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dba Creative Paint

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF CONTRA COSTA**

RICHARD EVANS, individually, and on behalf  
of other members of the public similarly situated,  
and on behalf of other aggrieved employees  
pursuant to the California Private Attorneys  
General Act;

Plaintiff,

vs.

MY PAINT STOP LLC dba CREATIVE PAINT,  
a California limited liability company; and DOES  
1 through 25, inclusive.

Defendants.

Case No. MSC21-01812

**JOINT STIPULATION OF CLASS ACTION  
AND PAGA SETTLEMENT**

Complaint Filed: August 30, 2021  
Trial Date: None Set

1 This Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement  
2 Agreement”) is made and entered into between Plaintiff Richard Evans (“Plaintiff”), on his own  
3 behalf, on behalf of the State of California, and on behalf of Settlement Class Members as defined  
4 below, and Defendant My Paint Stop LLC., dba Creative Paint (“Defendant”).

5 **I. DEFINITIONS**

6 As used in this Settlement Agreement, the following terms have the meanings specified below:

7 1. “Action” means the action entitled *Richard Evans v. My Paint Stop LLC dba Creative*  
8 *Paint*, Contra Costa Superior Court Case No. MSC21-01812.

9 2. “Attorneys’ Fees and Costs” means attorneys’ fees for Class Counsel’s litigation and  
10 resolution of this Action and their expenses and costs incurred in connection with the Action, which  
11 shall be paid from the Gross Settlement Payment.

12 3. “Class Counsel” means Jonathan M. Genish and Joana Fang of Blackstone Law, APC.

13 4. “Class List” means a complete list of all Settlement Class Members that Defendant will  
14 diligently and in good faith compile from its records and provide to the Settlement Administrator no  
15 later than fourteen (14) calendar days after the Court grants Preliminary Approval of this Settlement  
16 Agreement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet  
17 containing the following information for each Settlement Class Member: (1) full name; (2) last known  
18 home address; (3) last known telephone number; (4) social security number; (5) start and end dates of  
19 active employment as a non-exempt employee of Defendant in the State of California; (6) total  
20 Workweeks during the Class Period; (7) total Workweeks during the PAGA Period; and (8) any other  
21 information required by the Settlement Administrator in order to effectuate the terms of the Settlement.  
22 The Class List, and any information provided by Defendant to the Settlement Administrator, shall be  
23 treated as confidential and not be subject to disclosure to Class Counsel. However, notwithstanding  
24 this provision, the Settlement Administrator shall provide both Defendant’s counsel and Class Counsel  
25 a redacted version of the Class List that omits the names, addresses, telephone numbers, and social  
26 security numbers of the Settlement Class Members so that Class Counsel can verify the number of  
27 Settlement Class Members, the calculations of Workweeks and the calculations of Individual  
28 Settlement Shares, as well as any other information necessary to verify and approve the disbursement

1 of the Gross Settlement Amount. The Settlement Administrator shall use commercially reasonable  
2 efforts to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized  
3 disclosure or use of such data other than as provided for by the Settlement. Defendant's records will  
4 be presumed determinative with respect to whether an individual is a Settlement Class Member and  
5 the Settlement Class Member's hire and termination dates.

6 5. "Class Notice" means the Notice of Class Action Settlement, substantially in the form  
7 attached hereto as "Exhibit 1," which will be mailed to Settlement Class Members and which describes  
8 the material terms of the Settlement Agreement and the Settlement Class Members' rights and  
9 obligations, the formula for determining each Settlement Class Member's Individual Settlement Share,  
10 instructions on how to submit requests to opt out or object to the Settlement Agreement, and the  
11 deadlines for doing so. The Class Notice and any other communications to Settlement Class Members  
12 shall not include the Settlement Class Members' social security number, except for the last four (4)  
13 digits, if necessary.

14 6. "Class Period" means the period commencing on August 30, 2017 and ending on May  
15 11, 2022.

16 7. "Class Representative" or "Plaintiff" means Richard Evans.

17 8. "Class Representative Enhancement Award" means payment to the Class  
18 Representative for his services and efforts on behalf of the Settlement Class Members in this Action.

19 9. "Court" means the Superior Court for the County of Contra Costa.

20 10. "Effective Date" means the date that the Court enters an order granting Final Approval  
21 of the Settlement Agreement if no timely objections to the Settlement Agreement are filed, or if timely  
22 objections to the Settlement Agreement are filed but no objector successfully moves to intervene for  
23 purposes of appeal. If timely objections to the Settlement Agreement are filed and any objector or  
24 objectors successfully intervene for the purposes of appeal, the "Effective Date" shall be the 61st day  
25 following the date on which the Court enters an order of final approval of the Settlement Agreement;  
26 except that if an appeal is filed from the Court's overruling of objections to the Settlement Agreement  
27 and/or from the final approval order (other than an appeal limited solely to a challenge to the denial or  
28 reduction in the amount of requested attorneys' fees and expenses and/or service payments to the Class

Representative), the “Effective Date” shall be 30 days after the appeal is withdrawn or after all appellate review thereof is exhausted and an appellate decision exhausting such review and affirming the final approval decision becomes final.

11. “Final Approval” means the date on which the Final Approval Order and Judgment is entered.

12. “Final Approval Hearing” means the hearing following notice to the Settlement Class Members at which the Court will consider whether the terms of this Agreement are fair, adequate, and reasonable to the Settlement Class Members as a whole.

13. “Final Approval Order and Judgment” means the order granting final approval of the Settlement and entering Judgment thereon, in a form and content mutually agreed to by the Parties, and subject to approval by the Court.

14. “Gross Settlement Payment” or “Gross Settlement Amount” means the settlement amount of Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) to be paid by Defendant in full satisfaction of all Settled Claims, which includes Individual Settlement Payments to Participating Class Members, Class Representative Enhancement Award, LWDA Payment to the LWDA, Attorneys’ Fees and Costs to Class Counsel, and Settlement Administration Costs. The Gross Settlement Payment does not include any employer-side taxes and withholdings, which will be calculated by the Settlement Administrator and separately paid for by Defendant. The Gross Settlement Payment is non-reversionary; no portion of the Gross Settlement Payment will return to Defendant. The settlement does not require Participating Class Members to submit claims as a prerequisite to receiving their Individual Settlement Payment.

15. “Individual Settlement Payment” means the net payment of each Participating Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, and any payment a PAGA Member is eligible to receive from the employee portion of the PAGA Penalty Amount.

16. “Individual Settlement Share” means the pro rata share of the Net Settlement Fund that a Settlement Class Member may be eligible to receive, and any pro rata share of the PAGA Penalty Amount that a PAGA Member is eligible to receive from the employee portion of the PAGA Penalty

1 Amount.

2 17. "LWDA" means the California Labor and Workforce Development Agency.

3 18. "LWDA Payment" means seventy-five percent (75%) of the PAGA Penalty Amount.

4 19. "Net Settlement Fund" means the sum remaining after the Court-approved deductions  
5 from the Gross Settlement Payment for: (1) Class Representative Enhancement Award, (2) PAGA  
6 Penalty Amount, (3) Attorneys' Fees and Costs to Class Counsel, and (4) Settlement Administration  
7 Costs.

8 20. "PAGA" means the Labor Code Private Attorneys General Act of 2004, California  
9 Labor Code sections 2698, et seq.

10 21. "PAGA Members" means all current and former non-exempt and/or hourly-paid  
11 employees who worked for Defendant in the State of California at any time during the PAGA Period.

12 22. "PAGA Penalty Amount" means the amount allocated to settle any and all claims for  
13 which penalties under PAGA may be sought or are otherwise available for any and all Settled Claims.

14 23. "PAGA Period" means the period commencing on July 7, 2020 and ending on May 11,  
15 2022.

16 24. "Participating Class Members" means Settlement Class Members who do not submit  
17 timely and valid requests for exclusion from the Settlement Agreement.

18 25. "Parties" means the parties to the Agreement, specifically, Plaintiff, individually and  
19 on behalf of all Settlement Class Members, and Defendant.

20 26. "Preliminary Approval" means the date on which the Court enters the Preliminary  
21 Approval Order.

22 27. "Preliminary Approval Order" means the order entered and filed by the Court that  
23 preliminarily approves the terms and conditions of this Agreement.

24 28. "Released Parties" means Defendant My Paint Stop LLC dba Creative Paint, and its  
25 current and former officers, directors, members, managers, employees, agents, representatives,  
26 attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries,  
27 affiliates, divisions, predecessors, successors, assigns, joint venturers, and any individual or entity who  
28 or which could be jointly liable with Defendant My Paint Stop LLC dba Creative Paint and all persons

1 or entities acting by, through, under, or in concert with any of them.

2       29. “Response Deadline” means the deadline by which Settlement Class Members must  
3 submit to the Settlement Administrator valid requests to be excluded from the Settlement Agreement,  
4 valid objections to the Settlement Agreement, and disputes regarding Workweeks. The Response  
5 Deadline will be the date that is sixty (60) calendar days from the initial mailing of the Class Notice  
6 by the Settlement Administrator, unless the sixtieth (60th) day falls on a Sunday or a Federal holiday,  
7 in which case the Response Deadline will be extended to the next day on which the United States  
8 Postal service is open. The Response Deadline will be extended fifteen (15) calendar days for any  
9 Settlement Class Member who is re-mailed a Class Notice by the Settlement Administrator in  
10 accordance with the notice procedure described in Section IV of this Agreement, unless that fifteenth  
11 (15th) day falls on a Sunday or a Federal holiday, in which case the deadline will be extended to the  
12 next day on which the United States Postal service is open.

13       30. “Settled Claims” means any and all claims, causes of action, damages, wages, benefits,  
14 expenses, penalties, debts, liabilities, demands, obligations, attorneys’ fees, costs, and any other form  
15 of relief or remedy in law, equity, or whatever kind of nature, arising from the claims pled in the  
16 Action and any claims based on facts alleged in the operative complaint during the Class Period,  
17 including all claims for (i) failure to pay overtime wages due; (ii) failure to pay minimum wages; (iii)  
18 failure to provide all claims for meal periods; (iv) failure to provide rest periods; (v) failure to provide  
19 complete, accurate wage statements; (vi) failure to pay wages timely at time of termination; (vii) unfair  
20 business practices that could have been premised on the claims, causes of action or legal theories of  
21 relief described above or any of the claims, causes of action or legal theories of relief pleaded in the  
22 operative complaint; and (viii) all claims under the California Labor Code Private Attorneys General  
23 Act of 2004 or for civil penalties that could have been premised on the claims, causes of action or  
24 legal theories described above or any of the claims, causes of action or legal theories of relief pleaded  
25 in the operative complaint including but not limited to Labor Code sections 201, 202, 203, 204, 226(a),  
26 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198.

27       31. “Settlement” or “Settlement Agreement” means the agreement to settle the claims as  
28 set forth and embodied in this Agreement.

32. “Settlement Administration Costs” means the costs payable from the Gross Settlement Payment to the Settlement Administrator for administering this Settlement, including, but not limited to, translating the Class Notice from English to Spanish, printing, distributing, and tracking documents for this Settlement, calculating/confirming the Settlement Class Members’ Workweeks from the information contained in the Class List, calculating each Participating Class Member’s Individual Settlement Payment, tax reporting, distributing the Gross Settlement Payment, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties or the Court. Settlement Administration Costs shall not exceed Seven Thousand Dollars and Zero Cents (\$7,000.00).

33. “Settlement Administrator” means Simpluris. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

34. “Settlement Class” or “Settlement Class Members” means all current and former non-exempt and/or hourly-paid employees who worked for Defendant in the State of California at any time during the Class Period.

35. “Settlement Class Member” means an individual member of the Settlement Class.

36. “Workweeks” means the number of weeks each Settlement Class Member was employed by Defendant as an hourly paid or non-exempt employee in California and worked at least one (1) day during the Class Period.

## **II. RECITALS**

37. On July 7, 2021, Plaintiff submitted a written notice to the LWDA, with a copy sent to Defendant via U.S. Certified Mail, pursuant to California Labor Code section 2699.3, in which he provided notice of the specific provisions of the California Labor Code alleged to have been violated by Defendant, including the facts and theories to support the alleged violations. The notice alleged that Defendant violated California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198, and Industrial Welfare Commission Wage Order No. 7-2001. Plaintiff’s notice alleged, *inter alia*, that Defendant failed to pay minimum and overtime wages, failed to provide meal and rest periods, failed to timely pay wages during employment, failed to timely pay

wages upon termination, failed to keep accurate payroll records, and failed to furnish accurate itemized wage statements.

38. Plaintiff filed a putative class action and representative PAGA action against Defendant on August 30, 2021 in the Superior Court for Contra Costa County. The Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §§ 2698, et seq., alleged eight causes of action for: (1) Violation of California Labor Code sections 510 and 1198 (Unpaid Overtime Wages), (2) Violation of California Labor Code sections 1194, 1197, and 1197.1 (Unpaid Minimum Wages), (3) Violation of California Labor Code sections 226.7 and 512(a) (Unpaid Meal Period Premiums); (4) Violation of California Labor Code section 226.7 (Unpaid Rest Period Premiums); (5) Violation of California Labor Code section 226(a) (Failure to Issue Compliant Wage Statements); (6) Violation of California Labor Code sections 201, 202, 203 (Wages Not Timely Paid Upon Termination); (7) Violation of California Business and Professions Code sections 17200, et seq.; and (8) Violation of California Labor Code sections 2698, et seq.

39. Class Counsel diligently investigated the claims of the Settlement Class, including any and all applicable defenses and the applicable law. The discovery and investigation included, among other things: (1) inspection and analysis of employee documents and data, including time and payroll records, employment policies and procedures, and other relevant documents; (2) evaluation of legal positions taken by Defendant; (3) evaluation of potential class-wide damages and PAGA penalties; and (4) review and research of applicable law with respect to claims and potential defenses brought by Defendant. Class Counsel has prosecuted this Class Action, and Defendant has vigorously denied Plaintiff's allegations. The Parties have engaged in sufficient informal discovery and investigation to assess the relative merits of the claims and contentions of the Parties.

40. On May 11, 2022, the Parties mediated with the Honorable Raul Ramirez (Ret.) and reached the Settlement that is memorialized herein. The Parties' settlement discussions were conducted at arms' length, and the Settlement is the result of an informed and detailed analysis of Defendant's potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on Class Counsel's investigation, Class Counsel believes that the Settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate

and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant.

### **III. SETTLEMENT FUNDS AND SETTLEMENT PAYMENT ALLOCATION**

41. Funding of the Gross Settlement Payment. Within thirty (30) calendar days after the date the Court grants Final Approval of the Settlement, Defendant will deposit one-half of the Gross Settlement Payment (Three Hundred Thousand Dollars and Zero Cents), and all applicable employer-side payroll taxes, into a Qualified Settlement Fund ("QSF") within the meaning of Treasury Regulation Section 1.468B-1, *et seq.*, to be established by the Settlement Administrator. Within six (6) months after the date the Court grants Final Approval of the Settlement, Defendant shall deposit the second half of the Gross Settlement Payment (Three Hundred Thousand Dollars and Zero Cents), and all applicable employer-side payroll taxes, into the QSF. Defendant shall provide all information necessary for the Settlement Administrator to calculate necessary payroll taxes including its official name, 8-digit state unemployment insurance tax ID number, and other information requested by the Settlement Administrator, no later than fourteen (14) calendar days after the Effective Date.

42. Escalator Clause. Defendant estimated for purposes of settlement discussions that the Class Members worked a total of 9,000 Workweeks during the Class Period. If it is determined by the Settlement Administrator that the number of Workweeks worked by the Class Members during the Class Period actually exceeds 9,000 by more than 10% (i.e., by more than 900 Workweeks), Defendant shall increase the Gross Settlement Payment 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% to 9,990 Workweeks, the Gross Settlement Amount will increase by 1%.

43. Distribution from the QSF to the Class. Payments from the QSF for Individual Settlement Payments, Class Representative Enhancement Award, Attorneys' Fees and Costs to Class Counsel, LWDA Payment to the LWDA, and Settlement Administration Costs to the Settlement Administrator shall be made by the Settlement Administrator within fourteen (14) calendar days after the date the second half of the Gross Settlement Payment is deposited into the QSF

44. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Class Counsel for attorneys' fees of up to one-third (1/3) of the Gross Settlement Payment

(i.e., Two Hundred Thousand Dollars and Zero Cents) and actual costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00), both of which will be paid from the Gross Settlement Payment. Any portion of the requested Attorneys' Fees and Costs that is not awarded by the Court to Class Counsel shall be reallocated to the Net Settlement Fund and distributed to Participating Class Members as provided in this Agreement. The Parties agree that regardless of any action taken by the Court or any appellate court with respect to Attorneys' Fees and Costs, the validity of the underlying Settlement shall not be affected.

45. Enhancement Award to the Class Representative. Defendant agrees not to oppose or object to any application or motion by Plaintiff for a Class Representative Enhancement Award of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Richard Evans. The Class Representative Enhancement Award will be paid from the Gross Settlement Payment and will be in addition to the Class Representative's Individual Settlement Payment paid pursuant to the Settlement. Any adjustments made by the Court to the requested Class Representative Enhancement Award shall not be deemed a material modification of this Agreement. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Award, the Settlement Agreement remains in full force and effect and binding, and Plaintiff shall not have the right to revoke the settlement for that reason. Any portion of the requested Class Representative Enhancement Award that is not awarded by the Court to the Class Representative shall be reallocated to the Net Settlement Fund and distributed to Participating Class Members as provided in this Agreement.

46. PAGA Penalty Amount. Subject to approval by the Court, the Parties agree that the amount of Twenty-Five Thousand Dollars (\$25,000.00) shall be allocated from the Gross Settlement Payment for settlement and release of any and all claims for civil penalties under PAGA which may be sought or are otherwise available for any and all Settled Claims (i.e., PAGA Penalty Amount), which the Parties believe in good faith is a fair and reasonable apportionment. Pursuant to California Labor Code § 2699(i), the Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Penalty Amount, or Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00), to the LWDA. The remaining twenty-five percent (25%) of the PAGA Payment, or Six Thousand Two Hundred Fifty Dollars (\$6,250.00), will be distributed to PAGA Members on a *pro rata* basis based on the total

number of Workweeks worked by each PAGA Member during the PAGA Period.

47. Settlement Administration Costs. All costs and fees of the Settlement Administrator shall be paid from the Gross Settlement Payment. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

48. Individual Settlement Share Calculations. All Settlement Class Members who do not opt out of the Settlement will receive an Individual Settlement Share and are not required to submit a claim form. Individual Settlement Shares will be calculated and apportioned as follows:

A. Calculation of Class Portion of Individual Settlement Payments.

- i. After Preliminary Approval, the Settlement Administrator will determine the Workweeks of each Settlement Class Member, divide the Net Settlement Fund by the Workweeks of all Settlement Class Members to yield the “Estimated Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement.
- ii. After Final Approval, the Settlement Administrator will divide the final Net Settlement Fund by the Workweeks of all Participating Class Members to yield the “Final Workweek Value,” and multiply each Participating Class Member’s individual Workweeks by the Final Workweek Value to yield his or her final Individual Settlement Share.

B. Calculation of PAGA Portion of Individual Settlement Payments. The Settlement Administrator will calculate the total Workweeks for all PAGA Members by adding the number of workweeks worked by each PAGA Member during the PAGA Period. The amount that each PAGA Member will receive will be calculated by dividing each participating PAGA Member’s individual Workweeks by the total Workweeks of all PAGA Members and multiplying the resulting fraction by the 25% share of the PAGA Penalty Amount designated for distribution to PAGA Members. PAGA Members shall receive this portion of their Individual Settlement Payment regardless of whether they

1 opt out of participating in the Settlement Agreement regarding the Class claims.

2 49. Tax Treatment of Settlement Payments. Each payment of settlement funds to a  
3 Participating Class Member from the QSF, other than the Class Representative Enhancement Award  
4 and the PAGA Members' individual share of the PAGA Penalty Amount, shall be allocated as follows:  
5 twenty percent (20%) wages and eighty percent (80%) penalties and interest. The portion allocated to  
6 wages will be reported on an IRS Form W-2 and the portions allocated to penalties and interest,  
7 including portions allocated to PAGA penalties, will be reported on an IRS Form-1099 (if applicable)  
8 by the Settlement Administrator. The Settlement Administrator will withhold the employee's share  
9 of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and  
10 issue checks to Participating Class Members and PAGA Members for their Individual Settlement  
11 Payment (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The  
12 Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class Members,  
13 PAGA Members, and Class Counsel any tax forms (i.e., IRS Forms W-2, IRS Forms 1099, etc.) as  
14 may be required by law for all amounts paid pursuant to this Agreement. The Settlement  
15 Administrator will also be responsible for forwarding all payroll taxes and other legally required  
16 withholdings to the appropriate government authorities. Neither Defendant nor its counsel, nor Class  
17 Counsel make any representation and have made no representations as to the tax treatment or legal  
18 effect of the payments to be made pursuant to this Settlement Agreement, and Plaintiff, Participating  
19 Class Members, and PAGA Members are not relying on any statement, representation, or calculation  
20 by Defendant, the Settlement Administrator, or Class Counsel in this regard. Plaintiff, Participating  
21 Class Members, and PAGA Members understand and agree that Plaintiff, Participating Class  
22 Members, and PAGA Members will be solely responsible for the payment of any taxes and penalties  
23 assessed on the payments described in this Settlement Agreement. Plaintiff, Participating Class  
24 Members, and PAGA Members who receive any payment under this Agreement should consult with  
25 their tax advisors concerning the tax consequences of the Individual Settlement Payments they receive  
26 under the Settlement. Defendant shall have no involvement in or responsibility for the determination  
27 or payment of Employee Taxes and shall have no liability for errors made with respect to such  
28 Employee Taxes. With respect to the QSF: (1) Defendant shall be the "transferor" within the meaning

1 of Treasury Regulation Section 1.468B-1(d)(1) to the QSF; (2) the Settlement Administrator shall be  
2 the “administrator” of the QSF within the meaning of Treasury Regulation Section 1.468B-2(k)(3);  
3 and (3) Defendant and the Settlement Administrator shall cooperate in providing any statements or  
4 making any elections or filings necessary for satisfying the requirements for qualification as a  
5 “qualified settlement fund” within the meaning of Treasury Regulation Section 1.468B-1, et seq.,  
6 including as to the making of any relation-back election under Treasury Regulation Section 1.468B-  
7 1(j).

8         50.       Individual Settlement Payment checks shall be mailed by First Class U.S. Mail to the  
9 last known address of all Participating Class Members and PAGA Members, as reflected in the  
10 Settlement Administrator’s records, and subject to the provisions of Paragraph 42. If any Individual  
11 Settlement Payment check is returned as undeliverable within one hundred (100) calendar days after  
12 checks are initially mailed, the Settlement Administrator shall engage in reasonable skip-tracing  
13 efforts. If another address is identified, the Settlement Administrator shall mail the check to the newly  
14 identified address. If an Individual Settlement Payment is returned to the Settlement Administrator as  
15 undeliverable a second time, the Settlement Administrator shall not attempt any further re-mailing of  
16 that check.

17         51.       Check-Cashing Deadline and Uncashed Individual Settlement Payment Checks. Any  
18 checks issued by the Settlement Administrator to Participating Class Members and PAGA Members  
19 will be valid and negotiable for one hundred eighty (180) calendar days. If a Participating Class  
20 Member and/or PAGA Member does not cash his or her settlement check within 180 days, the  
21 uncashed funds, subject to Court approval, shall be distributed to the Controller of the State of  
22 California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et. seq.*  
23 for the benefit of those Participating Class Members and/or PAGA Members who did not cash their  
24 checks until such time that they claim their property. In such event, the Participating Class Member(s)  
25 shall nevertheless remain bound by the Settlement. The Parties agree that this disposition results in  
26 no “unpaid residue” under California Civil Procedure Code § 384, as the entire Net Settlement Fund  
27 will be paid out to Participating Class Members, whether or not they all cash their settlement checks.  
28 Therefore, Defendant will not be required to pay any interest on such amounts. The Individual

1 Settlement Payments provided to Participating Class Members and to PAGA Members shall  
2 prominently state the expiration date or a statement that the settlement check will expire in one hundred  
3 eighty (180) days, or alternatively, such a statement may be made in a letter accompanying the  
4 Individual Settlement Payment. Expired Individual Settlement Payments will not be reissued, except  
5 for good cause and as mutually agreed by the Parties in writing. The parties agree no unclaimed funds  
6 will result from the settlement process detailed in this Agreement.

7       52. Disputes Regarding Dates of Employment, Workweeks, and/or Estimated Individual  
8 Settlement Share. The Class Notice shall be individualized and shall include a statement of the dates  
9 worked by the Settlement Class Member receiving the notice, number of Workweeks, and estimated  
10 Individual Settlement Share, based on available records provided by Defendant. Settlement Class  
11 Members will have an opportunity to dispute the information provided in the Class Notice. To the  
12 extent a Settlement Class Member disputes the information as set forth in his or her Class Notice, that  
13 Settlement Class Member shall submit a written, signed challenge (“Dispute”) along with any  
14 supporting documents to the Settlement Administrator at the address or fax number provided on the  
15 Class Notice, postmarked or fax-stamped no later than the Response Deadline. The Dispute must  
16 contain: (a) the case name and number of the Action, (b) the Settlement Class Member’s signature, (c)  
17 the full name, address, telephone number, and the last four digits of the Social Security Number and/or  
18 Employee ID number of the disputing Settlement Class Member, (d) a statement that the Settlement  
19 Class Member disputes the number of Workweeks credited to him or her and what he or she contends  
20 is the correct number to be credited to him or her, and (e) information and/or documentation  
21 demonstrating that the number of Workweeks that he or she contends should be credited to him or her  
22 are correct. Absent evidence rebutting Defendant’s records, Defendant’s records will be presumed  
23 determinative. However, if a Settlement Class Member produces evidence to the contrary, the  
24 Settlement Administrator will, within five (5) calendar days from the date the Settlement  
25 Administrator receives notice of any such challenge, send to Class Counsel and Defendant’s counsel  
26 a copy of the documentation submitted in connection with that Dispute. Within five (5) calendar days  
27 from the date counsel receive that documentation, Class Counsel and Defendant’s counsel shall meet  
28 and confer and make one or more recommendations to the Settlement Administrator, and the

Settlement Administrator shall thereafter make a final and binding determination, without hearing or right to appeal, and shall communicate that determination to the Settlement Class Member, Class Counsel, and Defendant's counsel. In no case will a Dispute result in a payment by Defendant in excess of the Gross Settlement Payment. If a Settlement Class Member does not challenge the information set forth in the Class Notice, the Settlement Class Member need not do anything further and payment shall be made to that Settlement Class Member based on the records provided by Defendant and the terms of this Agreement.

#### **IV. PRELIMINARY APPROVAL AND SETTLEMENT ADMINISTRATION**

53. Preliminary Approval of Settlement and Request for Preliminary Approval Order. Plaintiff will obtain a hearing date from the Court to request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the Class Notice to be sent to all Settlement Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Agreement, which sets forth the terms of the Settlement, and will include the proposed Class Notice attached as Exhibit 1. Defendant shall file a notice of non-opposition that states it either joins in Plaintiff's Motion for Preliminary Approval or that it will not file any response to Plaintiff's unopposed Motion for Preliminary Approval.

54. Notice of Settlement to the LWDA. Pursuant to California Labor Code § 2699(1)(2), Class Counsel shall notify the LWDA of the Settlement upon filing the motion for preliminary approval of the Settlement.

55. Responsibilities of Settlement Administrator. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Parties agree that the following procedures for providing the Class Notice provide the best practicable notice to Settlement Class Members and are consistent with the requirements of due process and California Rule of Court 3.766. The Settlement Administrator will provide the following services:

- a. The Settlement Administrator shall be responsible for translating the Class Notice from English to Spanish, and for formatting, printing, and mailing to all Settlement Class Members an individualized version of the Class Notice, in substantially the form approved by the Court, and such other materials as may be required to be distributed, all as approved and directed by the Court.
- b. Within fourteen (14) calendar days of an Order from the Court granting Preliminary Approval of the Settlement Agreement, Defendant will provide the Class List to the Settlement Administrator. This is a material term of the Agreement, and if Defendant fails to comply, Plaintiff shall have the right to void the Agreement.
- c. Based on the information in the Class List and the terms of this Settlement, the Settlement Administrator shall promptly calculate the number of Workweeks and estimated Individual Settlement Share for every Settlement Class Member, to be included in the Class Notice to be sent to that Settlement Class Member, and shall prepare and email a spreadsheet setting forth those calculations to Class Counsel and Defendant's counsel no fewer than two (2) business days before mailing the Class Notice to Settlement Class Members.
- d. Within seven (7) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail the Class Notice to all Settlement Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. The Parties may not vary from the form of the Class Notice approved by the Court. If the Settlement Administrator asks for the Parties' approval prior to mailing the court approved Class Notice, the Parties shall provide their approval within three (3) business days. If either Party has an objection to the court approved form of the Class Notice, it must seek *ex parte* relief from the Court about its objection.
- e. All Settlement Class Members will be mailed a Class Notice. Each Class Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of

1 Workweeks each respective Settlement Class Member worked for Defendant during  
2 the Class Period; (e) each Settlement Class Member's estimated Individual Settlement  
3 Payment and the formula for calculating Individual Settlement Payments; (f) the dates  
4 which comprise the Class Period and PAGA Period; (g) the deadlines by which the  
5 Settlement Class Member must postmark Requests for Exclusion, Objections to the  
6 Settlement, or workweek disputes; (h) the claims to be released, as set forth herein; and  
7 (i) the date for the final approval hearing.

8 f. Prior to mailing, the Settlement Administrator will perform a search based on the  
9 National Change of Address Database for information to update and correct for any  
10 known or identifiable address changes. Any Class Notice returned to the Settlement  
11 Administrator as non-deliverable on or before the Response Deadline will be sent  
12 promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto  
13 and the Settlement Administrator will indicate the date of such re-mailing on the Class  
14 Notice. If no forwarding address is provided, the Settlement Administrator will  
15 promptly attempt to determine the correct address using a skip-trace, or other search  
16 using the name, address and/or Social Security number of the Settlement Class Member  
17 involved and will then perform a single re-mailing. If any Class Notice sent to a Class  
18 Member by the Settlement Administrator is returned as undeliverable to a current  
19 employee, then Defendant shall make all reasonable efforts to obtain the current  
20 address from the Settlement Class Member and provide the same within seven (7)  
21 calendar days of notice from the Settlement Administrator. Those Settlement Class  
22 Members who receive a re-mailed Class Notice, whether by skip-trace or by request,  
23 will have between the later of (a) an additional fifteen (15) calendar days or (b) the  
24 Response Deadline to postmark a Request for Exclusion, or an Objection to the  
25 Settlement. It will be conclusively presumed that, if an envelope so mailed has not been  
26 returned within twenty (20) days of the mailing, the Settlement Class Member received  
27 the notice packet.

28 g. For any Class Notice that is returned by the post office as undeliverable without a

1 forwarding address or addressee unknown, the Settlement Administrator shall perform  
2 a skip-trace search that shall use such public and proprietary electronic resources as are  
3 available to the Settlement Administrator that lawfully collect address data from  
4 various sources such as utility records, property tax records, motor vehicle registration  
5 records, and credit bureaus. If the Settlement Administrator is successful in locating  
6 an alternate subsequent address or addresses, the Settlement Administrator shall  
7 perform a single re-mailing of the Class Notice to the updated address(es) within five  
8 (5) calendar days of receipt of the undeliverable Class Notice. Settlement Class  
9 Members who receive a re-mailed Class Notice will have an extended fifteen (15)  
10 calendar days from the original Response Deadline to opt out of the Settlement, object  
11 to the Settlement, or submit a Dispute. If a Settlement Class Member's Notice Packet  
12 is returned to the Settlement Administrator more than once as undeliverable, then an  
13 additional Notice Packet shall not be re-mailed. Nothing further shall be required of,  
14 or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the  
15 proposed settlement.

- 16 h. Compliance with the procedures described in this section herein above, shall constitute  
17 due and sufficient notice to Settlement Class Members of this Settlement and shall  
18 satisfy the requirements of due process. In the event the procedures set forth herein are  
19 followed and an intended recipient of a Notice Packet still does not receive the Notice  
20 Packet, the intended recipient will be a Participating Class Member and will be bound  
21 by all terms of the Settlement and Final Judgment entered by the Court. Nothing else  
22 shall be required of or done by the Parties, Class Counsel, and Defense Counsel to  
23 provide notice of the proposed Settlement.

24 56. Objections to Settlement. To object to the Settlement, a Participating Class Member  
25 must postmark a valid Objection to the Settlement Administrator on or before the Response Deadline.  
26 The Objection must be signed by the Participating Class Member and contain all information required  
27 by this Settlement Agreement, including the Participating Class Member's full name, address,  
28 telephone number, the last four digits of their social security number and/or Employee ID number,

1 the specific reason including any legal grounds for the Participating Class Member's objection, and  
2 whether the Settlement Class Member intends to appear at the Final Approval Hearing. The postmark  
3 date will be deemed the exclusive means for determining that the Objection is timely. Any dispute  
4 regarding the validity of an Objection falls solely within the discretion of the Settlement Administrator  
5 unless both Parties stipulate otherwise. Participating Class Members who fail to object in the manner  
6 specified above will be foreclosed from making a written objection but shall still have a right to appear  
7 at the Final Approval Hearing in order to have their objections heard by the Court. At no time will any  
8 of the Parties or their counsel seek to solicit or otherwise encourage Participating Class Members to  
9 submit written objections to the Settlement or appeal from the Order and Judgment. Class Counsel  
10 will not represent any Participating Class Members with respect to any objections to this Settlement.  
11 By executing this Settlement, Plaintiff hereby stipulates he will not object or seek to exclude himself  
12 from the Settlement in any manner.

13 57. Opting-Out of the Settlement. Any Settlement Class Member wishing to opt-out from the  
14 Action must sign and postmark a written Request for Exclusion to the Settlement Administrator by  
15 the Response Deadline. The Request for Exclusion must include (a) the Settlement Class Member's  
16 name, address, telephone number, and the last four digits of the Settlement Class Member's Social  
17 Security number and/or the Employee ID number and (b) a clear statement requesting to be excluded  
18 from the Settlement. No Requests for Exclusion may be made by a Settlement Class Member on behalf  
19 of another Settlement Class Member or group of Settlement Class Members. The date of the postmark  
20 on the return mailing envelope receipt confirmation will be the exclusive means to determine whether  
21 a Request for Exclusion has been timely submitted. All Requests for Exclusion will be submitted to  
22 the Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the  
23 Requests for Exclusion that were timely submitted. Any Settlement Class Member who requests to be  
24 excluded from the Settlement will not be entitled to any recovery under the Settlement and will not be  
25 bound by the terms of the Settlement. At no time shall any of the Parties or their counsel seek to solicit  
26 or otherwise encourage, cause, directly or indirectly, members of the Settlement Class to submit  
27 Requests for Exclusion from the Settlement. Settlement Class Members who submit a valid Request  
28 for Exclusion may not also submit a Notice of Objection. Regardless of whether a Settlement Class

1 Member submits a timely Request for Exclusion, if the Settlement Class Member worked during the  
2 PAGA period, the Settlement Class Member shall still be entitled to an Individual Settlement Payment  
3 from the PAGA allocation as a Similarly Aggrieved Employee and will be bound by the settlement of  
4 the PAGA claim. All Settlement Class Members who do not request a timely exclusion from the Action  
5 will be bound by all terms of the Settlement Agreement if the Settlement is granted final approval by  
6 the Court.

7 58. Defendant's Right to Rescind. If more than ten percent (10%) of the Settlement Class  
8 Members (rounded to the next whole number) elect not to participate in the Settlement, Defendant  
9 may, at its election, rescind the Settlement Agreement and all actions taken in furtherance of it will be  
10 thereby null and void. Defendant must meet and confer with Class Counsel prior to exercising this  
11 right and must make clear its intent to rescind the Agreement within ten (10) calendar days of the  
12 Settlement Administrator notifying the Parties of these opt-outs, which the Settlement Administrator  
13 will do within seven (7) calendar days after the Response Deadline. If Defendant decides to void the  
14 Settlement, then the Settlement and conditional class certification shall be considered void, and neither  
15 the Settlement, nor any of the related negotiations or proceedings, shall be of any force or effect, and  
16 the Parties shall still stand in the same position, without prejudice, as if this Settlement had neither  
17 been entered into nor filed with the Court. If Defendant exercises its right to rescind the Agreement,  
18 Defendant shall be responsible for all Settlement Administration Costs incurred to the date of  
19 rescission.

20 59. Interim Reports by the Settlement Administrator. The Settlement Administrator shall  
21 provide weekly reports to counsel for the Parties providing (1) the status of the mailing of the Class  
22 Notice to Settlement Class Members, including but not limited to the names of Settlement Class  
23 Members for whom the Class Notice was returned as undeliverable; (2) the names of Settlement Class  
24 Members who submit requests for exclusion or objections to the Settlement; and (3) the names of  
25 Settlement Class Members who submitted Disputes, including the resolution of any such Disputes.  
26 No later than five (5) business days prior to the deadline for filing a motion for final approval of the  
27 Settlement, the Settlement Administrator shall provide counsel for the Parties with a declaration  
28 regarding the settlement notice administration process, including the total number and names of

1 Settlement Class Members who timely opted out of the Settlement, the total number and names of  
2 Participating Class Members who submitted objections to the Settlement, and any other information  
3 that may be required by the Court.

4 **V. FINAL APPROVAL**

5 60. Final Approval Hearing. Upon completion of the Class Notice process, including the  
6 expiration of the deadlines to postmark Requests for Exclusion or Objections to the Settlement  
7 Agreement, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final  
8 Approval of the Settlement Agreement along with the amounts properly payable for: (a) Individual  
9 Settlement Payments; (b) the PAGA Penalty Amount; (c) Class Counsel's Attorneys' Fees and Costs;  
10 (d) the Class Representative Enhancement Award; and (e) the Settlement Administration Costs. The  
11 Parties and their Counsel shall cooperate and make all reasonable efforts to revise the Settlement as  
12 necessary to obtain Final Approval. Any failure by the Court to fully and completely approve the  
13 Settlement Agreement as to all of the Action, or the entry of any Order by another Court with regard  
14 to any of the Action which has the effect of modifying material terms of this Agreement or preventing  
15 the full and complete approval of the Settlement Agreement as written and agreed to by the Parties,  
16 will result in this Agreement and all obligations under this Agreement being null and void. In such a  
17 case, the Parties and any funds to be awarded under the settlement shall be returned to their respective  
18 statuses as of the date and time immediately prior to the execution of the Settlement and the Parties  
19 shall proceed in all respects as if this Settlement had not been executed, except that any costs and fees  
20 already incurred by the Settlement Administrator shall be paid jointly by the Parties. In the event an  
21 appeal is filed from the Court's Final Judgment, or any other appellate review is sought, administration  
22 of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, and  
23 any other payments required hereunder by Defendant will not be paid pending completion and final  
24 resolution of the appeal, and any payment thereafter will: (1) only occur if the Final Judgment is  
25 upheld after all appeals; and (2) be in a manner that is provided for in the Settlement and in the Final  
26 Judgment. Defendant agrees it shall not oppose the granting of the Motion for Final Approval,  
27 provided Defendant has not exercised its right to rescind pursuant to the terms of this Agreement.

28 61. Final Approval Order and Judgment. The proposed Final Approval Order and

Judgment to be submitted to the Court shall be in a form mutually agreed upon by the Parties. The Parties shall not object to any final Judgment that is substantially in the form submitted to the Court by the Parties. If the Court grants final approval of the Settlement, the Settlement Administrator shall post the Final Approval Order and Judgment on its website within seven (7) calendar days of entry of the Final Approval Order and Judgment.

62. Continued Jurisdiction. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement. The Court shall award attorneys' fees and costs to the prevailing party in any motion or action taken and based on an alleged violation of any material term of the Settlement and/or in any action taken to enforce the terms of this Settlement.

## **VI. RELEASED CLAIMS**

63. Release of Claims by Plaintiff and All Participating Class Members. Upon the funding of the Gross Settlement Payment and all applicable employer-side payroll taxes by Defendant, each and every Participating Class Member, including Plaintiff, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, and assigns, shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all Settled Claims, and shall be permanently barred and enjoined from the institution or prosecution of any and all Settled Claims against the Released Parties, except as to such rights or claims as may be created by the Settlement, subject to the continuing jurisdiction of the Court.

## **VII. MISCELLANEOUS**

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

65. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' Settlement. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

66. Amendment or Modification. This Settlement Agreement may be amended or modified

only by a written instrument signed by counsel for all Parties or their successors-in-interest.

67. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

68. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

69. California Law Governs. All terms of this Settlement Agreement hereto will be governed by and interpreted according to the laws of the State of California.

70. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

71. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

72. Invalidity of Any Provision. Before declaring any provision of this 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 Agreement valid and enforceable.

73. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class

1 certification for purposes of this Settlement only; except, however, that either party may appeal any  
2 court order that materially alters the Settlement Agreement's terms.

3 74. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate  
4 to class action certification of the Settlement Class only for purposes of the Settlement. If, for any  
5 reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further  
6 agree that certification for purposes of the Settlement is not an admission that class action certification  
7 is proper under the standards applied to contested certification motions and that this Agreement will  
8 not be admissible in this or any other proceeding as evidence that either: (a) a class action should be  
9 certified or (b) Defendant is liable to Plaintiff or any Settlement Class Member, other than according  
10 to the Settlement's terms.

11 75. Neutral Employment Reference. Defendant agrees that it will adopt a neutral reporting  
12 policy regarding any future employment references related to Plaintiff. In the event that any potential  
13 or future employers of Plaintiff request a reference regarding Defendant's employment of Plaintiff,  
14 Defendant shall only provide Plaintiff's dates of employment and job titles during employment.  
15 Defendant shall not refer to the Action or this Settlement.

16 76. Non-Admission of Liability. The Parties enter into this Agreement to resolve the  
17 dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation.  
18 In entering into this Agreement, Defendant does not admit, and specifically denies, it has violated any  
19 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute  
20 or any other applicable laws, regulations or legal requirements; breached any contract; violated or  
21 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful  
22 conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor  
23 any of the negotiations connected with it, shall be construed as an admission or concession by  
24 Defendant of any such violations or failures to comply with any applicable law. Except as necessary  
25 in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions  
26 shall not be offered or received as evidence in any action or proceeding to establish any liability or  
27 admission on the part of Defendant or to establish the existence of any condition constituting a  
28 violation of, or a non-compliance with, federal, state, local or other applicable law.

1           77.    Captions. The captions and section numbers in this Agreement are inserted for the  
2 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the  
3 provisions of this Agreement.

4           78.    Waiver. No waiver of any condition or covenant contained in this Settlement  
5 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to  
6 imply or constitute a further waiver by such party of the same or any other condition, covenant, right  
7 or remedy.

8           79.    Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
9 conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against  
10 one Party than another merely by virtue of the fact that it may have been prepared by counsel for one  
11 of the Parties, it being recognized that, because of the arms-length negotiations between the Parties,  
12 all Parties have contributed to the preparation of this Settlement Agreement.

13          80.    Representation By Counsel. The Parties acknowledge that they have been represented  
14 by counsel throughout all negotiations that preceded the execution of this Agreement, and that this  
15 Agreement has been executed with the consent and advice of counsel and reviewed in full. Further,  
16 Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

17          81.    All Terms Subject to Final Court Approval. All amounts and procedures described in  
18 this Settlement Agreement herein will be subject to final Court approval.

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

25          83.    Execution by Settlement Class Members. It is agreed that it is impossible or impractical to  
26 have each Settlement Class Member execute this Settlement. This Notice of Settlement will advise all  
27 Settlement Class Members of the binding nature of this release, and such shall have the same force and effect  
28 as if each Settlement Class Member executed this Settlement.

84. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

**IT IS SO STIPULATED.**

Dated: 6/13/2022 | 1:47:05 PM PDT

By:   
Richard Evans

Dated: Jun 13, 2022

By:   
Ly Tran  
As Managing Member of  
My Paint Stop, LLC., dba Creative Paint

**APPROVED AS TO FORM ONLY:**

**BLACKSTONE LAW, APC**

Dated: June 13, 2022

By:   
Jonathan M. Genish, Esq.  
Attorney for Plaintiff Richard Evans  
and Proposed Class Counsel

**JON WEBSTER LAW GROUP, APC**

Dated: June 14, 2022

By:   
Dustin Burton  
Attorney for Defendants  
My Paint Stop, LLC., dba Creative Paint

## **EXHIBIT 1**

## **NOTICE OF CLASS ACTION SETTLEMENT**

### ***Evans v. My Paint Stop, LLC dba Creative Paint***

**Superior Court of the State of California for the County of Contra Costa, Case No. MSC21-01812**

To: All current and former non-exempt and/or hourly-paid employees employed by My Paint Stop, LLC dba Creative Paint in the State of California at any time during the period from August 30, 2017 to May 11, 2022 (“Settlement Class Members”).

***You are not being sued. This is a Court-approved notice that affects your rights. Please read it carefully.***

The purpose of this Notice is to let you know of a proposed settlement (the “Settlement”) that has been reached in a class and representative action that is pending in the Superior Court for the County of Contra Costa. The lawsuit was filed by a former employee, Richard Evans (“Plaintiff”) against My Paint Stop, LLC dba Creative Paint (“My Paint Stop”) (collectively, Plaintiff and My Paint Stop are referred to as the “Parties”), entitled *Evans v. My Paint Stop, LLC dba Creative Paint*, Contra Costa Superior Court Case No. MSC21-01812 (the “Lawsuit”).

The Court granted preliminary approval of the Parties’ settlement on [Date] and has scheduled a hearing on [Date] at [Time] (the “Final Approval Hearing”) to determine whether or not to grant final approval of the Settlement. **Your legal rights may be affected, and you have a choice to make now.**

### **1. WHAT ARE MY OPTIONS?**

|                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DO NOTHING</b>                           | <b>Receive an Individual Settlement Payment.</b><br><br>By doing nothing, you will receive an Individual Settlement Payment. However, you will release the right to assert all of the Released Claims (see Section 7 below) against My Paint Stop and the other Released Parties.                                                                                                                                                                                                                                                                                                                                      |
| <b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b> | <b>Exclude Yourself from the Settlement and Receive No Payment.</b><br><br>You may opt-out of the Settlement by submitting a signed Request for Exclusion (see Section 8(B) below) that must be postmarked no later than [Response Deadline]. If you submit a valid and timely Request for Exclusion, you will not receive any payment from the Settlement and you will not be bound by the Settlement and the release of claims provided under the Settlement.                                                                                                                                                        |
| <b>OBJECT TO THE SETTLEMENT</b>             | <b>Object to the Settlement.</b><br><br>If you choose to participate in the Settlement, you may submit an objection to the Settlement. To object, you can submit a written Objection (see Section 8(C) below) to the Settlement Administrator no later than [Response Deadline], or you can appear at the Final Approval Hearing and state any objections to the Settlement. If the Court overrules your objection, you will receive an Individual Settlement Payment, and you will release the right to assert all of the Released Claims (see Section 7 below) against My Paint Stop and the other Released Parties. |

### **2. WHY DID I GET THIS NOTICE?**

My Paint Stop’s records show that you were employed by My Paint Stop in California at some point during the period from August 30, 2017 to May 11, 2022 (the “Class Period”). The Court has authorized this notice because you have the right to know about the Settlement and your options before the Court decides whether to approve it. This notice explains what the Lawsuit is about, the terms of the Settlement, and your rights.

### **3. WHAT IS THIS LAWSUIT ABOUT?**

On August 30, 2021, Plaintiff filed a Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §§ 2698, et seq. (the “Complaint”) in the Superior Court for the County of Contra Costa. Plaintiff alleged that Defendant failed to pay all wages due, including overtime wages, minimum wages, meal period premiums, and rest period premiums; failed to issue compliant wage statements; failed to timely pay wages upon termination; engaged in unfair business practices; and owed penalties pursuant to the California Labor Code Private Attorneys’ General Act of 2004, codified at California Labor Code §§ 2698, et seq. (“PAGA”). In his Complaint, Plaintiff sought to represent a class of all current and former non-exempt and/or hourly-paid employees who worked for My Paint Stop in the State of California at any time during the period from August 30, 2017 to final judgment and who are residents of the State of California.

My Paint Stop denies all of the material allegations in the Complaint and asserted numerous affirmative defenses.

The Parties participated in a mediation with mediator Hon. Raul Ramirez (Ret.) and reached this Settlement.

### **4. WHY IS THERE A SETTLEMENT?**

The Court has not made any decision about the merits of Plaintiff’s Lawsuit. There has been no trial. However, to avoid additional expense and the risks of continued litigation, Plaintiff and My Paint Stop have concluded that it is in their respective best interests and the interest of the Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice.

The Settlement was reached after an exchange of extensive information about the facts and legal arguments in support of, and against, all of the claims raised in the Lawsuit. Plaintiff, Class Counsel, and My Paint Stop all support this Settlement due to, among other things, My Paint Stop’s potential defenses to liability, the inherent risk associated with a trial on the merits, the delays and uncertainties associated with litigation, and the benefits provided to Settlement Class Members under the Settlement.

### **5. SUMMARY OF THE SETTLEMENT**

My Paint Stop has agreed to pay a settlement amount of Six Hundred Thousand Dollars (\$600,000.00) (the “Gross Settlement Payment”). The portion of the Gross Settlement Payment that is available for payment to the Settlement Class Members is referred to as the “Net Settlement Fund.” The Net Settlement Fund will be the Gross Settlement Payment less the following payments which are subject to approval by the Court: (1) Class Representative Enhancement Award in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00), (2) PAGA Penalty Amount in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00), (3) Attorneys’ Fees in an amount not to exceed thirty-three percent (33%) of the Gross Settlement Payment (i.e., \$200,000.00), (4) Attorneys’ Costs in an amount not to exceed Thirty Thousand Dollars (\$30,000.00), and (5) Settlement Administration Costs in an amount not to exceed Seven Thousand Dollars (\$7,000.00).

Twenty-Five Thousand Dollars (\$25,000.00) of the Gross Settlement Payment has been allocated towards penalties under the PAGA (the “PAGA Penalty Amount”), of which the California Workforce and Development Agency (“LWDA”) will be allocated 75%, and the remaining 25% will be allocated to those individuals who were employed by Defendant in the State of California at any time during the period from July 7, 2020 to May 11, 2022 (the “PAGA Members.”)

Settlement Class Members are eligible to receive payment of their pro rata share of the Net Settlement Fund (“Individual Settlement Share”) based on the number of weeks that each Settlement Class Member was credited to have worked for My Paint Stop as an hourly-paid or non-exempt employee in the State of California at any

time during the Class Period, and worked at least one day, rounded up to the nearest hundredth of a workweek (“Workweeks”).

The Settlement Administrator has divided the Net Settlement Fund by the Workweeks of all Settlement Class Members to yield the “Estimated Workweek Value” and multiplied each Settlement Class Members’ individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement. If the Court grants final approval of the Settlement, the Settlement Administrator shall divide the final Net Settlement Fund by the Workweeks of all Settlement Class Members who did not submit a valid and timely Request for Exclusion (“Participating Class Members”) to yield his or her Individual Settlement Payment, which shall be paid from the Net Settlement Fund, less applicable employee-side tax withholdings.

Each Individual Settlement Share will be allocated twenty percent (20%) to wages, which will be reported on an IRS Form W2, and eighty percent (80%) to penalties and interest, which will be reported on an IRS Form 1099 (if applicable). The Settlement Administrator will withhold the employee’s share of taxes and withholdings with respect to the wage portion of the Individual Settlement Shares, and issue checks to Participating Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The employer’s share of taxes on the wage portion of Individual Settlement Shares will be paid by My Paint Stop separately and in addition to the Gross Settlement Payment.

## **6. WHAT IS MY ESTIMATED INDIVIDUAL SETTLEMENT SHARE?**

According to My Paint Stop’ records, during the period **from August 30, 2017 to May 11, 2022 you worked for My Paint Stop as an hourly-paid or non-exempt employee in California for approximately [REDACTED] Workweeks.**

If you wish to dispute the Workweeks credited to you in this Notice, you must submit a written, signed challenge (“Dispute”) to the Settlement Administrator. The Dispute must contain: (a) the case name and number of the Action (*Evans v. My Paint Stop*, Case No. MSC21-01812), (b) your signature, (c) your full name, address, telephone number, and the last four digits of your Social Security Number and/or Employee ID number, (d) a statement that you dispute the number of Workweeks credited to you and what you contend is the correct number to be credited to you, and (e) information and/or documentation demonstrating that the number of Workweeks that you contend should be to you are correct.

Under the terms of the Settlement, **your Individual Settlement Share is estimated to be \$[REDACTED]**. The Individual Settlement Share is subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Your Individual Settlement Share reflected in this Notice is only an estimate. Your actual Individual Settlement Share may be higher or lower.

## **7. WHAT RIGHTS AM I RELEASING IF I PARTICIPATE IN THE SETTLEMENT?**

If the Court approves the Settlement, the Court will enter a judgment and the Settlement Agreement will bind all Settlement Class Members who have not submitted a timely and valid Request for Exclusion. This will bar all such Settlement Class Members from bringing certain claims against My Paint Stop.

As more fully explained in the Settlement Agreement, upon the Effective Date, each and every Settlement Class Member who does not timely opt out of the Settlement, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, and assigns, shall be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all claims that were alleged in this Lawsuit, or that could have been raised that arise out of or are related to the

allegations, claims, and theories alleged in the Lawsuit or any of the PAGA notices filed with the LWDA during the pendency of this Lawsuit by Class Counsel on behalf of any Settlement Class Member, and that occurred at any time between August 30, 2017 to May 11, 2022, including, all claims for unpaid overtime wages, unpaid minimum wages, meal period violations, rest period violations, failure to provide accurate wage statements, final wages not timely paid, and unlawful business practices under the California Labor Code and/or the California Business and Professions Code, including all claims for restitution or equitable relief, liquidated damages, penalties, attorneys' fees and costs. "Released Parties" means Defendant My Paint Stop, and their current and former officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, joint venturers, and any individual or entity who or which could be jointly liable with Defendant My Paint Stop and all persons or entities acting by, through, under, or in concert with any of them. Settlement Class Members shall be permanently barred and enjoined from the institution or prosecution of any and all Settled Claims against the Released Parties, except as to such rights or claims as may be created by the Settlement, subject to the continuing jurisdiction of the Court.

The information provided in this Notice is only a summary. The terms of the Settlement Agreement are the binding terms of this settlement, and all of these terms, including the releases that will bind you as a class member if you do not submit a Request for Exclusion, are set forth fully in the Settlement Agreement that is on file with the Court, and which can also be found at [www.](http://www.) [REDACTED]. If the Court does not approve the Settlement, or the Settlement does not become final for some other reason, the litigation against My Paint Stop will continue.

## **8. WHAT ARE MY RIGHTS AND OPTIONS AS A SETTLEMENT CLASS MEMBER?**

### **A. PARTICIPATE IN THE SETTLEMENT**

**If you wish to participate in the Settlement and receive money from the Settlement, you do not have to do anything.** You will automatically be included in the Settlement and will be issued your Individual Settlement Payment. If you participate in the Settlement, you will be bound by its terms and any judgment that may be entered by the Court based thereon, and you will release all of the claims described in Section 7 above. As a Settlement Class Member, you will not be separately responsible for the payment of attorneys' fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and expenses.

### **B. EXCLUDE YOURSELF FROM THE SETTLEMENT**

**If you wish to exclude yourself from the Settlement because you wish to pursue a separate lawsuit against My Paint Stop for the claims asserted in this Action, or if you do not wish to participate in the Settlement for other reasons, you must submit a signed Request for Exclusion to the Settlement Administrator asking to exclude yourself from the Settlement.** The Request for Exclusion must: (a) contain the case name and number of the Action (*Evans v. My Paint Stop*, Case No. MSC21-01812), (b) include your signature, (c) include your name, address, telephone number, and the last four digits of your Social Security number and/or the Employee ID number, (d) include a clear statement requesting to be excluded from the Settlement, (and (e) be submitted to the Settlement Administrator by mail or facsimile, postmarked or fax-stamped no later than [Response Deadline] to the following mailing address or fax number:

Simpluris, Inc.  
[Mailing Address]  
[Facsimile Number]

No Requests for Exclusion that are postmarked after [Response Deadline] will be valid. Requests for Exclusion that do not include all of the required information will be deemed null, void, and ineffective.

If the Court grants final approval of the Settlement, any Settlement Class Member who submits a valid and timely Request for Exclusion will not be entitled to receive any payment from the Settlement, will not be bound by the Settlement (and the release of claims described in Section 7 above), and will not have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Members who do not submit a valid and timely request for exclusion will be deemed Participating Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of claims described in Section 7 above, as well as any judgment that may be entered by the Court based thereon.

Settlement Class Members will receive their share of the PAGA payment, regardless of whether they opt out of being a Class Member.

### **C. OBJECT TO THE SETTLEMENT**

If you do not think the Settlement is fair, you can object to the Settlement and tell the Court you do not agree with the Settlement or some part of it as long as you have not submitted a Request for Exclusion from the Settlement. The Court will consider your views. To object, you must submit a written objection to the Settlement Administrator or appear at the final settlement hearing to explain your objection. To be valid, a written objection must: (a) contain the case name and number of the Action (*Evans v. My Paint Stop*, Case No. MSC21-01812), (b) include your signature, (c) include your name, address, telephone number, and the last four digits of your Social Security number and/or your Employee ID number, (d) the specific reason including any legal grounds for your objection, (e) state whether you intend to appear at the Final Approval Hearing, and (f) be submitted to the Settlement Administrator by mail or facsimile, postmarked or fax-stamped no later than [Insert Response Deadline] to the Settlement Administrator listed in Section 8B above.

### **9. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?**

The Court will hold a Final Approval Hearing on [Date] at [Time] in Department 39 of the Wakefield Taylor Courthouse, located at 725 Court Street, Martinez, California 94553 to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve and award Attorneys' Fees and Costs to Class Counsel and the Class Representative Enhancement Award. The hearing may be postponed without further notice to Settlement Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

### **10. WHAT IF I HAVE QUESTIONS?**

A complete copy of the Settlement Agreement and this Notice are available at [www.\[redacted\]](http://www.[redacted]). This website will be updated periodically to update the Settlement Class Members on any developments in the case.

For further information about this case, you may contact Class Counsel, or the Settlement Administrator, Simpluris, Inc.

Jonathan Genish  
Joana Fang  
**BLACKSTONE LAW, APC**  
8383 Wilshire Boulevard, Suite 745  
Beverly Hills, California, 90211  
Tel: 310-622-4278

Simpluris, Inc.  
[Address/Contact Information]

**DO NOT CONTACT THE COURT, MY PAINT STOP, OR MY PAINT STOP'S ATTORNEYS ABOUT THIS NOTICE.**