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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

GENARO JUAREZ, an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

CALMET SERVICES, INC., a California
corporation; CALMET PROPERTIES, LLC,
a California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 21STCV33668

[Assigned to the Hon. Kenneth R. Freeman
in Dept. 14]

**CLASS AND REPRESENTATIVE
ACTION**

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: September 13, 2021
Trial Date: None set

This Joint Stipulation re: Class Action and Representative Action Settlement
("Settlement" or "Agreement" or "Settlement Agreement") is made by and between plaintiff
GENARO JUAREZ ("Plaintiff") individually and on behalf of the Settlement Class, on the one
hand; and defendants CALMET SERVICES, INC. and CALMET PROPERTIES, LLC
(collectively "Defendants"), on the other hand, in the lawsuits entitled *Juarez v. Calmet Services,
Inc. et al.*, filed in Los Angeles County Superior Court, Case No. 21STCV33668 and *Juarez v.*

1 *Calmet Services, Inc. et al.*, filed in Los Angeles County Superior Court, Case No.
2 21STCV42467. Plaintiff and Defendants shall be, at times, collectively referred to as the
3 “Parties”. This Agreement is intended by the Parties to fully, finally, and forever resolve the
4 claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

5 **1. DEFINITIONS**

6 **A. “Action”** means *Juarez v. Calmet Services, Inc. et al.*, filed in Los Angeles
7 County Superior Court, Case No. 21STCV33668.

8 **B. “Aggrieved Employees”** means Class Members working for Defendants during
9 the PAGA Period as non-exempt, hourly-paid employees in California.

10 **C. “Class Counsel”** means: David D. Bibiyan and Jeffrey Bils of Bibiyan Law
11 Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s
12 Counsel.”

13 **D. “Class Period”** means the period from September 13, 2017 through April 1, 2022.

14 **E. “Class Notice”** means and refers to the notice sent to Class Members after
15 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
16 Agreement.

17 **F. “Court”** means the Superior Court of the State of California for the County of
18 Los Angeles.

19 **G. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
20 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
21 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
22 have been filed, the date on which they have been resolved or exhausted.

23 **H. “Defendants”** means, collectively, CALMET SERVICES, INC. and CALMET
24 PROPERTIES, LLC.

25 **I. “Employer Taxes”** means employer-funded taxes and contributions imposed on
26 the wage portions of the Individual Settlement Payments under the Federal Insurance
27 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
28 and contributions required of employers, such as for unemployment insurance.

1 **J. “General Release”** means the broader release of claims by Plaintiff, which is in
2 addition to Plaintiff’s limited release of claims as a Participating Class Member.

3 **K. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Six
4 Hundred and Fifty Thousand Dollars and Zero Cents (\$650,000.00),¹ which shall be paid by
5 Defendants, from which all payments for the Individual Settlement Payments to Participating
6 Class Members, the Court-approved amounts for attorneys’ fees and reimbursement of litigation
7 costs and expenses to Class Counsel, Settlement Administration Costs, the Service Award, the
8 PAGA Payment, and the LWDA Payment shall be paid. It expressly excludes Employer Taxes,
9 which shall be paid by Defendants separate, apart, and in addition to the Gross Settlement
10 Amount.

11 **L. “Individual PAGA Payment”** means a payment made to an Aggrieved
12 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
13 Individual Settlement Share if he or she is also a Participating Class Member.

14 **M. “Individual Settlement Payment”** means a payment to a Participating Class
15 Member of his or her net share of the Net Settlement Amount.

16 **N. “Individual Settlement Share”** means the gross amount of the Net Settlement
17 Amount that a Participating Class Member is projected to receive based on the number of
18 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
19 shall be reflected in his or her Class Notice.

20 **O. “LWDA Payment”** means the payment to the State of California Labor and
21 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
22 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
23 Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and Zero Cents
24 (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand Dollars and
25 Zero Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Five Thousand
26 Dollars and Zero Cents (\$5,000.00) will be paid to Aggrieved Employees on a *pro rata* basis
27

28 ¹ As the same may be increased in accordance with Paragraph 17, below.

1 based on the Workweeks worked for Defendants as a non-exempt, hourly-paid employee in
2 California in the PAGA Period (*i.e.* the PAGA Payment).

3 **P. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
4 that is available for distribution to the Participating Class Members after deductions for the Court-
5 approved allocations for Settlement Administration Costs, a Service Award to Plaintiffs, an
6 award of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the
7 LWDA Payment, and the PAGA Payment.

8 **Q. “Operative Complaint” or “Complaint”** mean the First Amended Class Action
9 Complaint to be filed.

10 **R. “PAGA Payment** is the 25% portion of the Twenty Thousand Dollars and Zero
11 Cents (\$20,000.00) that is allocated toward PAGA penalties (Five Thousand Dollars and Zero
12 Cents (\$5,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on the
13 Workweeks worked as non-exempt, hourly-paid employees in California in the PAGA Period,
14 which would be in addition to their Individual Settlement Payment if they are Participating Class
15 Members, as well.

16 **S. “PAGA Period”** means the period from September 13, 2020 through April 1,
17 2022.

18 **T. “Participating Class Members”** means all Settlement Class Members who do
19 not submit a timely and valid Request for Exclusion.

20 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
21 Settlement Amount that a Participating Class Member is eligible to receive based on the number
22 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
23 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
24 may be entitled if he or she is also an Aggrieved Employee.

25 **V. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
26 Plaintiff Genaro Juarez.

27 **W. “Preliminary Approval Date”** means the date on which the Court enters an
28 Order granting preliminary approval of the Settlement.

1 **X. “Released Parties”** shall mean Defendants and each of their past, present, and
2 future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-
3 sponsored employee benefit plans of any nature and their successors and predecessors in interest,
4 including all of their officers, directors, shareholders, exempt employees, agents, principals,
5 heirs, representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,
6 trustees, and agents.

7 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
8 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
9 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
10 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
11 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
12 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
13 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
14 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
15 Workweek Dispute was submitted by the Response Deadline.

16 **Z. “Request for Exclusion”** means a written request to be excluded from the
17 Settlement Class pursuant to Paragraph 9(C) below.

18 **AA. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
19 Thousand, Five Hundred Dollars and Zero Cents (\$7,500,00), which subject to Court approval,
20 will be paid out of the Gross Settlement Amount.

21 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
22 Administrator in administration of the Settlement, including, but not limited to, translating the
23 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
24 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
25 Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated
26 taxes and withholdings, providing declarations, generating Individual Settlement Payment
27 checks and related tax reporting forms, doing administrative work related to unclaimed checks,
28 transmitting payment to Class Counsel for the Court-approved amounts for attorneys’ fees and

1 reimbursement of litigation costs and expenses, to Plaintiffs for their Service Award, and to the
2 LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related
3 information, and any other actions of the Settlement Administrator as set forth in this Agreement,
4 all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated
5 not to exceed \$9,650. If the actual amount of the Settlement Administration Costs is less than
6 \$9,650, the difference between \$9,650 and the actual Settlement Administration Costs shall be a
7 part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$9,650 then
8 such excess will be paid solely from the Gross Settlement Amount and Defendants will not be
9 responsible for paying any additional funds in order to pay these additional costs.

10 **CC. "Settlement Administrator"** means the Third-Party Administrator mutually
11 agreed upon by the Parties that will be responsible for the administration of the Settlement
12 including, without limitation, translating the Class Notice in Spanish, the distribution of the
13 Individual Settlement Payments to be made by Defendants from the Gross Settlement Amount
14 and related matters under this Agreement.

15 **DD. "Settlement Class" or "Settlement Class Members"** means all current and
16 former non-exempt, hourly-paid employees who worked in California for Defendants at any time
17 during the Class Period.

18 **EE. "Workweeks"** means the number of weeks that a Settlement Class Member was
19 employed by and worked for the Defendants in a non-exempt, hourly position during the Class
20 Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as
21 applicable).

22 **2. BACKGROUND**

23 **A.** On September 13, 2021, Plaintiff filed with the LWDA and served on Defendants
24 a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
25 LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code
26 violations. ("PAGA Notice").

27 **B.** Also on September 13, 2021, Plaintiff filed a putative wage-and-hour class action
28 alleging that, during the Class Period, Defendants, as it pertains to Class Members: (1) failed to

1 pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or
2 compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof;
3 (5) failed to all wages due upon separation from employment; (6) failed to timely pay wages; (7)
4 failed to pay vested vacation time; (8) failed to issue accurate and compliant wage statements;
5 and (9) engaged in unfair competition (the "Class Action").

6 C. On or about November 12, 2021, Defendants removed the Class Action to the
7 Central District of California, asserting that federal preemption applied by virtue of Collective
8 Bargaining Agreements ("CBAs") governing the claims. Plaintiff filed a Motion for Remand,
9 which was denied on the basis that Plaintiff's overtime claim is preempted by Section 301 of the
10 Labor Management Relations Act ("LMRA"). Defendants filed a Motion for Judgment on the
11 Pleadings, which the Court converted into a Rule 56 Motion for Summary Judgment ("Summary
12 Judgment Motion"). As part of the Summary Judgment Motion, Defendants contended that they
13 were entitled to a judgment on Plaintiff's overtime pay, meal periods, timely wages under Labor
14 Code section 204, and vested vacation pay under Labor Code section 227.3, by virtue of LMRA
15 preemption. Defendants also argued that the wage statement and waiting time penalty claims are
16 derivative of the overtime claim and thus preempted, as well.

17 D. The Summary Judgment Motion was granted in part and denied in part. The Court
18 ruled that the LMRA preempted the overtime claim, meal break claim, and failure to timely pay
19 wages under Labor Code section 204 claim, and granted judgment against Plaintiff on those
20 issues. The Court remanded the remaining minimum wage claim, rest break claim, vacation claim
21 under Labor Code section 227.3, claims for waiting time penalties, wage statement violations,
22 and unfair competition back to the State Court in which it was filed.

23 E. On November 17, 2021, after sixty-five (65) days had passed since Plaintiff filed
24 and served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor
25 Code violations, Plaintiff filed a separate representative action seeking PAGA civil penalties
26 against Defendants for the Labor Code violations alleged in the PAGA Notice (the "PAGA
27 Action").
28

1 **F.** Thereafter, the Parties exchanged formal and informal discovery and attended a
2 mediation, in which Plaintiff was provided with, among other things: (1) a one third (1/3)
3 sampling of time and payroll records for the estimated 191 Class Members; (2) hire dates,
4 termination dates and final rates of pay for one-third (1/3) of Class Members; (3) contact
5 information for all Class Members; (4) Plaintiff's complete personnel file; (4) samples of paper
6 logs used by Class Members effectuating work duties outside of Defendants' facilities; (5)
7 Defendant Calmet Services' 2017 and 2018 Employee Handbooks; and (6) A CBA dated October
8 1, 2017 through September 30, 2022 ("2017 CBA").

9 **G.** On October 5, 2022, the Parties participated in a full-day mediation before Mark
10 Rudy, Esquire, a well-regarded mediator experienced in mediating complex labor and
11 employment matters. With the aid of the mediator's evaluation and proposal, the Parties reached
12 the Settlement to resolve the Action. As part of the Agreement, the Parties agreed to stipulate to
13 Plaintiff filing a First Amended Complaint in the Class Action, and dismiss the PAGA Action
14 without prejudice, thereby effectively consolidating the Class Action and PAGA Action, as
15 further set out below (hereinafter, the "Action").

16 **H.** Class Counsel has conducted significant investigation of the law and facts relating
17 to the claims asserted in the Class Action, and the PAGA Notice, and have concluded that the
18 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
19 Class, taking into account the sharply contested issues involved, the expense and time necessary
20 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
21 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
22 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
23 to be received by Settlement Class Members.

24 **I.** Defendants have concluded that, because of the substantial expense of defending
25 against the Action, the length of time necessary to resolve the issues presented herein, the
26 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
27 interest to accept the terms of this Agreement. Defendants deny each of the allegations and
28 claims asserted against it in the Action and the PAGA Notice. However, Defendants nevertheless

1 desire to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
2 continuing litigation and for the purpose of putting to rest the controversies engendered by the
3 Action.

4 **J.** This Agreement is intended to and does effectuate the full, final, and complete
5 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
6 PAGA Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California
7 and Aggrieved Employees.

8 **3. JURISDICTION**

9 The Court has jurisdiction over the Parties and the subject matter of the Action. The
10 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
11 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
12 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
13 pursuant to California Rule of Court, rule 3.769, subdivision (h).

14 **4. STIPULATION OF CLASS CERTIFICATION**

15 The Parties stipulate to the certification of the Settlement Class under this Agreement for
16 purposes of settlement only.

17 **5. AMENDMENT OF PLEADING AND MOTIONS FOR APPROVAL OF**
18 **SETTLEMENT**

19 The Parties hereby stipulate to the filing of a First Amended Complaint in the Class
20 Action that includes all of the allegations in the PAGA Action. If and when the First Amended
21 Complaint is filed, Plaintiff will dismiss the PAGA Action without prejudice, thereby effectively
22 consolidating all allegations in the PAGA Action into the Class Action.

23 After full execution of this Agreement, Plaintiff will move for an order granting
24 preliminary approval of the Settlement, approving and directing the mailing of the proposed
25 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally
26 certifying the Settlement Class for settlement purposes only, and approving the deadlines
27 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
28 Objections. If and when the Court preliminarily approves the Settlement, and after

1 administration of the Class Notice in a manner consistent with the Court's Preliminary Approval
2 Order, Plaintiffs will move for an order finally approving the Settlement and seek entry of a
3 Judgment in line with this Settlement. The Parties may both respond to any Objections lodged
4 to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

5 The Parties hereby expressly agree that whether or not the Court finally approves the
6 Settlement, Plaintiff's allegations from the PAGA Action will be effectively consolidated into
7 the Class Action, will relate back to the date on which Plaintiff filed the PAGA Notice, and
8 Defendants will be estopped from making any argument that there is any adverse effect on the
9 statute of limitations caused by Plaintiff's dismissal of the PAGA Action without prejudice to
10 effectuate this consolidation.

11 **6. STATEMENT OF NO ADMISSION**

12 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
13 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
14 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
15 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
16 in the event that this Agreement is not approved by the Court, or any appellate court, is
17 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
18 limited or affected in any way any claims, rights or remedies, or defenses in the Action or the
19 PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any
20 way any of their objections or defenses in the Action and the PAGA Notice. The Parties shall be
21 restored to their respective positions in the Action prior to the entry of this Settlement.

22 **7. RELEASE OF CLAIMS**

23 **A. Release by All Participating Class Members.**

24 **B.** Effective only upon the entry of an Order granting Final Approval of the
25 Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator of
26 the full Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement,
27 Plaintiff and all Participating Class Members release all claims against the Released Parties
28 asserted in the Operative Complaint, or any and all claims that may be asserted against the

1 Released Parties based on the factual allegations in the Operative Complaint, as follows: For the
2 duration of the Class Period, the release includes, for Participating Class Members: (1) all claims
3 for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims
4 for failure to provide meal periods or compensation in lieu thereof; (4) all claims for failure to
5 provide rest periods or compensation in lieu thereof; (5) all claims for failure to pay all wages
6 due upon separation from employment; (6) all claims for failure to timely pay wages; (7) all
7 claims for failure to pay vested vacation time; (8) all claims for failure to issue accurate and
8 compliant wage statements; and (9) all claims asserted through California Business &
9 Professions Code section 17200, *et seq.* arising out of the Labor Code violations referenced in
10 the Complaint (the "Class Released Claims").

11 **C. Release by All Aggrieved Employees**

12 For Aggrieved Employees, and, to the extent permitted by law, the State of California,
13 the release includes for the duration of the PAGA Period, all claims asserted or that could have
14 been asserted based on the allegations set forth in the PAGA Notice and thereafter alleged in the
15 Operative Complaint for PAGA civil penalties pursuant to Labor Code sections 210, 226.3, 558,
16 1174.5, 1197.1, and 2699 in connection with alleged violations of Labor Code sections 96, 98.6,
17 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 1102.5, 1174,
18 1194, 1197, 1197.5, 1198.5, 2802, and 2810.5 (the "PAGA Released Claims"). The Class
19 Released Claims and PAGA Released Claims shall be referred to herein as the "Released
20 Claims".

21 **D. Claims Not Released**

22 The releases above expressly exclude all other claims, including claims for vested
23 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
24 compensation, and any other claims outside of the Class Released Claims of Participating Class
25 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
26 Employees (and, to the extent permitted by law, the State of California) arising outside of the
27 PAGA Period.

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1 **E. General Release.**

2 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
3 of Judgment, and payment by Defendants to the Settlement Administrator selected of the full
4 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in
5 addition to the Released Claims, Plaintiff makes the additional following General Release:
6 Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of
7 action of every nature and description whatsoever, known or unknown, asserted or that might
8 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
9 law or regulation arising out of, relating to, or in connection with any act or omission of the
10 Released Parties through the date of full execution of this Agreement in connection with
11 Plaintiff's employment with Defendants or the termination thereof, except for any and all other
12 claims that may not be released as a matter of law through this Agreement. To the extent of the
13 General Release provided herein, Plaintiff stipulates and agrees that, upon entry of an Order
14 granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the
15 Settlement Administrator selected of the full Gross Settlement Amount and Employers' Taxes
16 necessary to effectuate the Settlement, they shall have expressly waived and relinquished, to the
17 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
18 California Civil Code, or any other similar provision under federal or state law, which provides:

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

22 **8. SETTLEMENT ADMINISTRATOR**

23 **A.** Plaintiff and Defendants, through their respective counsel, have selected ILYM
24 Group, Inc. to administer the Settlement, which includes but is not limited to translating the Class
25 Notice to Spanish, distributing and responding to inquiries about the Class Notice and calculating
26 all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the
27 Settlement Administrator, currently estimated to be \$9,650 will be paid from the Gross
28 Settlement Amount. If the actual amount of the Settlement Administration Costs is less than

1 \$9,650, the difference between \$9,650 and the actual Settlement Administration Costs shall be a
2 part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$9,650, then
3 such excess will be paid solely from the Gross Settlement Amount and Defendants will not be
4 responsible for paying any additional funds in order to pay these additional costs.

5 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION**
6 **PROCESS**

7 **A. Notice to the Settlement Class Members**

8 (1) Within ten (10) calendar days after the Preliminary Approval Date,
9 Defendants' Counsel shall provide the Settlement Administrator with information with respect
10 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
11 currently in Defendants' possession, custody, or control; (3) last known telephone number(s)
12 currently in Defendants' possession, custody, or control; (4) last known Social Security
13 Number(s) in Defendants' possession, custody, or control; and (5) the dates of employment (*i.e.*,
14 hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class
15 Member ("Class List"). The Settlement Administrator shall perform an address search using the
16 United States Postal Service National Change of Address ("NCOA") database and update the
17 addresses contained on the Class List with the newly-found addresses, if any. Within seven (7)
18 calendar days, or soon thereafter, of receiving the Class List from Defendants, the Settlement
19 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
20 Members via first-class regular U.S. Mail using the most current mailing address information
21 available. The Settlement Administrator shall maintain the Class List and digital copies of all
22 the Settlement Administrator's records evidencing the giving of notice to any Settlement Class
23 Member, for at least four (4) years from the Final Approval Date.

24 (2) The Class Notice will set forth:

- 25 (a) the Settlement Class Member's estimated Individual
26 Settlement Payment and Individual PAGA Payment,
27 and the basis for each;
28

- (b) the information required by California Rule of Court, rule 3.766, subdivision (d);
- (c) the material terms of the Settlement;
- (d) the proposed Settlement Administration Costs;
- (e) the definition of the Settlement Class;
- (f) a statement that the Court has preliminarily approved the Settlement;
- (g) how the Settlement Class Member can obtain additional information, including contact information for Class Counsel;
- (h) information regarding opt-out and objection procedures;
- (i) the date and location of the Final Approval Hearing; and
- (j) that the Settlement Class Member must notify the Settlement Administrator no later than the Response Deadline if the Settlement Class Member disputes the accuracy of the number of Workweeks as set forth on his or her Class Notice ("Workweek Dispute"). If a Settlement Class Member fails to timely dispute the number of Workweeks attributed to him or her in conformity with the instructions in the Class Notice, then he or she shall be deemed to have waived any objection to its accuracy and any claim to any additional settlement payment based on different data.

(3) If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)

1 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
2 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
3 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
4 Member within three (3) business days. Further, any Class Notices that are returned to the
5 Settlement Administrator with a forwarding address before the Response Deadline shall be
6 promptly re-mailed to the forwarding address affixed thereto.

7 (4) No later than seven (7) calendar days from the Response Deadline, the
8 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
9 completion of the notice process, including the number of attempts to obtain valid mailing
10 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
11 and copies of all Requests for Exclusion and Objections received by the Settlement
12 Administrator.

13 **B. Objections.**

14 Only Participating Class Members may object to the Settlement. In order for any
15 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
16 do so by mailing a written objection to the Settlement Administrator at the address or phone
17 number provided on the Class Notice no later than the Response Deadline. The Settlement
18 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants'
19 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
20 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection
21 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
22 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
23 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
24 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
25 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
26 will remain a member of the Settlement Class and if the Court approves this Agreement, the
27 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
28 the same extent as a Settlement Class Member who does not object. The date of mailing of the

1 Class Notice to the objecting Settlement Class Member shall be conclusively determined
2 according to the records of the Settlement Administrator. Settlement Class Members need not
3 object in writing to be heard at the Final Approval Hearing; they may object or comment in
4 person at the hearing at their own expense. Class Counsel and Defendants' Counsel may respond
5 to any objection lodged with the Court up to five (5) court days before the Final Approval
6 Hearing.

7 **C. Requesting Exclusion.**

8 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
9 Settlement by mailing a written request to be excluded from the Settlement ("Request for
10 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
11 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last
12 four digits of the Class Member's Social Security Number; (3) the Class Member's signature;
13 and (4) the following statement: "Please exclude me from the Settlement Class in the *Juarez v.*
14 *Calmet Services, Inc., et al.* matter" or any statement of similar meaning standing for the
15 proposition that the Class Member does not wish to participate in the Settlement. The Settlement
16 Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel
17 and Defendants' Counsel and shall report the Requests for Exclusions that it receives, to the
18 Court, in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement
19 Class Member who requests exclusion using this procedure will not be entitled to receive any
20 payment from the Settlement and will not be bound by the Settlement Agreement or have any
21 right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who
22 does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will
23 be bound by all terms of the Settlement, including those pertaining to the Released Claims, as
24 well as any Judgment that may be entered by the Court if Final Approval of the Settlement is
25 granted. A Settlement Class Member cannot submit both a Request for Exclusion and an
26 objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the
27 Request for Exclusion will control and the Objection will be overruled. Settlement Class
28 Members who worked during the PAGA Period as Aggrieved Employees that submit a valid

Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members' Workweek Data.

Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA PAYMENTS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

A. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the

1 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
2 (“PAGA Workweeks”).

3 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the
4 Settlement Administrator will use the following formula: Individual Settlement Share =
5 (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

6 **C.** To determine each Participating Class Member’s Participating Individual
7 Settlement Share, the Settlement Administrator will determine the aggregate number of
8 Workweeks worked by all Participating Class Members during the Class Period (“Participating
9 Class Workweeks”) and use the following formula: Individual Settlement Share =
10 (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net Settlement
11 Amount.

12 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
13 to Participating Class Members by way of check and is referred to as “Individual Settlement
14 Payment(s)”.

15 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
16 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
17 PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$5,000.00 (the
18 PAGA Payment).

19 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
20 to Participating Class Members and/or Aggrieved Employees by way of check. When a
21 Participating Class Member is also an Aggrieved Employee, one check may be issued that
22 aggregates both the Individual Settlement Payment and the Individual PAGA Payment

23 **11. DISTRIBUTION OF PAYMENTS**

24 **A. Distribution of Individual Settlement Payments.**

25 Participating Class Members will receive an Individual Settlement Payment and
26 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
27 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
28 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)

1 calendar days after expiration of the 180-day period, checks for such payments shall be
2 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
3 abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid
4 Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
5 Procedure section 384, shall be transmitted to the California State Controller’s Office for deposit
6 into the California Unclaimed Property Fund.. The Settlement Administrator shall prepare a
7 report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the
8 report shall be presented to the Court by Class Counsel along with a proposed amended
9 judgment that is consistent with the provisions of Code of Civil Procedure section 384.

10 **B. Funding of Settlement.**

11 Defendants shall, within ten (10) calendar days of Final Approval Date, make payment
12 of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 17 of this
13 Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal Revenue
14 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”)
15 with an FDIC insured banking institution, for distribution in accordance with this Agreement and
16 the Court’s Orders and subject to the conditions described herein.

17 **C. Time for Distribution.**

18 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
19 Employer Taxes by Defendants, or as soon thereafter as practicable, the Settlement Administrator
20 shall distribute all Payments due from the QSA for: (1) the Service Award to Plaintiff as specified
21 in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid
22 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
23 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
24 Payment, as specified in this Agreement and approved by the Court; (5) Individual PAGA
25 Payments as specified in this Agreement and approved by the Court; and (5) Individual
26 Settlement Payments to Participating Class Members, less applicable taxes and withholdings, as
27 specified in this Agreement and approved by the Court. All interest accrued shall be for the
28 benefit of the Class Members and distributed on a *pro rata* basis to Participating Class Members

1 based on the number of Workweeks worked by them in the Class Period.

2 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

3 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
4 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
5 17 of this Agreement, amounts to Two Hundred and Twenty-Seven Thousand Five Hundred
6 Dollars and Zero Cents (\$227,500.00). Class Counsel shall further apply for, and Defendants
7 shall not oppose, an application or motion by Class Counsel for reimbursement of actual costs
8 associated with Class Counsel's prosecution of this matter as set forth by declaration testimony
9 in an amount up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of
10 attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and future
11 attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval of the
12 settlement in Action. The "future" aspect of the amounts stated herein includes, without
13 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
14 There will be no additional charge of any kind to either the Settlement Class Members or request
15 for additional consideration from Defendants for such work unless, Defendants materially breach
16 this Agreement, including any term regarding funding, and further efforts are necessary from
17 Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce
18 the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
19 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
20 be a part of the Net Settlement Amount.

21 **13. SERVICE AWARD TO PLAINTIFF**

22 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an
23 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to
24 Plaintiff, for participation in and assistance with the Action. Any Service Award awarded to
25 Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form
26 1099. If the Court approves the Service Award to Plaintiff in less than the amounts sought herein,
27 then the unapproved portion(s) shall be a part of the Net Settlement Amount.

28 **14. TAXATION AND ALLOCATION**

1 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
2 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
3 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
4 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the
5 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
6 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
7 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
8 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
9 be made pursuant to applicable state and/or local withholding codes or regulations.

10 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
11 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
12 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
13 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
14 set forth in this Section may be modified in a manner to bring Defendants into compliance with
15 any such changes.

16 c. All Employer Taxes shall be paid by Defendants separate, apart, and in addition
17 to the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
18 payroll taxes as described above.

19 d. Neither Counsel for Plaintiff nor Defendants intend anything contained in this
20 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
21 be relied upon as such within the meaning of United States Treasury Department Circular 230
22 (31 C.F.R. Part 10, as amended) or otherwise.

23 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

24 The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of
25 the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
26 percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA
27 and twenty-five percent (25%) (\$5,000.00) will be distributed to Aggrieved Employees on a *pro*
28

1 *rata* basis based upon their respective Workweeks worked as Aggrieved Employees during the
2 PAGA Period.

3 **16. COURT APPROVAL**

4 This Agreement is contingent upon an order by the Court granting Final Approval of the
5 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
6 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
7 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
8 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
9 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
10 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
11 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
12 the Settlement Agreement being voided or not approved, and which control in such an event.

13 **17. INCREASE IN WORKWEEKS**

14 Defendants represents that there are no more than 32,000 Workweeks worked during
15 the Class Period. In the event that it is determined that the number of Workweeks worked by
16 Class Members during the Class Period increases by more than 10%, or 3,200 Workweeks,
17 then the Gross Settlement Amount shall be increased proportionally by the Workweeks in
18 excess of 35,200 Workweeks multiplied by the Workweek Value. The Workweek Value shall
19 be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$650,000.00)
20 by 32,000, which amounts to a Workweek Value of \$20.31. Thus, for example, should there
21 be 36,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased
22 by \$16,248.00. ((36,000 Workweeks – 35,200 Workweeks) x \$20.31 per Workweek.).

23 **18. RIGHT TO RESCIND**

24 If more than five percent (5%) of the Class Members elect not to participate in the
25 Settlement, Defendants may, at its election, rescind the Settlement Agreement and all actions
26 taken in furtherance of it will be thereby null and void. Defendants must meet and confer with
27 Class Counsel prior to exercising this right and must make clear their intent to rescind the
28 Agreement within fourteen (14) calendar days after the expiration of the Response Deadline.

1 **19. NOTICE OF JUDGMENT**

2 In addition to any duties set out herein, the Settlement Administrator shall provide
3 notice of the Final Judgment entered in the Action by posting the same on its website for a
4 period of no less than four (4) years.

5 **20. MISCELLANEOUS PROVISIONS**

6 **A. Interpretation of the Agreement.**

7 This Agreement constitutes the entire agreement between the Parties with respect to its
8 subject matter. Except as expressly provided herein, this Agreement has not been executed in
9 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
10 written representations or terms shall modify, vary or contradict its terms. In entering into this
11 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
12 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
13 enforced under the laws of the State of California, both in its procedural and substantive aspects,
14 without regard to its conflict of law provisions. Any claim arising out of or relating to the
15 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
16 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendants
17 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
18 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
19 and each of them, participated in the negotiation and drafting of this Agreement and had available
20 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
21 Defendants may claim that any ambiguity in this Agreement should be construed against the
22 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
23 approved by the Court.

24 **B. Further Cooperation.**

25 The Parties and their respective attorneys shall proceed diligently to prepare and execute
26 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
27 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
28 will not take any action inconsistent with this Agreement, including, without limitation,

1 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
2 Party has taken actions inconsistent with the Settlement, including, without limitation,
3 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
4 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
5 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
6 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
7 opt-outs and/or objections.

8 **C. Counterparts.**

9 The Agreement may be executed in one or more actual or non-original counterparts, all
10 of which will be considered one and the same instrument and all of which will be considered
11 duplicate originals.

12 **D. Authority.**

13 Each individual signing below warrants that he or she has the authority to execute this
14 Agreement on behalf of the Party for whom or which that individual signs.

15 **E. No Third-Party Beneficiaries.**

16 Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California,
17 Class Counsel, and Defendants are direct beneficiaries of this Agreement, but there are no third-
18 party beneficiaries.

19 **F. Deadlines Falling on Weekends or Holidays.**

20 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
21 or legal holiday, that deadline shall be continued until the following business day.

22 **G. Jurisdiction of the Court**

23 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
24 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
25 of this Settlement Agreement and all orders and judgments entered in connection therewith,
26 and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
27 interpreting, implementing, and enforcing the settlement embodied in this Settlement
28 Agreement and all orders and judgments entered in connection therewith.

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1 **H. Severability.**

2 In the event that one or more of the provisions contained in this Agreement shall for any
3 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
4 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
5 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
6 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

7 **IT IS SO AGREED:**

8 Dated: Feb 16, 2023, 2022


Genaro Juarez (Feb 16, 2023 13:23 PST)

GENARO JUAREZ
Plaintiff and Class Representative

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11 Dated: _____, 2022

CALMET SERVICES, INC,
Defendant

By: _____

Its: _____

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17 Dated: _____, 2022

CALMET PROPERTIES, LLC
Defendant

By: _____

Its: _____

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20 **AGREED AS TO FORM:**

21
22 Dated: 02/16/2023, 2022



DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiff GENARO JUAREZ

23
24
25
26 Dated: _____, 2022

ANTHONY C. OCEGUERA
ALEXIS SCHWAB
Counsel for Defendants CALMET
SERVICES, INC, and CALMET
PROPERTIES, LLC