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SUPERIOR COURT OF THE STATE OF CALIFORNIA

15

FOR THE COUNTY OF ALAMEDA

16

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18 GENE BICKLEY, as an individual and on
behalf of others similarly situated,

19

Plaintiff,

20

vs.

21

ARNOLD & SON, INC.; and DOES 1 through
22 10,

23

Defendant.

24

25

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27

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Case No. 21CV002096

CLASS ACTION

Dept.: 21

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

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11 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

12 This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement
13 Agreement”) is made and entered into by and between Plaintiff Gene Bickley (“Plaintiff” or
14 “Class Representative”), as an individual and on behalf of all others similarly situated and
15 aggrieved, and Defendant Arnold J. Thomas & Son (“Defendant”) (collectively with Plaintiff, the
16 “Parties”).

17 **DEFINITIONS**

18 The following definitions are applicable to this Settlement Agreement. Definitions
19 contained elsewhere in this Settlement Agreement will also be effective:

20 1. “Action” means the civil lawsuit Plaintiff filed against Defendant, styled *Gene*
21 *Bickley, individually and on behalf of all others similarly situated, Plaintiff, vs. Arnold & Son, Inc.*
22 *and Does 1 through 10, inclusive, Defendants*, on or about November 8, 2021, in the Superior
23 Court of California, in and for the County of Alameda, case number 21CV002096. Further,
24 “Action” likewise includes the First Amended Complaint Plaintiff filed in this matter on or about
25 June 20, 2022.

26 2. “Appeal” means a timely appeal by a Class Member to the Order and Judgment
27 approving the Settlement, or an appeal by one of the Parties to an order that materially alters the
28 Settlement.

3. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and
approved by the Court for Class Counsel’s litigation and resolution of the Action, and all actual

1 costs incurred and to be incurred by Class Counsel in the Action, such as costs associated with
2 documenting the Settlement, providing any notices required as part of the Settlement or Court
3 order, securing the Court's approval of the Settlement, administering the Settlement, obtaining
4 entry of an Order and Judgment approving the Settlement, and expenses for any expert, and other
5 similar costs. Class Counsel will request not more than one-third (33.33%) of the Class
6 Settlement Amount, or \$125,000.00 (One Hundred and Twenty-Five Thousand Dollars) in
7 attorneys' fees. Defendant has agreed not to oppose Class Counsel's request for attorneys' fees as
8 set forth above, as well as Class Counsel's request for reasonable costs.

9 4. "Class Counsel" means Peter M. Hart of the Law Offices of Peter M. Hart.

10 5. "Class List" means a complete list of all Class Members that Defendant will
11 diligently and in good faith compile from their records and provide to the Settlement
12 Administrator and to Class Counsel within fourteen (14) calendar days after entry of an Order
13 granting Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft
14 Office Excel or other computer-readable format and will include each Class Member's full name;
15 most recent mailing address and telephone number; Social Security number; dates of employment;
16 the verified number of Workweeks worked during the Class Period while in Defendant Arnold J.
17 Thomas & Son, Inc.'s employ; and any other relevant information needed to calculate settlement
18 payments.

19 6. "Class Member(s)" or "Settlement Class" means any and all persons who have
20 been employed by Arnold J. Thomas & Son, Inc., or its related entities, as non-exempt truck
21 drivers in California at any time from November 8, 2017 to the earlier of 60 days after September
22 20, 2022 or the date of preliminary approval. The Parties estimate that as of September 20, 2022
23 there were approximately 144 Class Members, and that Class Members had worked an estimated
24 total of approximately 8,687 Workweeks. If the actual number of Class Members exceeds 10%
25 (Ten Percent) of 144 or the actual total workweeks exceeds 10% (Ten Percent) of 8,687, the Class
26 Settlement Amount shall increase proportionally by the increase in the class size or workweeks,
27 whichever is greater.

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1 7. “Class Notice” means the Notice of Class Action Settlement substantially in the
2 form attached hereto as Exhibit A, and approved by the Court.

3 8. “Class Period” means the period from November 8, 2017 to the earlier of 60 days
4 after September 20, 2022 or the date of Preliminary Approval.

5 9. “Class Representative” means Plaintiff Gene Bickley.

6 10. “Class Settlement Amount” means the exact amount of \$375,000.00 (Three
7 Hundred and Seventy-Five Thousand Dollars), to be paid by Defendant in full satisfaction of all
8 claims alleged in the Action or that could have been alleged in the Action, based on the operative
9 facts alleged therein, which includes all Individual Settlement Payments to Participating Class
10 Members, the Labor and Workforce Development Agency Payment, Attorneys’ Fees and Costs,
11 the Class Representative Enhancement Payment, and Settlement Administration Costs. Any
12 employer-side payroll taxes required by law, including the employer-side FICA, FUTA, and SDI
13 contributions, will be paid by Defendant separately and apart from the Class Settlement Amount.
14 There will be no reversion of any portion of the Class Settlement Amount to Defendants.

15 11. “Court” means the Hon. Evelio Grillo of the Alameda County Superior Court.

16 12. “Defendant” refers to Arnold J. Thomas & Son, Inc., erroneously sued as Arnold &
17 Son, Inc.

18 13. “Effective Date” shall be when Final Approval of the Settlement can no longer be
19 appealed by an objector, or in the absence of any objections (or if all objections are withdrawn
20 with Court approval by the time of the Final Approval Hearing), five (5) calendar days following
21 Notice of Entry of Judgment. If objections are heard by the Court and overruled, and no appeal is
22 taken of the Judgment by an objector, then the Effective Date shall be sixty-five (65) calendar
23 days after Notice of Entry of Judgment. If any appeal is taken from the Court’s overruling of any
24 objections to the Settlement, then the Effective Date shall be ten (10) calendar days after all
25 appeals are withdrawn or after an appellate decision affirming the Final Approval and Judgment
26 becomes final.

27 14. “Final Approval” means the Court’s Order granting final approval of the
28 Settlement.

1 15. “Individual Settlement Payment” means each Participating Class Member’s
2 respective share of the Net Settlement Amount.

3 16. “Labor and Workforce Development Agency Payment” means the payment of
4 Fifteen Thousand Dollars and Zero Cents (\$15,000.00) from the Class Settlement Amount to the
5 California Labor and Workforce Development Agency for its 75% portion of the Twenty
6 Thousand Dollars and Zero Cents (\$20,000.00) in civil penalties paid under the California Labor
7 Code Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code §§ 2698, *et seq.*

8 17. “Net Settlement Amount” means the portion of the Class Settlement Amount
9 remaining after deducting Plaintiff’s Attorneys’ Fees and Costs, the Class Representative’s
10 Enhancement Payment, the Labor and Workforce Development Agency Payment, Attorneys’
11 Fees, and Settlement Administration Costs. The entire Net Settlement Amount will be distributed
12 to Participating Class Members. There will be no reversion of any portion of the Net Settlement
13 Amount to Defendant.

14 19. “Notice of Entry of Judgment” means a Notice of Entry of Judgment pursuant to
15 section 664.5(c) of the California Code of Civil Procedure filed and served by Plaintiff.

16 20. “Notice of Objection and/or Notice of Intent to Appear” means a Class Member’s
17 valid and timely written objection to the Settlement Agreement, a Class Member’s valid and
18 timely written statement of intent to appear, either personally or through counsel, at the Final
19 Approval Hearing, or both. For a Notice of Objection to be valid, it must include: (i) the
20 objector’s full name, signature, address, and telephone number; (ii) a written statement of all
21 grounds for the objection accompanied by any legal support for such objection; and (iii) copies of
22 papers, briefs, or other documents upon which the objection is based, if any. For a Notice of
23 Intent to Appear to be valid, it must include: (i) the objector’s full name, signature, address, and
24 telephone number; and (ii) a brief written statement explaining why the objector wishes to appear
25 and be heard at the Final Approval Hearing. A Class Member may combine a Notice of Objection
26 and Notice of Intent to Appear in one submission. Absent good cause found by the Court, any
27 Class Member who does not submit a timely written Notice of Objection and/or Notice of Intent to
28 Appear to the Settlement Administrator, or who fails to otherwise comply with the specific

requirements of this paragraph, will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the Settlement, by appeal or otherwise.

21. “Parties” means Plaintiff and Defendant collectively.

22. “Participating Class Member” means any Class Member who does not submit a timely and valid Request for Exclusion.

23. “Plaintiff” means Gene Bickley.

24. “Plaintiff’s Counsel” means Peter M. Hart of the Law Offices of Peter M. Hart.

25. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement.

26. “Released Claims” means any and all claims, rights, demands, damages, liabilities and causes of action, whether known or unknown, contingent or vested, state or federal, in law or in equity, arising at any time during the Settlement Class Period alleged in the operative complaint or related claims that could have been alleged based on the facts pleaded, and all associated penalties, including but not limited to: (a) any alleged failure by any Defendant (1) to pay minimum wages; (2) to reimburse business expenses; (3) to provide accurate wage statements to employees; (4) to pay all wages due upon separation of employment; (b) any right or claim for civil penalties pursuant to PAGA, or any penalties arising under the California Labor Code or Wage Orders, based on the alleged failures set forth herein; (c) any right or claim for unfair business practices in violation of California Business & Professions Code §§ 17200, *et seq.*, based on the alleged failures set forth herein; and (d) any violation of the California Labor Code arising from or related to the conduct alleged herein, including, without limitation, violation of Labor Code Sections 201, 202, 203, 218, 218.5, 218.6, 226, 226.2, 226.3, 226.8, 1194, 1194.2, 1197, 1197.1, 2698 *et seq.*, or any other ordinance, rule, regulation, or statute, whether federal state, or administrative, or similar causes of action that any Class Member has or might have, known or unknown, of any kind whatsoever, that was alleged or could have been alleged based on the factual allegations in the operative complaint.

27. “Released Parties” means Defendant and any and all of its affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, managers,

1 agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers,
2 board members, trustees, auditors, accountants, attorneys, benefits administrators, third-party
3 administrators, consultants, contractors, representatives, partners, and any past, present or future
4 officers, directors, and employees) and any other person acting on their behalf or on whose behalf
5 they acted, as well as any predecessors, successors (Arnold & Son, Inc.), and assigns, as well as
6 any entity that could be deemed a “joint employer” of Plaintiff or members of the Settlement
7 Class.

8 28. “Request for Exclusion” means a timely letter submitted by a Class Member
9 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set
10 forth the name, address, telephone number and last four digits of the Social Security Number of
11 the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to
12 the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included
13 in the Settlement; and (v) be postmarked on or before the Response Deadline.

14 29. “Response Deadline” means the deadline by which Class Members must postmark
15 to the Settlement Administrator Requests for Exclusion, or postmark or file Notices of Objection
16 and/or Notices of Intent to Appear to the Court and counsel for the Parties. The Response
17 Deadline will be forty five (45) calendar days from the initial mailing of the Class Notice by the
18 Settlement Administrator, unless the forty-fifth (45th) day falls on a Sunday or Federal holiday, in
19 which case the Response Deadline will be extended to the next day on which the U.S. Postal
20 Service and the Sonoma County Superior Court are open.

21 30. “Settlement Administration Costs” means the costs to the Settlement Administrator
22 for administering this Settlement, including, but not limited to, printing, distributing, and tracking
23 documents for this Settlement, creating and maintaining a web site and toll-free telephone number,
24 tax reporting, distributing the Class Settlement Amount, and providing necessary reports and
25 declarations, as requested by the Parties or the Court. The Settlement Administration Costs will
26 not exceed Ten Thousand Dollars and Zero Cents (\$10,000.00).

27 31. “Settlement Administrator” means ILYM Settlement Administrators, or any other
28 third-party class action settlement administrator agreed to by the Parties and approved by the

1 Court for the purposes of administering this Settlement. The Parties each represent that they do
2 not have any financial interest in the Settlement Administrator or otherwise have a relationship
3 with the Settlement Administrator that could create a conflict of interest.

4 32. "Workweek" or "Workweeks" means any week in which a Class Member actively
5 worked at least one day of the week during the Class Period, according to Defendant's records.

6 TERMS OF AGREEMENT

7 The Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as
8 follows:

9 33. Funding of the Class Settlement Amount. Defendant will make a deposit of the
10 Class Settlement Amount via wire transfer into a Qualified Settlement Account ("QSA") to be
11 established by the Settlement Administrator in the exact amount of \$375,0000. This amount shall
12 be paid in one payment within twenty-one (21) calendar days after the Effective Date.

13 34. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any
14 application or motion by Class Counsel for Attorneys' Fees not to exceed one-third (33.33%) of
15 the Class Settlement Amount, or One Hundred and Twenty-Five Thousand Dollars (\$125,000.00),
16 and reasonable litigation costs and expenses. The Parties stipulate that, for purposes of settlement,
17 Plaintiff and the Class are the prevailing parties in the Action and are entitled to attorneys' fees
18 and costs under the applicable fee-shifting statutes, including, *inter alia*, California Code of Civil
19 Procedure section 1021.5, and Labor Code sections 218.5, 1194(a) and 2699(g). Any funds
20 allocated to Attorneys' Fees and Costs but not awarded by the Court will be included in the Net
21 Settlement Amount and distributed pro rata to the Participating Class Members.

22 35. Class Representative Enhancement Payment. In exchange for a general release
23 inclusive of a waiver of any and all rights and benefits conferred upon Plaintiff by the provisions
24 of Section 1542 of the California *Civil Code*,¹ and in recognition of his effort and work in
25 _____

26 ¹ Section 1542 of the California *Civil Code* provides:

27 **"A general release does not extend to claims that the creditor or releasing party does not**
28 **know or suspect to exist in his or her favor at the time of executing the release and that, if**
(footnote continued)

1 prosecuting the Action on behalf of the Class Members, Defendant agrees not to oppose or impede
2 any application or motion for a Class Representative Enhancement Payment not to exceed Ten
3 Thousand and Zero Cents (\$10,000.00) for Plaintiff. The Class Representative Enhancement
4 Payment amount made payable to Plaintiff will be reported to the Internal Revenue Service and all
5 applicable state or local taxing authorities by means of a Form 1099. The Class Representative
6 Enhancement Payment will be paid from the Class Settlement Amount and will be in addition to
7 Plaintiff's Individual Settlement Payment. Any funds allocated to the Class Representative
8 Enhancement Payment but not awarded by the Court will be included in the Net Settlement
9 Amount and distributed pro rata to the Participating Class Members. Plaintiff will be solely
10 responsible to pay any and all applicable taxes on the payments made pursuant to this paragraph.

11 36. Settlement Administration Costs. The Settlement Administrator will be paid for
12 the reasonable costs of administration of the Settlement and distribution of payments from the
13 Class Settlement Amount, which Settlement Administration Costs shall not exceed Ten Thousand
14 Dollars and Zero Cents (\$10,000.00). These costs, will include, *inter alia*, the required tax
15 reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
16 distributing Class Notices, creating and maintaining a web site and toll-free telephone number,
17 calculating and distributing the Class Settlement Amount and Attorneys' Fees and Costs, and
18 providing necessary reports and declarations. These costs shall be paid from the Class Settlement
19 Amount. Any funds allocated to Settlement Administration Costs but not incurred by or otherwise
20 paid to the Settlement Administrator will be included in the Net Settlement Amount and
21 distributed pro rata to the Participating Class Members.

22 37. PAGA Allocation. The Parties agree to allocate Twenty Thousand Dollars and
23 Zero Cents (\$20,000.00) from the Class Settlement Amount to the resolution of all claims related
24 to the Class Members arising under the California Private Attorneys General Act of 2004
25 (California Labor Code sections 2698, *et seq.*, "PAGA"). Pursuant to PAGA, Seventy-Five

26 _____
27 **known by him or her, would have materially affected his or her settlement with the debtor**
28 **or released party."**

1 Percent (75%) of the PAGA allocation, or Fifteen Thousand Dollars and Zero Cents (\$15,000.00),
2 will be paid to the California Labor and Workforce Development Agency, and the remaining
3 Twenty Five Percent (25%) of the PAGA allocation, or Five Thousand Dollars and Zero Center
4 (\$5,000.00), will be allocated to the Net Settlement Amount.

5 38. Individual Settlement Payment Calculations. Individual Settlement Payments will be
6 calculated and apportioned from the Net Settlement Amount as follows: Prorated distribution based on the
7 number of Workweeks worked during the Class Period as a percentage of the payments to members of the
8 Settlement Class. Specific calculations of Individual Settlement Payments will be made as follows:

9 (a) Defendant or the Settlement Administrator will calculate the total number of Workweeks
10 worked by each Class Member during the Class Period.

11 (b) Based on those calculations the Settlement Administrator will calculate and determine each
12 Class Member's estimated "Individual Settlement Payment" using the following formula: The Net
13 Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the
14 "Workweek Value." Each Class Member's "Individual Settlement Payment" will be calculated by
15 multiplying each individual Class Member's total number of Workweeks by the Workweek Value.

16 39. The Settlement Administrator shall be responsible for reducing each Individual
17 Settlement Payment based on any required deductions for each Participating Class Member as
18 specifically set forth herein, including employee-side tax withholdings or deductions.

19 40. The entire Net Settlement Amount will be disbursed to all Class Members who do
20 not submit timely and valid Requests for Exclusion. If there are any timely and valid Requests for
21 Exclusion from members of the Class, the Settlement Administrator shall not include all
22 compensation paid to such individuals while employed by Defendant as a non-exempt employee
23 as set forth in paragraph 6 during the Class Period. Any such amounts shall not be part of the
24 calculation of the total compensation paid to Participating Class Members under paragraph 38
25 above, so that the amount actually distributed to the Participating Class Members equals 100% of
26 the Net Settlement Amount.

27 41. No Credit To Benefit Plans. The Individual Settlement Payments made to
28 Participating Class Members under this Settlement, as well as any other payments made pursuant

1 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans
2 to which any Class Member may be eligible, including, but not limited to: profit-sharing plans,
3 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
4 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
5 affect any rights, contributions, or amounts to which any Class Member may be entitled under any
6 benefit plans.

7 42. Administration Process. The Parties agree to cooperate in the administration of the
8 settlement and to make all reasonable efforts to control and minimize the costs and expenses
9 incurred in administration of the Settlement.

10 43. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary
11 Approval, Defendant will provide the Class List to the Settlement Administrator and to Class
12 Counsel.

13 44. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the
14 Class List from Defendant, the Settlement Administrator will mail a Class Notice to all Class
15 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
16 identified in the Class List.

17 45. Confirmation of Contact Information in the Class List. Prior to mailing, the
18 Settlement Administrator will perform a search based on the National Change of Address
19 Database for information to update and correct for any known or identifiable address changes.
20 Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the
21 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
22 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing
23 on the Class Notice. If no forwarding address is provided, the Settlement Administrator will
24 promptly attempt to determine the correct address using a skip-trace, or other search using the
25 name, address and/or Social Security number of the Class Member involved, and will then
26 perform a single re-mailing.

27 46. Class Notices. All Class Members will be mailed a Class Notice via First Class
28 U.S. Mail. Each Class Notice will provide: (i) information regarding the nature of the Action; (ii)

1 a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) each Class
2 Member's estimated Individual Settlement Payment and the formula for calculating Individual
3 Settlement Payments, including each Class Member's Workweeks worked during the Class
4 Period; (v) the dates that constitute the Class Period; (vi) instructions on how to submit a Request
5 for Exclusion, Notice of Objection, Notice of Intent to Appear, or dispute the Workweeks and/or
6 estimated Individual Settlement Payment; (vii) the deadlines by which the Class Member must
7 postmark Requests for Exclusion, and the deadlines by which the Class Members must file or
8 postmark Notices of Objection to the Settlement or Notices of Intent to Appear; and (ix) the
9 claims to be released. The Class Notice shall be in substantially the same form as Exhibit A
10 hereto, as approved by the Court.

11 47. The Settlement Administrator will also set up and maintain a web site and toll-free
12 telephone number for Class Members to contact the Settlement Administrator regarding the
13 Settlement. Both the URL for the web site and the toll-free telephone number will be identified in
14 the Class Notice. The web site will contain links allowing Class Members to access the operative
15 complaint, the Class Notice, the Settlement Agreement, the motion for preliminary approval and
16 all related papers and Court Orders, and the motion for final approval, attorneys' fees and costs,
17 and representative enhancement and all related papers and Court Orders.

18 48. Disputed Information on Class Notices. Class Members will have an opportunity
19 to dispute the information provided in their Class Notices. To the extent Class Members dispute
20 their total number of Workweeks Worked while working for Defendant as a non-exempt employee
21 as described in paragraph 6, Class Members may produce evidence to the Settlement
22 Administrator showing that such information in the Class Notice is inaccurate. The Settlement
23 Administrator will decide the dispute. Defendant's records will be presumed correct, but the
24 Settlement Administrator will evaluate the evidence submitted by the Class Member and will
25 make the final decision as to the merits of the dispute, which decision shall be final and
26 unappealable by any Party or Class Member. All disputes shall be resolved within ten (10)
27 business days of the Response Deadline.

28 49. Defective Submissions. If a Class Member's Request for Exclusion is defective as

1 to the requirements listed herein, that Class Member will be given an opportunity to cure the
2 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
3 business days of receiving the defective submission to advise the Class Member that his or her
4 submission is defective and that the defect must be cured to render the Request for Exclusion
5 valid. The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15)
6 calendar days from the date of the cure letter to postmark a revised Request for Exclusion. If the
7 revised Request for Exclusion is not postmarked within that period, it will be deemed untimely.

8 50. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
9 Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement
10 Administrator within the Response Deadline. The postmark date will be the exclusive means to
11 determine whether a Request for Exclusion has been timely submitted.

12 51. Option to Rescind the Settlement Agreement: Defendant may elect, at its sole
13 discretion, to rescind the Settlement if more than ten percent (10%) of Settlement Class Members
14 submit timely and valid Requests for Exclusion. If Defendant exercises its conditional right to
15 rescind, it must do so by written communication to Class Counsel that is received by Class
16 Counsel within thirty (30) calendar days of the Response Deadline. In the event that Defendant
17 exercises its conditional right to rescind, Defendant will be responsible for all Settlement
18 Administration Costs incurred to the date of rescission.

19 52. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
20 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely
21 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
22 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
23 approval to the Settlement. A list of Settlement Class Members (except those who opt-out) shall
24 be appended to the Court's order of entry of final approval and judgment.

25 53. Objection Procedures. To object to the Settlement Agreement, a Class Member
26 must timely submit to the Settlement Administrator a Notice of Objection and/or Notice of Intent
27 to Appear at the Final Approval Hearing. The Notice of Objection and/or Notice of Intent to
28 Appear must be signed by the Class Member and contain all information required by this

1 Settlement Agreement, as specified in the Class Notice. The Notice of Objection and/or Notice of
2 Intent to Appear shall be mailed to the Settlement Administrator as explained in the Class Notice.
3 Within three (3) calendar days of receipt, the Settlement Administrator will provide copies of any
4 Notices of Objection and/or Notices of Intent to Appear to Class Counsel and counsel for the
5 Defendant. The postmark date or filing date will be deemed the exclusive means for determining
6 whether a Notice of Objection and/or Notice of Intent to Appear is timely. Class Members who
7 fail to object in the manner specified above will be deemed to have waived all objections to the
8 Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to
9 the Settlement Agreement. Class Members who postmark timely Notices of Intent to Appear may,
10 but are not required to, appear at the Final Approval Hearing, personally or through their own
11 counsel, in order to have their objections heard by the Court. Only those Class Members who do
12 not submit a Request for Exclusion may object to the Settlement. At no time will any of the
13 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written or
14 oral objections to the Settlement Agreement or appeal from the Order and Judgment. Class
15 Counsel will not represent any Class Members with respect to any such objections to this
16 Settlement. Class Counsel shall timely file with the Court copies of any and all Notices of
17 Objection and/or Notices of Intent to Appear prior to the Final Approval Hearing.

18 54. Certification Reports. The Settlement Administrator will provide Defendant's
19 counsel and Class Counsel a weekly report that certifies the number of Class Members who have
20 submitted valid Requests for Exclusion, and whether any Class Member has submitted a challenge
21 to any information contained in their Class Notice. Additionally, the Settlement Administrator
22 will provide to counsel for both Parties any updated reports regarding the administration of the
23 Settlement Agreement as needed or requested.

24 55. Distribution of Settlement Payments. There will be a single distribution as set forth
25 in paragraph 33. The distribution of the Settlement Payments will be made within fourteen (14)
26 calendar days from the date Defendant funds the QSA. At distribution, the Settlement
27 Administrator will issue the Court-approved payments to: (i) Participating Class Members; (ii) the
28 Labor and Workforce Development Agency; (iii) Plaintiff; (iv) Class Counsel; and (v) the

1 Settlement Administrator.

2 56. Uncashed Settlement Checks. Participating Settlement Class Members will have 180 days
3 to cash their Individual Settlement Payment checks. For any check not cashed after 180 calendar days, the
4 Settlement Administrator will pay the amount represented by the check to the California State Controller's
5 Office, Unclaimed Property Division, in the name of the Participating Class Member to whom the funds
6 belong, to be held for the Participating Class Member pursuant to California's Unclaimed Property Law.
7 The money paid to the California State Controller's Office will thus remain the Participating Class
8 Member's property and will allow those Participating Class Members who did not cash their checks to
9 collect their Individual Settlement Payments at any time in the future. Therefore, there will be no unpaid
10 residue or abandoned class member funds and California Code of Civil Procedure § 384 shall not apply.

11 57. Certification of Completion. Upon completion of administration of the Settlement,
12 the Settlement Administrator will provide a written declaration under oath to certify such
13 completion to the Court and counsel for all Parties.

14 58. Treatment of Individual Settlement Payments. All Individual Settlement Payments
15 will be allocated as follows: (i) Twenty Percent (20%) of each Individual Settlement Payment will
16 be allocated as wages for which IRS Forms W-2 will be issued; and (ii) Eighty Percent (80%) will
17 be allocated to penalties and interest for which IRS Forms 1099-MISC will be issued.

18 59. Administration of Taxes by the Settlement Administrator. The Settlement
19 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
20 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
21 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
22 all payroll taxes and penalties to the appropriate government authorities.

23 60. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
24 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
25 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
26 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
27 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
28 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS

1 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
2 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
3 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
4 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
5 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
6 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
7 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
8 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
9 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
10 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
11 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
12 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
13 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
14 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
15 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
16 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
17 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
18 AGREEMENT.

19 61. No Prior Assignments. The Parties and their counsel represent, covenant, and
20 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
21 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
22 action, cause of action or right herein released and discharged.

23 62. Nullification of Settlement Agreement. In the event that: (i) the Court does not
24 grant final approval of the Settlement as provided herein; or (ii) the Settlement does not become
25 final for any other reason, then this Settlement Agreement, and any documents generated to bring
26 it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of
27 this Settlement Agreement will likewise be treated as void from the beginning.

28 63. Preliminary Approval Hearing. Class Counsel will be responsible for drafting all

documents necessary to obtain preliminary approval. Class Counsel will also obtain a hearing before the Court to request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order. The Preliminary Approval Order will provide for the Class Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Class Notice, which is attached hereto as Exhibit A.

64. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadline to postmark Requests for Exclusion, Notices of Objection, and Notices of Intent to Appear, and with the Court's permission, a Final Approval Hearing will be conducted to determine the Final Approval of the Settlement, along with the amounts properly payable for: (i) Individual Settlement Payments; (ii) the Labor and Workforce Development Agency Payment; (iii) the Class Representative's Enhancement Payment; (iv) Attorneys' Fees and Costs; and (v) all Settlement Administration Costs. The Final Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain final approval, including obtaining approval for the Representative Enhancement Payment and Attorneys' Fees and Costs, and the Settlement Administration Costs, to be heard at the Final Approval Hearing.

65. Release by the Settlement Class and the California Labor and Workforce Development Agency ("LWDA"). Upon the Effective Date, all Participating Class Members will be deemed to have released the Released Claims, and the LWDA will be deemed to have released the Released Claims brought under PAGA, and will be barred and enjoined from bringing or prosecuting any of the Released Claims against the Released Parties.

66. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the Court or after the Final Approval Hearing, the Parties will present the Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

1 67. Release by Plaintiff. Upon the Effective Date, Plaintiff will release and forever
2 discharge the Released Parties, to the fullest extent permitted by law, of and from any and all
3 claims, known and unknown, asserted and not asserted, which Plaintiff has or may have against
4 the Released Parties. To the extent the foregoing releases are releases to which section 1542 of the
5 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly
6 waives any and all rights and benefits conferred upon him by the provisions of section 1542 of the
7 California Civil Code or similar provisions of applicable law, which are as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
9 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
10 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
11 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

12 68. Release by Class Members. Upon the Effective Date, all Participating Class
13 Members will release and forever discharge the Released Parties of any and all of the Released
14 Claims.

15 69. Exhibit Incorporated by Reference. The terms of this Settlement Agreement
16 include the terms set forth in the attached exhibits, which are incorporated by this reference as
17 though fully set forth herein. Any exhibit to this Settlement Agreement is an integral part of the
18 Settlement.

19 70. Entire Agreement. This Settlement Agreement and attached exhibits constitute the
20 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
21 agreements may be deemed binding on the Parties. The Parties expressly recognize California
22 Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide
23 that a written agreement is to be construed according to its terms and may not be varied or
24 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
25 representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

26 71. Amendment or Modification. No amendment, change, or modification to this
27 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their
28 counsel.

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

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

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

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

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

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

5 78. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
6 that either party may appeal any court order that materially alters the Settlement Agreement's
7 terms.

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

22 80. Waiver. No waiver of any condition or covenant contained in this Settlement
23 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
24 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
25 right or remedy.

26 81. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
27 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
28 construed more strictly against one party than another merely by virtue of the fact that it may have

1 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-
2 length negotiations between the Parties, all Parties have contributed to the preparation of this
3 Settlement Agreement.

4 82. Representation By Counsel. The Parties acknowledge that they have been
5 represented by counsel throughout all negotiations that preceded the execution of this Settlement
6 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
7 counsel. Further, Plaintiff and Plaintiff's Counsel warrant and represent that there are no liens on
8 the Settlement Agreement.

9 83. All Terms Subject to Final Court Approval. All amounts and procedures described
10 in this Settlement Agreement herein will be subject to final Court approval.

11 84. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
12 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
13 this Settlement Agreement.

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

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21 **SIGNATURES FOLLOW ON NEXT PAGE**
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SIGNATURES

PLAINTIFF

DATED: Jan 3, 2023

By Gene Bickley
Gene Bickley (Jan 3, 2023 10:50 PST)

Gene Bickley
Named Plaintiff and Representative
of All Others Similarly Situated and
All Aggrieved Employees

DEFENDANT

DATED:

By _____

Aaron Thomas
On Behalf of and an Authorized Representative
of Defendant Arnold J. Thomas & Son, Inc.

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SIGNATURES

PLAINTIFF

DATED:

By —

Gene Bickley
Named Plaintiff and Representative
of All Others Similarly Situated and
All Aggrieved Employees

DEFENDANT

DATED:

By —


Aaron Thomas
On Behalf of and an Authorized Representative
of Defendant Arnold J. Thomas & Son, Inc.