

SETTLEMENT AGREEMENT

This Settlement Agreement (this “Settlement” or “Agreement”) is made by and between plaintiff Pele Henderson (“Plaintiff”) and defendant Scopely, Inc. (“Scopely”). Plaintiff and Scopely collectively are referred to in this Agreement each as a “Party” and collectively as the “Parties.”

I. RECITALS

- A. On August 9, 2021, Plaintiff filed a complaint against Scopely in the Superior Court of the State of California, for the County of Los Angeles (the “Superior Court”), entitled “*PELE HENDERSON, on behalf of himself and all others similarly situated, Plaintiff, vs. SCOPELY, INC., a Delaware corporation; and Does 1 through 50, Inclusive, Defendants*” (the “Action” or the “Complaint”), No. 21STCV29152. The Action asserted putative class claims against Scopely for alleged failure to furnish accurate itemized wage statements, furnish paper copies of wage statements, reimburse for necessary business expenses, pay all wages due (including minimum and overtime wages), provide meal and rest periods, pay meal and rest period premiums at the regular rate of pay, and pay all wages due to discharged and quitting employees, and asserted a claim under the California Labor Code Private Attorneys General Act, Cal. Lab. Code section 2698 *et seq.*, (“PAGA”) based on the same allegations.
- B. On August 5, 2021, Plaintiff submitted to the Labor and Workforce Development Agency of the State of California (the “LWDA”) notice of claims under PAGA against Scopely.
- C. On February 24, 2022, the Parties participated in a mediation presided over by Antonio Piazza of Mediated Negotiations. During the mediation, each side, represented by its respective counsel, recognized the substantial risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. This Agreement replaces and supersedes the Memorandum of Agreement entered into at the mediation and any other agreements, understandings, or representations between the Parties.
- D. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Scopely that Plaintiff’s claims in the Actions have merit or that it has any liability to Plaintiff or the Class on those claims, or as an admission by Plaintiff that Scopely’s defenses in the Actions have merit.

Based on these Recitals, incorporated by reference in this Agreement, the Parties agree as follows:

II. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the civil action titled “*PELE HENDERSON, on behalf of himself and all others similarly situated, Plaintiff, vs. SCOPELY, INC., a Delaware corporation; and Does 1 through 50, Inclusive, Defendants*” (the “Action”), No. 21STCV29152, currently pending in the Superior Court of the State of California, for the County of Los Angeles.
- B. “Class” means, collectively:
 - 1. All current and former employees who worked for Scopely in California at any time during the Class Period (the “California Class”), who will be referred to collectively as “California Class Members”; and
 - 2. All current and former employees who worked for Scopely in an exempt position in California and received a salary less than two-times state minimum wage at any time during the Class Period or who worked for Scopely as an exempt QA Lead or exempt Senior QA Tester in California at any time during the Class Period (the “Salary/Exempt QA Class”), who will be referred to collectively as “Salary/Exempt QA Class Members.”
- C. “Class Counsel” means Shaun Setareh, Thomas Segal, Farrah Grant and Tyson Gibb of Setareh Law Group.
- D. “Class Counsel Fees and Expenses Payment” means the amount awarded to Class Counsel by the Superior Court to compensate them for their fees and expenses in connection with the Action, including their pre-filing investigation, their commencement of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
- E. “Class Members” means all members of the Class.
- F. “Class Notice” means the Notice of Proposed Settlement, Conditional Certification of Settlement Class, Preliminary Approval of Settlement, and Hearing Date for Final Court Approval as evidenced by Exhibit A to this Agreement and incorporated by reference into this Agreement.
- G. “Class Notice Packet” means the Class Notice (Exhibit A to this Agreement) and the Notice of Estimated Settlement Share (Exhibit B to this Agreement).
- H. “Class Period” means the period of time from August 9, 2017 through March 31, 2022.
- I. “Class Representative” means Plaintiff Pele Henderson.
- J. “Class Representative Payment” means the special payment made to Plaintiff in his capacity as Class Representative to compensate him for initiating and pursuing

the Action, undertaking the risk of liability for attorneys' fees and expenses in the event he was unsuccessful in the prosecution of the Actions, and granting the release described in section III.H.1 of the Settlement.

- K. "Final" means the last of the following dates, as applicable.
1. The last date on which a notice of appeal from the Judgment may be filed, and none is filed.
 2. If a timely appeal from the Judgment is filed, the last of the following dates:
 - a. the last date by which a petition for review by the California Supreme Court of the California Court of Appeal's decision affirming the Judgment may be filed, and none is filed;
 - b. the last date by which a petition for a writ of *certiorari* to the United States Supreme Court of a decision by the California Court of Appeal or the California Supreme Court affirming the Judgment may be filed, and none is filed;
 - c. if a petition for review by the California Supreme Court, or a petition for a writ of *certiorari* to the U.S. Supreme Court, seeking review of the Judgment or of the California Court of Appeal's decision on an appeal from the Judgment is timely filed, the date on which the highest reviewing court renders its decision denying the petition (where the immediately lower court affirmed the Judgment) or affirming the Judgment.
- L. "Final Approval Hearing" means the hearing to be conducted by the Superior Court to determine whether to approve finally and implement the terms of this Agreement.
- M. "Scopely's Counsel" means Zachary P. Hutton, Jarryd Cooper and Anna M. Skaggs of Paul Hastings LLP.
- N. "Judgment" means the Order Granting Final Approval of Class Action Settlement and the Final Judgment entered by the Superior Court in substantially the same forms evidenced by Exhibits D-1 and D-2, respectively, to this Agreement and incorporated by reference into this Agreement.
- O. "LWDA Payment" means the 75% of the PAGA Civil Penalties payable to the LWDA for its share of the settlement of claims for civil penalties under PAGA, as specified in section III.E.3 of this Agreement.
- P. "Net Settlement Amount" means the amount from the Total Settlement Amount that is available for distribution as the Class Payment portion of Settlement Shares to Class Members after deductions for (a) the PAGA Civil Penalties; (b) the Class

Representative Payment; (c) the Class Counsel Fees and Expenses Payment; and (d) the Settlement Administrator's fees and expenses. The entire Net Settlement Amount will be distributed to Class Members. If any Settlement Share check is not timely cashed by a Class Member, that share will be sent to the California State Controller's Office, Unclaimed Property Fund, in the name of the Class Member, where the Class Member can later claim their funds.

- Q. "Notice of Estimated Settlement Share" means the form that Class Members will receive that describes their estimated Settlement Shares, as evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
- R. "PAGA Amount" means the 25% of the PAGA Civil Penalties payable to PAGA Settlement Group Members under PAGA, as specified in section III.D.3 of this Agreement.
- S. "PAGA Civil Penalties" means the amount set aside from the Total Settlement Amount for settlement of claims for civil penalties under PAGA, as specified in section III.B of this Agreement. Per Labor Code § 2699(i), 75% of such penalties will be payable to the LWDA as the LWDA Payment, and the remaining 25% will be payable to PAGA Settlement Group Members as the PAGA Amount.
- T. "PAGA Period" means the period of time from August 9, 2020 through March 31, 2022.
- U. "PAGA Settlement Group" means all Class Members who worked for Scopely during the PAGA Period. The PAGA Settlement Group is a subset of the Class.
- V. "PAGA Settlement Group Members" means all members of the PAGA Settlement Group.
- W. "Participating Class Member" means any Class Member who does not submit a timely and valid Request for Exclusion.
- X. "Participating California Class Member" means any California Class Member who does not submit a timely and valid Request for Exclusion.
- Y. "Participating Salary/Exempt QA Class Member" means any Salary/Exempt QA Class Member who does not submit a timely and valid Request for Exclusion.
- Z. "Preliminary Approval of the Settlement" means the Superior Court's preliminary approval of the Settlement without material change, or with material changes to the Settlement to which the Parties both agree. An award by the Superior Court of lesser amounts than sought for the Class Representative Payment or Class Counsel Fees and Expenses Payment will not be considered a material change to the Settlement.
- AA. "Settlement Administrator" means the administrator proposed by the Parties and appointed by the Superior Court to administer the Settlement.

- BB. “Settlement Share” means the portion of the Net Settlement Amount and PAGA Amount allocable to each Class Member as provided by this Agreement.
- CC. “Superior Court” means the Superior Court of the State of California in and for the County of Los Angeles.
- DD. “Total Settlement Amount” means the total amount to be paid by Scopely as provided by this Agreement. The Total Settlement Amount is \$850,000 (Eight Hundred Fifty Thousand Dollars) without reversion to Scopely. The Total Settlement Amount will cover (a) all Settlement Shares paid to Class Members pursuant to the Settlement; (b) the PAGA Civil Penalties (75% of which will constitute the LWDA Payment and 25% of which will constitute the PAGA Amount); (c) Plaintiff’s Class Representative Payment; (d) the Class Counsel Fees and Expenses Payment (which includes all attorneys’ fees and expenses incurred to date and to be incurred in documenting the Settlement, securing court approval of the Settlement, attending to the administration of the Settlement, and obtaining dismissal of the Actions); and (e) the Settlement Administrator’s fees and expenses.

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Amended Complaint.** Prior to seeking the Superior Court’s approval of the Settlement, Plaintiff will file a Second Amended Complaint (“SAC”) in the Action that encompasses all claims to be released through the Settlement. Scopely will stipulate to the filing of the SAC, subject to the Superior Court’s approval.
- B. **Total Settlement Amount.** Subject to the terms and conditions of this Agreement, including but not limited to section III.G.6, the Total Settlement Amount is \$850,000 (Eight Hundred Fifty Thousand Dollars). The Total Settlement Amount will cover (a) all Settlement Shares paid to Class Members pursuant to the Settlement; (b) the PAGA Civil Penalties of \$20,000 (75% of which will constitute the LWDA Payment and 25% of which will constitute the PAGA Amount); (c) Plaintiff’s Class Representative Payment; (d) the Class Counsel Fees and Expenses Payment (which includes all attorneys’ fees and expenses incurred to date and to be incurred in documenting the Settlement, securing court approval of the Settlement, attending to the administration of the Settlement, and obtaining dismissal of the Actions); and (e) the Settlement Administrator’s fees and expenses. All of the Total Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Total Settlement Amount will revert to Scopely.
- C. **Employer’s-Side Payroll Taxes.** Scopely’s share of payroll taxes on the Wage Portions of the Settlement Shares paid to the Class shall be paid by Scopely separately from, and in addition to, the Total Settlement Amount.

- D. **Settlement Shares.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Settlement Shares to Class Members, and will report such payments to taxing authorities, as follows:

1. **Calculation of Class Payments.**

- a. **California Class.** 40% (Forty Percent) of the Net Settlement Amount will be allocated to the California Class (the “California Class Allocation”), and the California Class Allocation will be attributed to each Participating California Class Member based on the number of pay periods that he or she worked in a position covered by the Settlement during the Class Period (“California Pay Periods”).
- b. **Salary/Exempt QA Class.** 60% (Sixty Percent) of the Net Settlement Amount will be allocated to the Salary/Exempt QA Class (the “Salary/Exempt QA Class Allocation”), and the Salary/Exempt QA Class Allocation will be attributed to each Participating Salary/Exempt QA Class Member based on the number of pay periods that he or she worked in a position covered by the Salary/Exempt QA Class during the Class Period (“Salary/Exempt QA Pay Periods”). However, to the extent that any Salary/Exempt QA Class Member was paid a salary less than two times the minimum wage while employed in an exempt QA Lead or exempt QA Tester position, that pay period will not be double-counted, and will be treated as a single pay period in the Salary/Exempt QA Class.

The payments described in sections III.D.1.a and III.D.1.b shall be referred to as the “Class Payments.”

2. **Treatment of Class Payments.** The Class Payment portion of Class Members’ Settlement Shares shall be reported to taxing authorities as follows:

- a. The Class Payment portion of Settlement Shares of Participating Class Members who are members of the California Class, but who are not members of the Salary/Exempt QA Class, are intended to settle claims for penalties and business expenses. Accordingly, the Settlement Administrator will issue a Form 1099 for the Class Payment portion of their Settlement Shares.
- b. For Participating Class Members who are members of the Salary/Exempt QA Class, 1/3 (One-Third) of the Class Payment portion of each Settlement Share (the “Wage Portion”) is intended to settle claims for unpaid wages. Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and

deductions, and the Settlement Administrator will issue a Form W-2 with respect to the Wage Portion.

- c. For Participating Class Members who are members of the Salary/QA Class, 2/3 (Two-Thirds) of the Class Payment portion of each Settlement Share (the “Non-Wage Portion”) is intended to settle each Participating Class Member’s claims for all interest and penalties. Accordingly, the Non-Wage Portion will not be reduced by payroll tax withholding and deductions; and, instead, the Settlement Administrator will issue a Form 1099 with respect to the Non-Wage Portion.

- 3. **Calculation and Treatment of PAGA Amount Payments.** In addition to the Net Settlement Amount, \$5,000 (25% of the PAGA Civil Penalties) has been designated as the PAGA Amount. Each PAGA Settlement Group Member shall receive a “PAGA Amount Payment” equal to the PAGA Amount times the ratio of (i) the number of pay periods worked by the PAGA Settlement Group Member for Scopely in a position covered by the Settlement during the PAGA Period (“PAGA Pay Periods”) to (ii) the total number of PAGA Pay Periods worked by all such PAGA Settlement Group Members. All PAGA Settlement Group Members, including those who opt out of the Settlement, will receive a PAGA Amount Payment. One hundred percent (100%) of the PAGA Amount Payment is in settlement of claims for civil penalties under PAGA and thus shall not be subject to payroll tax withholdings or wage deductions and shall be reported on IRS Form 1099.

- 4. **Effect of Class Members Who Opt Out of Settlement.** A Class Member who timely and validly opts out of the Settlement by submitting a Request for Exclusion to the Settlement Administrator will not participate in or be bound by the Settlement; will not receive the Class Payment portion of his or her Settlement Share; and will not be included with those other Class Members counted for purposes of the calculation of the Class Payment portion of Settlement Shares, except that all PAGA Settlement Group Members will release the Released PAGA Claims as described in section III.H.4, and will receive a PAGA Amount Payment regardless of whether they opt out. The Class Payment portion of the Settlement Share that otherwise would have been payable to a Class Member who opts out of the Settlement will be retained in the Net Settlement Amount for distribution to all other Class Members.

- E. **Payments to Plaintiff, Class Counsel, LWDA, and Settlement Administrator.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Total Settlement Amount as follows:

1. **To Plaintiff.** In addition to Plaintiff's Settlement Share (which includes the Class Payment and the PAGA Amount Payment), Plaintiff will apply to the Superior Court for an award of not more than \$5,000 as Plaintiff's Class Representative Payment in consideration of initiating and pursuing the Actions, undertaking the risk of liability for attorneys' fees and expenses in the event he was unsuccessful in the prosecution of the Actions, and granting the release provided for in section III.H.1 of the Settlement. Scopely will not oppose a Class Representative Payment of \$5,000 to Plaintiff. The Settlement Administrator will pay the Class Representative Payment approved by the Superior Court (but not more than \$5,000) out of the Total Settlement Amount. If the Superior Court approves a Class Representative Payment of less than \$5,000, the remainder will be retained in the Net Settlement Amount. Tax deductions and withholdings will not be taken from the Class Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to this payment.
2. **To Class Counsel.** Class Counsel will apply to the Superior Court for an award of not more than \$283,333.33 for attorneys' fees (one-third (1/3) of the Total Settlement Amount of \$850,000) and the actual amount incurred but not to exceed \$19,000 for actual expenses, as their Class Counsel Fees and Expenses Payment, and Scopely will not oppose their request. If the Superior Court approves a Class Counsel Fees and Expenses Payment of less than the amount authorized to be sought under this Agreement, the remainder will be retained in the Net Settlement Amount. A Form 1099 will be issued to Class Counsel with respect to the awarded attorneys' fees and costs, and Class Counsel beforehand will furnish a completed Form W-9.
3. **To LWDA and PAGA Settlement Group Members.** The Parties will apply to the Superior Court for approval of the PAGA Civil Penalties payment of \$20,000, which shall consist of the LWDA Payment of \$15,000 (75% of the PAGA Civil Penalties) as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to PAGA and the PAGA Amount of \$5,000 (25% of the PAGA Civil Penalties) to be distributed to the PAGA Settlement Group Members as described in section III.D.3. If the Superior Court approves PAGA Civil Penalties of less than \$20,000, the remainder will be retained in the Net Settlement Amount. If the Superior Court orders PAGA Civil Penalties in excess of \$20,000, the excess amount shall be taken from the Net Settlement Amount.
4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself out of the Total Settlement Amount its reasonable fees and expenses as approved by the Superior Court. It is projected that these fees and expenses shall not exceed \$20,000.

F. **Appointment of Settlement Administrator.** The Parties will ask the Superior Court to appoint a Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. Plaintiff will obtain three bids, and absent compelling reasons otherwise, the Parties will use the lowest bidding Settlement Administrator. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to the Class Members; conducting a National Change of Address search and using Accurant and other reasonable and cost-effective skip trace methods to locate any Class Member whose Class Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's new address; receiving Class Member opt-outs from the Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Class Member opt-outs from the Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a Class Member's Settlement Share, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Total Settlement Amount.

G. **Procedure for Approving Settlement.**

1. **Motion for Preliminary Approval.**

- a. Promptly after Plaintiff files the SAC, the Parties jointly will file a motion (the "Motion for Preliminary Approval") with the Superior Court for an order granting Preliminary Approval of the Settlement; conditionally certifying the Class; appointing the Class Representative, Class Counsel, and Settlement Administrator; setting a date for the Final Approval Hearing; and approving the Class Notice and the Notice of Estimated Settlement Share.
- b. Pursuant to PAGA, on the date the Parties file the Motion for Preliminary Approval with the Superior Court, Plaintiff will submit to the LWDA the Motion for Preliminary Approval and the Settlement. The Parties intend and believe that providing notice of this Settlement to the LWDA pursuant to the procedures described in this section complies with the requirements of PAGA, and will request the Superior Court to adjudicate the validity of the PAGA Notice in the Motion for Final Approval of the Settlement and bar any claim to void the Settlement under PAGA.
- c. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit

an order granting the motion in the form evidenced by Exhibit C to this Agreement.

- d. Should the Superior Court decline to preliminarily approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, the Settlement will be null and void and the Parties will have no further obligations under it. An award by the Superior Court of lesser amounts than sought for the Class Representative Payment or Class Counsel Fees and Expenses Payment will not be considered a material change to the Settlement.

- 2. **Notice to Class Members.** After the Superior Court enters its order granting the Motion for Preliminary Approval of the Settlement, every Class Member will be provided with the Class Notice Packet (which will include the Class Notice completed to reflect the order granting preliminary approval of the Settlement, and the Notice of Estimated Settlement Share) as follows:

- a. Within thirty (30) days after the Superior Court enters its order granting Preliminary Approval of the Settlement, Scopely will provide to the Settlement Administrator an electronic database for the Class Members, containing each Class Member's name, last-known mailing address, last-known telephone number, Social Security number, and his or her number of California Pay Periods and Salary/Exempt QA Pay Periods (the "Class Member Information"). If any or all of the Class Member Information is unavailable to Scopely, Scopely will use best efforts to deduce or reconstruct the Class Member Information prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except in order to carry out the reasonable efforts described in section III.G.2, or pursuant to Scopely's express written authorization or by order of the Superior Court. The Parties agree that keeping confidential the Class Member Information is in the best interest of the Class Members, as it will contain private and sensitive information such as Social Security numbers, and that keeping confidential the Class Member Information will not impede Class Counsel's ability to discharge their fiduciary duties.
- b. Within fifteen (15) days after receiving the Class Member Information from Scopely, the Settlement Administrator will (i) search for updated addresses for all Class Members using the National Change of Address ("NCOA") database; (ii) update any Class Member addresses found through the NCOA search; (iii) calculate each Class Member's estimated Settlement Share; (iv) send to counsel for the Parties its payment calculations for

Class Members and obtain approval from counsel of the calculations; and (v) send a Class Notice Packet to each Class Member. The Settlement Administrator will mail this information to all identified Class Members. In the event of returned or non-deliverable notices, the Settlement Administrator will make reasonable efforts to locate Class Members and re-send the notices.

- c. If a Class Notice Packet is returned because of an incorrect address and no forwarding address is affixed thereto, the Settlement Administrator will promptly, and not later than five (5) business days from receipt of the returned packet, search for a more current address for the Class Member using a skip trace, and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Member Information and otherwise work with Scopely to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Class Counsel and according to the deadlines set forth in this Agreement, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps will include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available telephone numbers and Social Security numbers; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note the address for its own records and notify Class Counsel and Scopely's Counsel of the date of each such re-mailing as part of a weekly status report provided to the Parties.
- d. Each week, the Settlement Administrator will provide to Class Counsel and Scopely's Counsel a report showing whether any Class Notice Packets have been returned and re-mailed and the receipt of any opt-outs from the Settlement.
- e. In connection with the filing of the Parties' Motion for Final Approval of the Settlement, the Settlement Administrator will prepare, and the Parties will file with the Superior Court, a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Opt-outs from Settlement.** Class Members may submit objections to the Settlement or opt out of the Settlement pursuant to the following procedures:
- a. **Objections to Settlement.** Class Members who wish to object to any term of the Settlement must submit an objection to the Settlement Administrator, postmarked no later than forty-five (45) days after the Settlement Administrator mails the Class Notice Packets or, in the event a Class Member's Class Notice Packet is returned to and re-mailed by the Settlement Administrator as described in section III.G.2.c of this Agreement, postmarked no later than forty-five (45) days after the date the Settlement Administrator re-mails the Class Notice Packet. The Settlement Administrator shall, within two (2) business days of receipt, serve any objection(s) as received on Class Counsel and Scopely's Counsel, who shall then promptly file all such objections with the Superior Court. Scopely's Counsel and Class Counsel shall file and serve any responses to objections no later than five (5) calendar days prior to the Final Approval Hearing. To be valid, any objection must: (1) contain the objecting Class Member's full name, current address, and telephone number, as well as contact information for any attorney representing the objecting Class Member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence supporting the objection; and (4) be postmarked no later than forty-five (45) days after the Settlement Administrator mails the Class Notice Packets or, where applicable, no later than forty-five (45) days after the Settlement Administrator re-mails the Class Member's Class Notice Packet. The objection also will indicate whether the Class Member intends to appear at the Final Approval Hearing. Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement.
 - b. **Request for Exclusion.** The Class Notice will provide that Class Members may exclude themselves from the Settlement by mailing to the Settlement Administrator a written Request for Exclusion letter, postmarked no later than forty-five (45) days after the Settlement Administrator mails the Class Notice Packets or, in the event a Class Member's Class Notice Packet is returned to and re-mailed by the Settlement Administrator as described in section III.G.2.c of this Agreement, postmarked no later than forty-five (45) days after the date the Settlement Administrator re-mails the Class Notice Packet. The "Request for Exclusion" is a letter prepared by the Class Member containing: (1) the Class Member's name, address, telephone number, and the last four digits of his or

her Social Security number; (2) a statement that the Class Member wishes to exclude himself or herself from the Settlement; and (3) the Class Member's signature. If a question is raised about the authenticity of a signed Request for Exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Class Member who timely submits a valid Request for Exclusion will not participate in or be bound by the Settlement and the Judgment, except that all Class Members who worked for Scopely during the PAGA Period will release the Released PAGA Claims as described in section III.H.4 and will receive a portion of the PAGA Amount regardless of whether they opt out. A Class Member who does not complete and mail a valid Request for Exclusion in the manner and by the deadline specified above will automatically be bound by all terms and conditions of the Settlement, including its release of claims, if the Settlement is approved by the Superior Court, and by the Judgment. Any Class Members who timely submits a valid Request for Exclusion shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

- c. **Report.** Not later than ten (10) days after the deadline for submission of opt-outs to the Settlement, the Settlement Administrator will provide the Parties with a complete and accurate list of objections and opt-outs submitted by Class Members.

- 4. **Resolution of Disputes.** If a Class Member disputes the information shown on his or her Notice of Estimated Settlement Share, the Class Member must ask the Settlement Administrator to resolve the matter by returning the Notice of Estimated Settlement Share with the information that he or she contends is correct and including with the sheet any documentation the Class Member has to support his or her contention. The corrected information and supporting documentation must be postmarked no later than forty-five (45) days after the Settlement Administrator mails the Class Notice Packets or, in the event a Class Member's Class Notice Packet is returned to and re-mailed by the Settlement Administrator as described in section III.G.2.c of this Agreement, postmarked no later than forty-five (45) days after the date the Settlement Administrator re-mails the Class Notice Packet. In the event of such a dispute, Scopely will have the right to review its payroll and personnel records to verify the correct information. After consultation with Class Counsel, the Class Member, and Scopely, the Settlement Administrator will make a determination of the correct information, and that determination will be final, binding on the Parties and the Class Member, and non-appealable.

5. **No Solicitation of Objection, Appeal, or Opt-Out.** Neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or opt out of the Settlement.
6. **Right of Scopely to Reject Settlement.** If five percent (5%) or more of Class Members, or a number of Class Members whose Settlement Shares would be worth five percent (5%) or more of the Net Settlement Amount as calculated, timely submit valid Requests for Exclusion, Scopely will have the right to rescind the Settlement, and the Settlement and all actions taken in furtherance of it will be null and void. Scopely must exercise this right within fifteen (15) days after the Settlement Administrator notifies the Parties of the number of opt-outs, which the Settlement Administrator will do within ten (10) days after the deadline for submission of Requests for Exclusion. If Scopely exercises the right to rescind, it will be responsible for the costs of administration of the Settlement incurred through that time. If Scopely does not exercise the right to rescind, the Parties jointly will move for final approval of the Settlement and for an award of the Class Representative Payment and the Class Counsel Fees and Expenses Payment pursuant to the Settlement, which Scopely will not oppose.
7. **Additional Briefing and Final Approval.**
 - a. Not later than sixteen (16) court days before the Final Approval Hearing, the Parties jointly will file with the Superior Court a Motion for Final Approval of the Settlement, the LWDA Payment, payment of the Settlement Administrator's reasonable fees and expenses, and for awards of the Class Representative Payment and the Class Counsel Fees and Expenses Payment pursuant to this Settlement (the "Motion for Final Approval"); and a declaration prepared by the Settlement Administrator listing the employee identification numbers of all Class Members who timely submitted a valid Request for Exclusion.
 - b. Not later than five (5) days before the Final Approval Hearing, Plaintiff and/or the Parties jointly may file a reply in support of the Motion for Final Approval of the Settlement to the extent that any opposition to the motion is filed.
 - c. If the Superior Court does not grant final approval of the Settlement, or if the Superior Court's final approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will be null and void; if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Scopely to pay the Total Settlement Amount, except that Scopely will pay the Settlement Administrator's

reasonable fees and expenses incurred as of the date that the Settlement is deemed null and void. An award by the Superior Court of lesser amounts than sought for the Class Representative Payment or Class Counsel Fees and Expenses Payment will not constitute a material modification of the Settlement; although Plaintiff maintains the right to appeal any such reduction.

- d. Together with the Motion for Final Approval, the Parties will present a proposed Judgment to the Superior Court for its approval and entry, in substantially the form evidenced by Exhibit D-2 to this Agreement. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (1) enforcing this Agreement, (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under court rules or applicable law.

- 8. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the material terms of this Agreement, Plaintiff, Class Members who did not timely submit an objection to the Settlement and intervene in the Action, Scopely, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings, or to file a cross-appeal. This paragraph does not preclude Plaintiff or Class Counsel from appealing from a refusal by the Superior Court to award the full Class Representative Payment or the Class Counsel Fees and Expenses Payment sought by them. If an appeal is taken from the Judgment, the time for consummating the Settlement (including making payments under the Settlement) will be suspended until such time as their appeal is finally resolved and the Judgment becomes Final, as defined in this Agreement.

- 9. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal or a petition for *certiorari* or review, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material change to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiff or Scopely will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court not later than thirty (30) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal,

or modification of the Superior Court's award of the Class Representative Payment or the Class Counsel Fees and Expenses Payment will not constitute a vacating, reversal, or material modification of the Judgment within the meaning of this paragraph.

10. **Timing of Settlement Payments.** Three (3) days after the Settlement becomes Final, as defined in this Agreement, the Settlement Administrator will provide Scopely with wire transfer information. Within twenty (20) days after the Settlement Administrator provides Scopely with wire transfer information, Scopely will transfer the Total Settlement Amount to the Settlement Administrator via wire transfer. Within fifteen (15) days thereafter, the Settlement Administrator will pay to Class Members the Settlement Shares; to Plaintiff, the Class Representative Payment; to the LWDA, the LWDA Payment; to Class Counsel, the Class Counsel Fees and Expenses Payment; and to the Settlement Administrator, its reasonable fees and expenses.
11. **Uncashed Settlement Share Checks.** A Class Member must cash his or her Settlement Share check within one hundred and eighty (180) calendar days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class Member at his or her correct address. If any Class Member's Settlement Share check is not cashed within one hundred and twenty (120) days after its last mailing to the Class Member, the Settlement Administrator will send the Class Member a letter or postcard informing him or her that unless the check is cashed in the next sixty (60) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If a Class Member fails to cash the check for his or her Settlement Share within one hundred and eighty (180) days after it is mailed to him or her, the Settlement Administrator will distribute the funds to the California State Controller's Office, Unclaimed Property Division, in the name of the Class Member. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure section 384, as the entire Net Settlement Amount will be paid out to Class Members, whether or not they cash their Settlement Share checks. Any amounts paid to PAGA Settlement Group Members for PAGA Amount Payments shall be treated in the same manner.

H. **Release and Waiver of Claims.**

1. **Plaintiff.** In consideration of Plaintiff's awarded Class Representative Payment, Plaintiff's Settlement Share, and the other terms and conditions of the Settlement, as of the date the Settlement becomes Final and is fully funded as set forth in section III.G.10 of this Agreement, with the sole exception of the individual claims for disability discrimination, wrongful termination in violation of public policy, negligent and intentional

infliction of emotional distress, and violation of California Business and Professions Code section 17200 *et seq.* already asserted in the pending action entitled “*PELE HENDERSON, an individual, Plaintiff, vs. Scopely, Inc., a Delaware Corporation; JOE ZANETTI, an individual; ROSIE [SURNAME UNKNOWN]; and DOES 1 through 50, inclusive, Defendants*” (the “Individual Action”), pending before the Superior Court, No. 21STCV29370 (the “Excluded Claims”), Plaintiff releases any and all known and unknown claims against Scopely and any present and former parents, subsidiaries and affiliated companies or entities, and their respective officers, directors, employees, partners, shareholders and agents, and any other successors, assigns and legal representatives and its related persons and entities (“Released Parties”) that exist as of the execution of this agreement, and waives the protection of California Civil Code section 1542, which reads:

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

(“Plaintiff’s Released Claims”). Expressly excluded from Plaintiff’s Released Claims are the Excluded Claims and any claims for workers’ compensation benefits, unemployment insurance benefits, claims outside the Class Period, and any other claims that cannot be waived by law.

2. **California Class Members.** In consideration for their awarded Class Payment portions of their Settlement Shares, as of the date the Settlement becomes Final and is fully funded as set forth in section III.G.10 of this Agreement, all California Class Members (other than those Class Members who timely and validly requested to be excluded from the Settlement) release any and all known and unknown claims against Scopely and the Released Parties asserted in the Second Amended Complaint or arising out of or reasonably related to the facts alleged in the Second Amended Complaint that, from August 9, 2017 through the date upon which the Court grants preliminary approval of the Settlement, Scopely failed to furnish accurate itemized wage statements; furnish paper copies of wage statements; or reimburse for necessary business expenses. The released claims include but are not limited to claims brought under California Labor Code sections 226, 226.3, and 2802, California Business and Professions Code sections 17200-17208, and the Industrial Welfare Commission Wage Order. Such claims include claims for unreimbursed expenses, statutory penalties, civil penalties, or other relief under the California Labor Code, PAGA, relief from unfair competition under California Business and Professions Code section 17200 *et seq.*; attorneys’ fees and costs; and interest (the “California Class Members’ Released Claims”). Additionally, all California Class Members who worked for

Scopely during the PAGA Period will release such claims for civil penalties under PAGA, and will receive a portion of the amount set aside as PAGA penalties, regardless of whether they elect not to participate in the Settlement.

3. **Salary/Exempt QA Class Members.** In consideration for their awarded Class Payment portions of their Settlement Shares, as of the date the Settlement becomes Final and is fully funded as set forth in section III.G.10 of this Agreement, all Salary/Exempt QA Class Members (other than those Class Members who timely and validly requested to be excluded from the Settlement) release any and all known and unknown claims against Scopely and the Released Parties asserted in the Second Amended Complaint or arising out of or reasonably related to the facts alleged in the Second Amended Complaint that, from August 9, 2017 through the date upon which the Court grants preliminary approval of the Settlement, Scopely failed to pay all wages due, including minimum wages and overtime; provide meal and rest periods; pay meal and rest period premiums at the regular rate of pay; furnish accurate itemized wage statements; furnish paper copies of wage statements; reimburse for necessary business expenses; or pay all wages due to discharged and quitting employees. The released claims include but are not limited to claims brought under California Labor Code sections 201-204, 210, 212, 215, 216, 218.6, 223, 225, 225.5, 226, 226.3, 226.6, 226.7, 256, 354, 408, 510, 512, 553, 558, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, and 2802, California Business and Professions Code sections 17200-17208, and the Industrial Welfare Commission Wage Order. Such claims include claims for wages, statutory penalties, civil penalties, or other relief under the California Labor Code, PAGA, relief from unfair competition under California Business and Professions Code section 17200 *et seq.*; attorneys' fees and costs; and interest (the "Salary/Exempt QA Class Members' Released Claims"). Additionally, all Salary/Exempt QA Class Members who worked for Scopely during the PAGA Period will release such claims for civil penalties under PAGA, and will receive a portion of the amount set aside as PAGA penalties, regardless whether they elect not to participate in the Settlement.
4. **PAGA Settlement Group Members.** In consideration for their awarded portions of the PAGA Civil Penalties, as of the date the Settlement becomes Final and is fully funded as set forth in section III.G.10 of this Agreement, the State of California and all PAGA Settlement Group Members release any and all claims under PAGA for civil penalties against Scopely and the other Released Parties that arise out of or reasonably relate to the allegations in the notices submitted by Plaintiff to the LWDA pursuant to PAGA that, during the PAGA Period, Scopely failed to pay all wages due, including minimum wages and overtime; provide meal and rest periods; pay meal and rest period premiums at the regular rate of pay; furnish accurate itemized wage statements and/or

furnish paper copies of wage statements; reimburse for necessary business expenses; or pay all wages due to discharged and quitting employees (the “Released PAGA Claims”). The Released PAGA Claims include but are not limited to claims arising under California Labor Code sections 201-204, 210, 212, 216, 221-223, 225.5, 226, 226.3, 226.6, 226.7, 256, 354, 408, 510, 512, 558, 1175, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, and 2802, and the Industrial Welfare Commission Wage Order. All PAGA Settlement Group Members will release the Released PAGA Claims, and will receive a PAGA Amount Payment, regardless of whether they request to be excluded from the Settlement.

5. **Class Counsel.** Class Counsel will not seek or be entitled to any attorneys’ fees and/or expenses in this Action, other than those specified in this Agreement.
- I. **No Effect on Other Benefits.** The Settlement will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Class Members, and Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- J. **Confidentiality Preceding Preliminary Approval.** Plaintiff and his attorneys agree not to issue any press or other media releases or talk to the press or media regarding the Settlement, and Plaintiff’s attorneys agree not to publicize the Settlement on their website or social media. In addition, prior to filing of the Motion for Preliminary Approval, Plaintiff and his attorneys will not have any communication regarding the Settlement with anyone other than family members, clients, Class Members, financial advisors, retained experts, and vendors related to settlement administration, except as needed to inform the Court of the status of the case.
- K. **Unanticipated Increase in Covered Workweeks.** It is estimated that there are approximately 976 California Class Members who worked 88,630 workweeks from the start of the Class Period through January 31, 2022. It is estimated that there are approximately 33 Salary/Exempt QA Class Members who worked 2,506 workweeks from the start of the Class Period through January 31, 2022. Scopely will provide final confirmation of the number of California Class Members, the number of Salary/Exempt QA Class Members, and the number of workweeks they worked through January 31, 2022. The Total Settlement Amount will increase proportionally with added workweeks if the number is more than five percent (5%) of the estimated workweeks of California Class Members stated herein.

L. Miscellaneous Terms.

1. No Admission of Liability.

- a. Scopely denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Scopely, or an admission by Plaintiff that any of his claims were non-meritorious or any defense asserted by Scopely was meritorious. This Settlement and the fact that Plaintiff and Scopely were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).
- b. The Parties agree that the Motion for Preliminary Approval seeking, *inter alia*, certification of a class is for purposes of the Settlement only and if, for any reason, the Settlement is not approved, the certification will have no force or effect and will be immediately revoked. The Parties further agree that certification for purposes of the Settlement is in no way an admission that class certification is proper under the more stringent standard applied for litigation purposes and that this Settlement will not be admissible in this or any other proceeding as evidence that (a) a class should be certified or (b) Scopely is liable to Plaintiff or the Class.
- c. Whether or not the Judgment becomes Final, nothing in the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, or any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Scopely or the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against Scopely or any of the Released Parties, in any further proceeding in the Actions, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
- d. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings

to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
4. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
5. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
6. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
7. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
8. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
9. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

SETAREH LAW GROUP
Shaun Setareh
Thomas Segal
Farrah Grant
Tyson Gibb
9665 Wilshire Boulevard, Suite 430
Beverly Hills, California 90212
Telephone: (310) 888-7771
Facsimile: (310) 888-0109
shaun@setarehlaw.com
thomas@setarehlaw.com
farrah@setarehlaw.com
tyson@setarehlaw.com

To Scopely:

PAUL HASTINGS LLP
Zachary P. Hutton
Jarryd Cooper
Anna M. Skaggs
101 California Street, 48th Floor
San Francisco, California 94111
Telephone: (415) 856-7000
Facsimile: (415) 856-7100
zachhutton@paulhastings.com
jarrydcooper@paulhastings.com
annaskaggs@paulhastings.com

10. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

[Intentionally Left Blank]

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: January 19, 2023.

PELE HENDERSON


[ID: ERTes1ceCahB4krQqT2kKhvj](#)

Dated: January 01/19, 2023.

SETAREH LAW GROUP

By: 
[ID: 3YAqZs42VYA0mwuYmkPPdMUIXt](#)
Shaun Setareh
Attorneys for Plaintiff Pele Henderson

Dated: January _____, 2023.

SCOPELY, INC.

By: _____
Roy Rosenthal
Scopely, Inc.

Dated: January _____, 2023.

PAUL HASTINGS LLP

By: _____
Zachary P. Hutton
Attorneys for Defendant Scopely, Inc.

EXHIBIT A

**[NOTICE OF PROPOSED SETTLEMENT, CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS, PRELIMINARY APPROVAL OF SETTLEMENT, AND
HEARING DATE FOR FINAL COURT APPROVAL]**

EXHIBIT B

[NOTICE OF ESTIMATED SETTLEMENT SHARE]

EXHIBIT C

[PROPOSED ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT]

EXHIBITS D-1 AND D-2

**[PROPOSED ORDER GRANTING FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND PROPOSED FINAL JUDGMENT]**

eSignature Details

Signer ID: 3XAq7s42VYAWmwYmKPPdWUXt
Signed by: shaun setareh
Sent to email: shaun@setarehlaw.com
IP Address: 104.180.15.40
Signed at: Jan 19 2023, 1:11 pm PST

Signer ID: FRTea1ceCahB4kcQqT2kKhyj
Signed by: Pele Henderson
Sent to email: pece.santee@gmail.com
IP Address: 68.224.246.75
Signed at: Jan 19 2023, 2:40 pm PST