and
2 KDP, ABC, Dr Pepper/Seven-Up, and Mott's will release ICR from any and all claims they, or
3 any of them, have or may have against ICR, including a waiver of any and all provisions of
4 California Civil Code section 1542.

5 **G. Interim Stay of Proceedings**

6 57. Pending completion of all of the prerequisites necessary to effectuate this
7 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
8 except such as are necessary to effectuate the Settlement.

9 **H. Notice Process**

10 58. Appointment of Settlement Administrator. The Parties have agreed to the
11 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
12 including mailing the Notice, using standard devices to obtain forwarding addresses,
13 independently reviewing and verifying documentation associated with any claims or opt-out
14 requests, resolving any disputes regarding the calculation or application of the formula for
15 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
16 Participating Class Members, and PAGA Group Members, issuing W-2 and 1099 Tax Forms,
17 unclaimed funds due diligence, reporting and remittance obligations, and performing such other
18 tasks as set forth herein or as the Parties mutually agree or that the Court orders. The Settlement
19 Administrator (along with any of its agents) shall represent and warrant that it will: (a) provide
20 reasonable and appropriate administrative, physical and technical safeguards for any personally
21 identifiable information ("PII"), which it receives from Defendants; (b) not disclose the PII to
22 Class Counsel, Plaintiffs, any party or third parties, including agents or subcontractors, without
23 Defendants' consent; (c) not disclose or otherwise use the PII other than to carry out its duties as
24 set forth herein; (d) promptly provide Defendants with notice if PII is subject to unauthorized
25 access, use, disclosure, modification, or destruction; and (e) continue to protect the PII upon
26 termination of its services.

27 59. Disputes Regarding Settlement Administration. Any and all disputes relating to
28 administration of the Settlement by the Settlement Administrator (except for disputes regarding

1 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
2 over the terms and conditions of this Settlement Agreement, until Plaintiffs and Defendants
3 notify the Court that all payments and obligations contemplated by this Settlement Agreement
4 have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties
5 will confer in good faith to resolve the dispute without the necessity of Court intervention. The
6 Settlement Administrator shall also be responsible for issuing to Plaintiffs, Participating Class
7 Members, PAGA Group Members, and Class Counsel any W-2, 1099, or other Tax Forms as
8 may be required by law for all amounts paid pursuant to this Agreement. The Settlement
9 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding
10 all payroll taxes and penalties to the appropriate government authorities.

11 60. Class Data. Within 21 days after entry of the Preliminary Approval Order,
12 Defendants shall provide the Class Data to the Settlement Administrator. The Settlement
13 Administrator will run a check of the Class Members' addresses against those on file with the
14 U.S. Postal Service's National Change of Address List. The Class Data provided to the
15 Settlement Administrator will remain confidential, shall be used solely to administer the
16 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
17 required by applicable tax authorities, pursuant to Defendants' express written consent, or by
18 order of the Court. Although Class Counsel will not be provided with the list of Class Data,
19 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
20 the Action and Settlement.

21 61. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
22 Administrator to the Settlement Class Members, by first class mail, in English and Spanish,
23 within fourteen (14) calendar days following the Settlement Administrator's receipt of the Class
24 Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain
25 forwarding addresses of Settlement Class Members if any envelopes are returned.

26 62. Returned Notices. The Settlement Administrator will take steps to ensure that the
27 Notice is received by all Settlement Class Members, including utilization of the National Change
28 of Address Database maintained by the United States Postal Service to review the accuracy of

1 and, if possible, update a mailing address. Notices will be re-mailed to any Settlement Class
2 Member for whom an updated address is located within ten (10) calendar days following both
3 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.
4 No Notices will be re-mailed after the Notice Response Date. The Notice shall be identical to
5 the original Notice, except that it shall notify the Settlement Class Member that the exclusion
6 (opt-out) request or objection must be returned by the later of the Notice Response Deadline or
7 fifteen (15) days after the remailing of the Notice.

8 63. Disputes Regarding Information on Notices. Settlement Class Members are
9 deemed to participate in the Settlement, unless they opt-out, and PAGA Group Members may not
10 opt out of the Settled PAGA Claims. The Notice will inform Settlement Class Members and
11 PAGA Group Members of his/her estimated Individual Settlement Payment and the number of
12 Weeks Worked during the Class Period and the number of Pay Periods Worked during the
13 PAGA Period. Settlement Class Members may dispute their Weeks Worked and PAGA Group
14 Members may dispute their Pay Periods Worked if they feel they should be credited with more
15 Eligible Weeks or Eligible Pay Periods than the Class Data shows by submitting evidence to the
16 Settlement Administrator prior to the Notice Response Deadline. The Class Data will be
17 presumed determinative absent reliable evidence to rebut it, but the Settlement Administrator
18 will evaluate the evidence submitted by the Settlement Class Member or PAGA Group Member
19 and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet
20 and confer in good faith about the evidence to determine the Settlement Class Member's actual
21 number of Weeks Worked, Pay Periods Worked, and estimated Individual Settlement Payment.
22 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
23 Settlement Administrator to render a final decision. Class Members and PAGA Group Members
24 will have until the Notice Response Deadline to dispute Weeks Worked or Pay Periods Worked,
25 object, or opt out, unless extended by the Court. In the event that the Settlement Administrator
26 increases the number of Weeks Worked or Pay Periods Worked for any Settlement Class
27 Member or PAGA Group Member, then the Settlement Administrator will recalculate the
28 Participating Class Members' or PAGA Group Members' Individual Settlement Payments;

1 accordingly, in no event will Defendants be required to increase the Gross Settlement Amount.

2 64. Settlement Class Members' Rights. Each Settlement Class Member will be fully
3 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
4 Settled Class Claims, and the ability to opt-out or request exclusion from the Settlement with
5 respect to the Settled Class Claims. The Notice will inform the Settlement Class Members of the
6 Court-established deadlines for filing objections or requesting exclusion from the Settlement
7 with respect to the Settled Class Claims in accordance with the following guidelines:

8 (a) Requests for Exclusion from Participating in the Settlement Class. Any
9 Settlement Class Member, other than Plaintiffs, may request to be excluded from the Settlement
10 Class by submitting a "Request for Exclusion" form (attached hereto as Exhibit B) to the
11 Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request
12 for Exclusion should state:

13 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
14 CLASS IN THE KEURIG DR PEPPER LAWSUIT. I
15 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
16 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
 MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS
 IN THIS LAWSUIT."

17 To be valid, any Request for Exclusion must include the full name, address, telephone
18 number, last four digits of the social security number or date of birth, and signature of the
19 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
20 mail to the Settlement Administrator at the specified address. Any such Request must be made
21 in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
22 if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
23 Any Settlement Class Member who timely requests exclusion in compliance with these
24 requirements: (i) will not have any rights under this Agreement with respect to the Settled Class
25 Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be
26 entitled to receive any payments under this Agreement for the Settled Class Claims; and (iii) will
27 not be bound by this Agreement, or the Judgment, with respect to the Settled Class Claims. Any
28 PAGA Group Member who requests timely exclusion will still be subject to the Settled PAGA

1 Claims to the fullest extent permitted by law and shall be sent his or her share of PAGA
2 Penalties.

3 (b) Right to Revoke. KDP, ABC, Dr Pepper/Seven-Up, and Mott's shall
4 retain the right, in the exercise of their sole discretion, to nullify the Settlement within fourteen
5 (14) calendar days after expiration of the Notice Response Deadline if five percent (5%) or more
6 of the Settlement Class opts out of the Settlement. If KDP, ABC, Dr Pepper/Seven-Up, and
7 Mott's nullify the Settlement, they will pay Settlement Administration Costs incurred up until the
8 time of revocation.

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

16 (d) Objections to Settlement of the Settled Class Claims. Any Settlement
17 Class Member, other than Plaintiffs, may object to the terms of this Agreement, except as to the
18 Settled PAGA Claims. To object, a Settlement Class Member shall inform the Settlement
19 Administrator, in writing, of his or her objection by submitting an Objection form (attached
20 hereto as Exhibit C) which must be postmarked by the Notice Response Deadline at the address
21 set forth in the Notice. Such objection shall include the objecting Settlement Class Member's
22 full name, address, telephone number, and dates of employment with Defendants, the case name
23 and number, the basis for the objection, including any legal support and each specific reason in
24 support of the objection, as well as any documentation or evidence in support thereof, and, if the
25 Objecting Settlement Class Member is represented by counsel, the name and address of his or
26 her counsel. The Settlement Administrator shall provide objections, if any, to Class Counsel and
27 Defense Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall
28 attach the same to its declaration of due diligence and file with the Court prior to the Final

1 Approval Hearing. Any Participating Class Member who files an objection remains eligible to
2 receive monetary compensation from the Settlement. Plaintiffs and Defendants shall not be
3 responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her
4 counsel related to any objections to the Settlement. Submitting an objection does not preserve
5 the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party
6 of record by timely and properly intervening or filing a motion to vacate the judgment under
7 Code of Civil Procedure Section 663. To the extent a Participating Class Member submits a
8 Request for Exclusion and objection, the objection shall be disregarded and the Settlement Class
9 Member shall be excluded from the Class. Settlement Class Members and PAGA Group
10 Members may not object to or opt-out of the Settlement with respect to the PAGA Claims.

11 (e) Failure to Object. Any Settlement Class Member who desires to object to
12 the Settled Class Claims in the Settlement but fails to timely submit a written objection or in
13 person objection at the Final Approval Hearing waives any right to object and will be foreclosed
14 from making any objection to this Settlement. Any Settlement Class Member who does not
15 timely and properly become a party of record by intervening or filing a motion to vacate the
16 judgment waives any and all rights to appeal from the Judgment, including all rights to any post-
17 judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for
18 new trial, a motion under California Code of Civil Procedure Section 473, and extraordinary
19 writs.

20 (f) Responses to Objections. Counsel for the Parties may file a response to
21 any objections submitted by objecting Settlement Class Members at least five (5) court days
22 before the date of the Final Approval Hearing.

23 (g) Settlement Class Members will have until the Notice Response Deadline
24 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
25 Settlement Administrator shall disclose jointly to Class Counsel and Defendants' counsel what
26 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
27 request of Class Counsel or Defense Counsel.

28 (h) Defective Submissions. If a Settlement Class Member's Request for

1 Exclusion or objection is defective as to the requirements listed herein (with the exception of the
2 requirement to submit the Request for Exclusion or objection by the Notice Response Deadline),
3 that Settlement Class Member will be given an opportunity to cure the defect(s). So long as
4 defective Request for Exclusion of objection was timely received by the Settlement
5 Administrator, the Settlement Administrator will mail the Settlement Class Member a cure letter
6 within three (3) business days of receiving the defective submission to advise the Settlement
7 Class Member that his or her submission is defective and that the defect must be cured to render
8 the Request for Exclusion or objection valid. The Settlement Class Member will have the later
9 of (i) the Notice Response Deadline or (ii) 15 calendar days from the date of the cure letter to
10 postmark or fax a revised Request for Exclusion or objection. If the revised Request for
11 Exclusion or objection is not postmarked or received by fax within that period, it will be deemed
12 untimely.

13 65. Declaration of Due Diligence. The Settlement Administrator shall provide
14 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing,
15 a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

16 66. Funding of the Settlement Amount. Defendants KDP, ABC, Dr Pepper/Seven-
17 Up, and Mott's shall make a one-time deposit into the QSF of the Gross Settlement Amount
18 within ten (10) calendar days after the Effective Date. The funding Defendants separately shall
19 pay into the QSF their share of employer payroll taxes as calculated and directed by the
20 Settlement Administrator, which shall be distributed and reported by the Settlement
21 Administrator. Once the funding Defendants have complied with their obligation set forth in this
22 paragraph, all Defendants shall be deemed to have satisfied all of the terms and conditions of this
23 Agreement, shall be entitled to all the protections afforded them under the Agreement, and shall
24 have no further obligations under the Agreement. The Settlement Administrator (and not
25 Defendants) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to the
26 Class Members and PAGA Group Members.

27 67. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
28 Gross Settlement Amount into the QSF, the Settlement Administrator will mail the Individual

1 Settlement Payments to the Participating Class Members, the payment to Class Counsel for the
2 Attorneys' Fees and Costs Award, any Service Payment to the Class Representatives, the
3 payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration
4 Costs.

5 68. Opt-In Language. Opt-in and release language regarding the release of the Settled
6 Class Claims arising under the Fair Labor Standards Act will be printed on the settlement checks
7 issued to Participating Class Members, with instructions that endorsing, cashing, depositing, or
8 otherwise negotiating such check constitutes consent under the Fair Labor Standards Act to opt
9 into the release of Settled Class Claims arising under the Fair Labor Standards Act. The
10 language to be included will be substantially similar to the following:

11 My endorsing, cashing, depositing, or otherwise negotiating this check constitutes
12 my consent to join the lawsuit entitled *Esmeralda Zarazua and Francisco Bello v.*
13 *Industrial Clerical Recruiters, Inc.,; Keurig Dr Pepper Inc.; The American*
14 *Bottling Company; Dr Pepper/Seven Up, Inc.; and Motts LLP*, pending in the
15 Superior Court of the State of California for the County of San Bernardino
16 CIVSB2126751, pursuant to the provisions of the Fair Labor Standards Act
17 ("FLSA"), 29 U.S.C. Section 216(b), and release of Settled Class Claims arising
18 under the FLSA.

19 69. Deadline for Cashing Settlement Checks. Participating Class Members and
20 PAGA Group Members shall have 180 calendar days after mailing by the Settlement
21 Administrator to cash their settlement checks. If any Participating Class Member's or PAGA
22 Group Member's check is not cashed within that period, the check will be void and a stop-
23 payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the
24 California State Controller's Office in the name of the Class Member or PAGA Member, or as
25 otherwise directed by the Court. The release will be binding upon all Participating Class
26 Members and PAGA Group Members who do not cash their checks within the 180-day period.
27 In the event that any settlement check is returned to the Settlement Administrator within 180
28 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the

1 returned settlement check, perform a skip trace to locate the individual, and notify Defense
2 Counsel and Class Counsel of the results. If a new address is located by these means, the
3 Administrator will have ten (10) business days to re-issue the check. Neither Defendants,
4 Defense Counsel, Class Counsel, Plaintiffs, nor the Settlement Administrator will have any
5 liability for lost or stolen settlement checks, forged signatures on settlement checks, or
6 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a
7 Participating Class Member or PAGA Group Member notifies the Settlement Administrator that
8 he or she believes that a settlement check has been lost or stolen, the Settlement Administrator
9 shall immediately stop payment on such check. If the check in question has not been negotiated
10 prior to the stop payment order, the Settlement Administrator will issue a replacement check.

11 70. No person shall have any claim against Defendants (or their designees),
12 Defendants' Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on
13 mailings, distributions, payments or reports made in accordance with or pursuant to this
14 Agreement or based on any and all acts of the Settlement Administrator. This provision does
15 not, however, prevent a Party from seeking enforcement of this Agreement.

16 **I. Duties of the Parties Prior to the Court's Approval**

17 71. Promptly after execution of this Settlement Agreement, the Parties shall execute a
18 joint stipulation and take other action needed to file a First Amended Complaint in the first filed
19 Zarazua Action that will consolidate and incorporate the Bello Action into the Zarazua Action
20 and therein collectively allege the Settled Class Claims and Settled PAGA Claims, thereby
21 leaving only the First Amended Complaint pending in San Bernardino Superior Court. Plaintiffs
22 will thereafter move the Court for Preliminary Approval of this Settlement and entry of the
23 Preliminary Approval Order accomplishing the following:

24 (a) Scheduling the Final Approval Hearing on the issue of whether this
25 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
26 and a hearing on fees, costs and the Service Payments;

27 (b) Approving as to form and content the proposed Notice (attached hereto as
28 Exhibit A);

1 (c) Directing the mailing of the Notice by first class mail to the Settlement
2 Class Members;

3 (d) Preliminarily approving this Settlement; and

4 (e) Preliminarily certifying the class for purposes of this Settlement.

5 72. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
6 hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate,
7 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within
8 this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent
9 Court hearings.

10 **J. Duties of the Parties Following Court's Final Approval**

11 73. In connection with the Final Approval Hearing provided for in this Settlement
12 Agreement, Class Counsel shall submit a proposed Final Approval Order:

13 (a) Approving the Settlement, adjudging the terms thereof to be fair,
14 reasonable and adequate, and directing consummation of its terms and provisions;

15 (b) Approving Class Counsel's application for an award of attorneys' fees and
16 reimbursement of litigation costs and expenses, the Service Payment to the Class
17 Representatives, and the payment to the Settlement Administrator for costs of administering the
18 settlement; and

19 (c) Entering judgment approving settlement, thereby permanently barring all
20 Participating Class Members from prosecuting any Settled Class Claims against any of the
21 Released Parties and permanently barring all PAGA Group Members and the LWDA from
22 prosecuting any Settled PAGA Claims against any of the Released Parties.

23 74. Final Judgment. The Settlement Administrator shall give the Participating Class
24 Members and PAGA Group Members notice of the entry of Final Judgment on a postcard or
25 letter that will be included with the Individual Settlement Payments. If any amended judgment is
26 required for any reason, the Parties will work together in good faith to jointly submit and a
27 proposed amended judgment.

28 **K. Other Terms**

1 75. Waiver. The waiver by one Party of any breach of this Agreement by another
2 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

3 76. Full and Complete Defense. This Agreement may be pleaded by any Released
4 Party as a full and complete defense to, and may be used as the basis for an injunction against,
5 any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted,
6 asserting any Settled Class or PAGA Claim.

7 77. Parties' Authority. The signatories hereto represent that they are fully authorized
8 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
9 hereof.

10 78. No Publicity. Communications regarding this Settlement prior to the Preliminary
11 Approval Date shall be limited to Court-Approved Notices in the Action. After the Preliminary
12 Approval Date, Class Counsel and Class Representatives agree that they will not publicize this
13 Settlement on their website, social media, blogs, micro-blog, vlogs or any other media,
14 including, reporting to Jury Verdicts or any other reporting services and agree that any breach of
15 this paragraph is a material breach of the Settlement Agreement. Nothing herein shall be
16 construed to prevent Class Counsel from the public filing of motions or other case materials in
17 the Action related to seeking and obtaining Court approval of this Settlement and the related
18 awards of attorneys' fees and costs, or to communications with Settlement Class Members or
19 their representatives about this Settlement, including through the posting of Court-filed
20 documents on Class Counsel's websites for access solely by the Settlement Class Members, or to
21 prevent the Parties or their representatives from communicating with financial or legal advisors
22 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
23 the Action has been settled on terms mutually agreeable to the Parties.

24 79. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
25 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
26 such documents and to take such other action as may reasonably be necessary to implement the
27 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
28 best efforts, including all efforts contemplated by this Settlement Agreement and any other

1 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
2 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
3 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
4 Defendants and Defense Counsel, take all necessary steps to secure the Court's preliminary and
5 final approval of the Settlement, and the final entry of judgment. Class Counsel shall provide
6 Defense Counsel with copies of the Preliminary Approval Motion and Final Approval Motion
7 for review at least seven days prior to the filing deadline.

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

12 81. No Admission. Defendants deny any and all liability to Plaintiffs and/or any
13 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
14 that might have been asserted in this Action. Nothing in this Settlement Agreement is intended
15 or shall be construed as an admission of liability, fault or wrongdoing by Defendants. Nothing in
16 this Settlement Agreement shall operate or be construed as an admission of any liability or that
17 class certification is appropriate in any context other than this Settlement Agreement.
18 Nonetheless, Defendants wish to settle and compromise the matters at issue in the Consolidated
19 Action to avoid further substantial expense and the inconvenience and distraction of protracted
20 and burdensome litigation. Defendants also have taken into account the uncertainty and risks
21 inherent in litigation, and without conceding any infirmity in the defenses that they have asserted
22 or could assert against Plaintiffs, have determined that it is desirable and beneficial that
23 Plaintiffs' claims be settled in the manner and upon the terms and conditions set forth in this
24 Agreement.

25 82. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
26 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
27 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
28 of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into

1 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
2 attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
3 and it, along with all related documents such as the notices, and motions for preliminary and
4 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
5 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to
6 approve the settlement, and/or interpret or enforce this Settlement Agreement and corresponding
7 judgment. The stipulation for class certification as part of this Settlement Agreement is for
8 settlement purposes only and if, for any reason the settlement is not approved, the stipulation will
9 be of no force or effect.

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

14 To the Settlement Class Members and PAGA Group Members:

15 Nazo Koulloukian, SBN 263809
16 *nazo@koullaw.com*
17 KOUL LAW FIRM
18 3435 Wilshire Blvd., Suite 1710
19 Los Angeles, CA 90010
20 Tel: (213) 761-5484 | Fax: (818) 561-3938

21 Sahag Majarian, II, Esq. (SBN 146621)
22 *sagahii@aol.com*
23 LAW OFFICES OF SAHAG MAJARIAN II
24 18250 Ventura Blvd.
25 Tarzana, CA 91356
26 Tel: (818) 609-0807 | Fax: (818) 609-0892

27 BIBIYAN LAW GROUP, P.C.
28 David D. Bibiyan (SBN 287811)
david@tomorrowlaw.com
Jeffrey D. Klein (SBN 297296)
jeff@tomorrowlaw.com
Joshua Shirian (SBN 341909)
josh@tomorrowlaw.com
8484 Wilshire Blvd., Suite 500

1 Beverly Hills, CA 90211
2 Tel: (310)438-5555 | Fax: (310) 300-1705

3 To Defendants:

4 Daniel Whang (SBN 223451)	Diana J. Carloni (SBN 100460)
5 dwhang@seyfarth.com	diana@carlonilaw.com
6 Laura E. Heyne (SBN 279478)	DIANA J. CARLONI
lheyne@seyfarth.com	ATTORNEY AT LAW
7 SEYFARTH SHAW LLP	16195 Siskiyou Rd. Suite 130
2029 Century Park East, Suite 3500	Apple Valley, California 92307
8 Los Angeles, California 90067	Telephone: (760) 946-9910
Telephone: (310) 277-7200	Facsimile: (760) 946-99209
9 Facsimile: (310) 201-5219	

10 84. Construction. The Parties hereto agree that the terms and conditions of this
11 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
12 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
13 by reason of the extent to which any Party or his or its counsel participated in the drafting of this
14 Settlement Agreement. Plaintiffs and Defendants expressly waive the common-law and statutory
15 rule of construction that ambiguities should be construed against the drafter of an agreement and
16 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
17 all cases construed as a whole, according to its fair meaning.

18 85. Captions and Interpretations. Paragraph titles or captions contained herein are
19 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
20 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
21 Settlement Agreement is contractual and not merely a recital other than paragraphs 40-45.

22 86. Modification. This Settlement Agreement may not be changed, altered, or
23 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
24 Settlement Agreement may not be discharged except by performance in accordance with its
25 terms or by a writing signed by all of the Parties hereto.

26 87. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
27 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
28 provide written notice to the other Party and allow an opportunity to cure the alleged

1 deficiencies, and Plaintiffs and Defendants agree to seek the help of the mediator identified in
2 this Agreement to resolve any dispute they are unable to resolve informally. During this period,
3 the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any
4 legal action or other proceeding instituted by any person or entity other than Plaintiffs or
5 Defendants.

6 88. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
7 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
8 Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
9 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents and obligations
10 of this Agreement.

11 89. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
12 this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible
13 in a court of law.

14 90. Choice of Law. This Settlement Agreement shall be governed by and construed,
15 enforced and administered in accordance with the laws of the State of California.

16 91. Integration Clause. This Settlement Agreement contains the entire agreement
17 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
18 or contemporaneous agreements, understandings, representations, and statements, whether oral
19 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
20 hereunder may be waived except in writing.

21 92. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
22 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
23 successors and assigns.

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

1 Class Member.

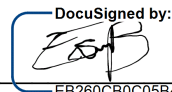
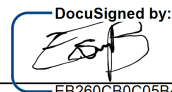
2 94. Invalidity of Any Provision. Before declaring any provision of this Settlement
3 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
4 extent possible consistent with applicable precedents so as to define all provisions of this
5 Settlement Agreement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

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

10 8/11/2023

11 Dated: August __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

12  DocuSigned by:
13 

14 Esmeralda Zarazua

15 Dated: August __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

16 _____
17 Francisco Bello

18 Dated: August __, 2023

CLASS COUNSEL:
19 KOUL LAW FIRM

20 _____
21 Nazo Koulloukian
Attorneys for Plaintiffs

22 Dated: August __, 2023

CLASS COUNSEL:
23 LAW OFFICE OF SAHAG MAJARIAN, II

24 _____
25 Sahag Majarian, II
Attorneys for Plaintiffs
26
27
28

Class Member.

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

95. 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.

Dated: August __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

Esmeralda Zarazua

Dated: August 17, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:



Francisco (Aug 17, 2023 14:47 PDT)

Francisco Bello

Dated: August __, 2023

CLASS COUNSEL:
KOUL LAW FIRM

Nazo Koulloukian
Attorneys for Plaintiffs

Dated: August __, 2023

CLASS COUNSEL:
LAW OFFICE OF SAHAG MAJARIAN, II

Sahag Majarian, II
Attorneys for Plaintiffs

1 Dated: August 2, 2023

CLASS COUNSEL:
BIBIYAN LAW GROUP, P.C.
David B. Bibiyan

David Bibiyan
Attorneys for Plaintiffs

5 Dated: August __, 2023

DEFENDANT:
KEURIG DR PEPPER INC.

By: _____
Title: _____

9 Dated: August __, 2023

DEFENDANT:
AMERICAN BOTTLING COMPANY

By: _____
Title: _____

14 Dated: August __, 2023

DEFENDANT:
DR PEPPER/SEVEN-UP, INC.

By: _____
Title: _____

18 Dated: August __, 2023

DEFENDANT:
MOTT'S, INC.

By: _____
Title: _____

23 Dated: August __, 2023

DEFENDANTS' COUNSEL:
SEYFARTH SHAW LLP

Daniel Whang
Attorneys for Defendant

- END OF DOCUMENT -

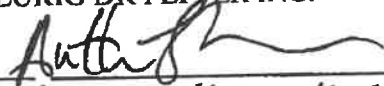
1 Dated: August __, 2023

CLASS COUNSEL:
BIBIYAN LAW GROUP, P.C.

2
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4 David Bibiyan
Attorneys for Plaintiffs

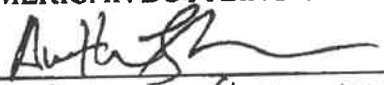
5 Dated: August 9, 2023

DEFENDANT:
KEURIG DR PEPPER INC.

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7 
8 By: Anthony Shoemaker
Title: Chief Legal Officer & General Counsel

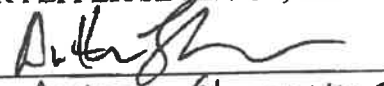
9 Dated: August 9, 2023

DEFENDANT:
AMERICAN BOTTLING COMPANY

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11 
12 By: Anthony Shoemaker
Title: Chief Legal Officer & General Counsel

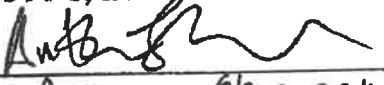
13 Dated: August 9, 2023

DEFENDANT:
DR PEPPER/SEVEN-UP, INC.

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Title: Chief Legal Officer & General Counsel

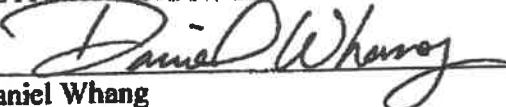
17 Dated: August 9, 2023

DEFENDANT:
MOTT'S, INC.

18
19 
20 By: Anthony Shoemaker
Title: Chief Legal Officer & General Counsel

21 Dated: August 9, 2023

DEFENDANTS' COUNSEL:
SEYFARTH SHAW LLP

22
23 
24 Daniel Whang
25 Attorneys for Defendant
26
27
28

1 Dated: August 24, 2023

DEFENDANT:
INDUSTRIAL CLERICAL RECRUITERS, INC.

2
3
4 By: Robert A. Lovin
Title: COO

5
6 Dated: August 24, 2023

DEFENDANT'S COUNSEL:
DIANA J. CARLONI ATTORNEY AT LAW

7
8 Diana J. Carloni
9 Diana Carloni
Attorneys for Defendant Industrial Clerical Recruiters, Inc.

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