

Subject to the Court's approval, the Parties have entered into a Settlement Agreement pursuant to the terms and conditions in this Joint Stipulation of Settlement of Class and PAGA Action and Settlement Agreement ("Settlement Agreement") between Plaintiff GREGORY SEILER (hereinafter "Plaintiff"), on behalf of himself and the Settlement Class, and Defendant SMOAKLAND DISTRIBUTION, LLC, Smoakland Sacramento, Chang Yi, Irfan Jaffery and Linda Jaffery, including their predecessors, successors, affiliates, owners, shareholders, officers, directors, managers, and past and present employees ("Defendants").

I. DEFINITIONS

1. **"Action" or "Lawsuit"** shall mean the Complaint entitled Gregory Seiler v. Smoakland Distribution, LLC et al., in Alameda County Superior Court, and assigned Case No. 21CV003855, and the operative First Amended Complaint ("FAC"), filed on or about March 16, 2022.

2. **"Class Counsel"** means the attorneys of record for the Class Representative and Class Members, i.e., Matthew J. Matern, Joshua D. Boxer and Clare E. Moran, MATERN LAW GROUP, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach CA 90266.

3. **"Class Counsel Award"** means an award of attorneys' fees, expenses and costs granted to Class Counsel and paid from the Maximum Settlement Amount.

4. **"Class Data"** means information regarding Class Members that Defendant will collect from its electronic records and provide to the Settlement Administrator. The Class Data shall be formatted as a Microsoft Excel spreadsheet and shall include for each Class Member their full name, last known address, last known telephone number, and Social Security number, as well as information sufficient to enable the Settlement Administrator to designate the number of work weeks worked by each and every Settlement Class Member during the Class Period.

5. **"Class Members"** means all current and former non-exempt, hourly employees who worked for Defendant in California at any time during the Class Period.

6. **"Class Period"** shall mean the time period from December 9, 2017 through the date of the Court's order approving Plaintiff's Motion for Preliminary Approval.

7. **“Class Representative Service Award”** or (“CRSA”) means the amount that the Court authorizes to be paid to Plaintiff from the Maximum Settlement Amount, in addition to Plaintiff’s Individual Settlement Payment.

8. **“Class Representative”** means the named Plaintiff in this lawsuit, Gregory Seiler.

9. **“Court”** means the Superior Court for the State of California, County of Alameda

10. **“Defendant”** means collectively Smoakland Distribution LLC, DeliverMD, Smokland Media, LLC, Smoakland Sacramento, Chang Yi, Irfan Jaffery and Linda Jaffery.

11. **“Defense Counsel”** or **“Counsel for Defendant”** shall mean Sean B. Gentry of Ad Astra Law Group, LLP, 582 Market St. 17th. Fl. San Francisco, CA 94104.

12. **“Effective Date of the Settlement”** refers to the 15th day after the date by which the last of the following has occurred: (a) all conditions of Settlement have been satisfied; (b) the Court has entered and filed the Final Approval Order and Judgment; and (c) the time period for appeal of the Judgment has been exhausted without any appeals having been filed, and/or all such appeals have been voluntarily or involuntarily dismissed, and/or the appropriate appellate court or courts have entered a final judgment affirming the Final Approval Order and Judgment of the Court and the final judgment of such appellate court or courts is no longer subject to any further appellate challenge or procedure. The Parties agree that only the Parties and/or Class Members who file a valid and timely Objection maintain the right to appeal. If an appeal is filed, the Effective Date shall be the date the judgment is final and no longer subject to appeal.

13. **“Individual Settlement Payment”** (“ISP”) means the amount payable from the Net Settlement Amount to each Settlement Class Member (“SCM”).

14. **“Maximum Settlement Amount”** or (“MSA”) means the maximum sum to be paid by Defendant pursuant to this Settlement Agreement, which shall be no more than Two Hundred and Fifty Thousand Dollars (\$250,000.00). The MSA shall include all payments contemplated by this Settlement Agreement, including but not limited to all ISPs, the CRSA, the Class Counsel Award, the PAGA Payment, the Settlement Administration Costs, any award of costs or reimbursements to Class Counsel or Plaintiff. Defendant’s share of payroll taxes will not

be paid out of the Maximum Settlement Amount, but instead will be paid separate and apart from it.

15. “Net Settlement Amount” or (“NSA”) means the MSA less the CRSA, the Class Counsel Award, the 75% portion of the PAGA Payment allocated to the LWDA, and the Settlement Administration Costs.

16. “Notice” means the Notice of Settlement of Class and PAGA Action in a form substantially similar to the form attached as Exhibit 1 (the “Notice”).

17. “PAGA” means the California Labor Code Private Attorneys General Act of 2004.

18. “PAGA Employees” means the aggrieved non-exempt employees employed by Defendant who worked at least one pay period during the PAGA Period.

19. “PAGA Period” means the time period one year and sixty-five days preceding the filing of the original Complaint.

20. “PAGA Payment” means the payment made to the California Labor and Workforce Development Agency pursuant to the PAGA. The PAGA Payment shall be made from the MSA.

21. “Parties” mean Plaintiff and Defendant, collectively, and “Party” shall mean either Plaintiff or Defendant, individually.

22. “Payment Ratio” means the respective Qualified Workweeks for each Settlement Class Member divided by the total Qualified Workweeks for all Class Members.

23. “Plaintiff” shall mean the named Plaintiff in this Lawsuit, Gregory Seiler.

24. “Qualified Settlement Fund” means the fund set up by the Settlement Administrator into which the MSA shall be deposited and disbursements from it shall be made.

25. “Qualified Workweeks” means the number of workweeks in which a Class Member performed any work for Defendant in a non-exempt, hourly position during the Class Period.

26. “Released Claims” means all claims and causes of action raised or that reasonably could have been raised in the operative complaint (the FAC) based upon the facts, legal theories,

and causes of action alleged in the Lawsuit for the time period from December 9, 2017 through the date of preliminary approval, and including all of the following claims for relief: failure to pay wages due; failure to pay minimum wages; failure to pay overtime wages; failure to provide compliant meal breaks and related premium payments; failure to provide compliant rest breaks and related premium payments; failure to provide compliant wage statements; failure to provide timely wages; failure to comply with Section 221 of the California Labor Code; failure to pay final wages; unfair business practices in violation of California Business and Professions Code § 17200 et seq.; any other claims or penalties under the wage and hour laws pleaded in the FAC; and all damages, penalties, interest, fees, and other amounts recoverable under the claims, causes of action or legal theories of relief described above as may be available under California and federal law to the extent permissible. The period of the Released Claims shall extend to the limits of the Class Period, but they are ineffective after the close of the Class Period. The definition of Released Claims shall not be limited in any way by the possibility that Plaintiff or SCMs may discover new facts, legal theories, or legal arguments not alleged in the FAC but which might serve as an alternative basis for pursuing the same or similar claims, causes of action, or legal theories of relief falling within the definition of Released Claims.

27. “Release Effective Date” means the date when the releases provided by the Settlement Class of the above-described Released Claims become effective, and more particularly upon both the Effective Date of the Settlement and the final installment payment to fully fund the QSF with the Maximum Settlement Amount.

28. “PAGA Released Claims” shall mean claims under the Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. (“PAGA”) that reasonably could have been premised on the facts, claims, and legal theories described above or in the FAC or in the PAGA Notice Letter Plaintiff provided to the LWDA and served on Defendants. The Released Parties shall be entitled to a release from the State of California and the Aggrieved Employees only as to all PAGA Released Claims based on the alleged facts and legal claims in the operative complaints. PAGA Released Claims will be released by the PAGA Employees even if they determine to opt out of the

Settlement.

a. Upon the Effective Date, and following the final payment to fully fund the Qualified Settlement Fund, the effective date of the PAGA Released Claims will occur when the Administrator receives the final installment payment from Defendant to fully fund the Qualified Settlement Fund.

b. The PAGA Released Claims expressly exclude all PAGA claims outside the PAGA Period, all PAGA claims not alleged in the operative complaints in the Actions, all claims under Cal. Labor Code § 558(a)(3), and all non-PAGA claims. In no event shall the release of the PAGA Release of Claims in this Settlement Agreement release any individual claims of any individuals other than Plaintiff.

29. “Released Parties” shall mean Defendant Smoakland Distribution LLC, DeliverMD, Smokland Media, LLC, Smoakland Sacramento, Chang Yi, Irfan Jaffery and Linda Jaffery and all of those entities’ past, present and/or future, direct and/or indirect, subsidiaries, parents, affiliates, divisions, joint venturers, predecessors, successors, insurers, assigns, consultants, subcontractors, current or former employees, officers, directors, servants, agents, investors, representatives, attorneys, executors, administrators, assigns, employee benefit plans (including but not limited to the trustees, fiduciaries, and administrators of those plans), and all persons acting under, by, through, or in concert with any of them, and each of them.

30. “Request for Exclusion” refers to a formal request to be excluded from the Settlement Agreement as described in the “Requests for Exclusion” section herein. PAGA Employees cannot exclude themselves from the PAGA Released Claims, and will instead automatically receive their pro-rata share of 25% of the PAGA Payment.

31. “Response Deadline” means the date forty-five (45) days after the Settlement Administrator mails Notices to Class Members, and the last date on which Class Members may submit requests for exclusion or objections to the Settlement Agreement.

32. “Settlement Agreement” means this Joint Stipulation of Class Action and PAGA Settlement Agreement.

33. “Settlement Administrator” means Phoenix Settlement Administrators.

34. “Settlement Class Members” (“SCM”) means all Class Members who do not submit a Request for Exclusion. SCMs will release all of the Released Claims and be bound by all terms of the Settlement Agreement and final judgment entered in this Lawsuit, if any.

RECITALS

35. Class Certification. The Parties stipulate and agree to certification of a “Settlement Class” for the purposes of this Settlement Agreement only. Should the Settlement Agreement not obtain Court approval and become final and effective, class certification shall immediately be set aside and the Settlement Class immediately decertified. The Parties’ stipulation to class certification as part of the Settlement Agreement shall not be considered in connection with the issue of whether a class should be certified in this Lawsuit or any other lawsuit, and shall not be admissible in any such proceeding other than in the context of this Settlement Agreement.

36. Procedural History. On or about December 9, 2021, Plaintiff filed a putative class action Complaint asserting claims against the Defendant, including claims for failure to pay minimum and overtime wages; failure to provide compliant meal and rest breaks and related premium payments; failure to provide compliant wage statements; failure to provide timely wages; failure to comply with Section 221 of the California Labor Code; failure to pay final wages; and unfair business practices in violation of California Business and Professions Code § 17200 et seq. On or about March 16, 2022, Plaintiff filed the FAC alleging the same claims in the original Complaint. The Lawsuit was filed in the Alameda County Superior Court.

37. Mediation. On December 15, 2023, the Parties participated in a private mediation with the Honorable Bonnie Sabraw (Ret.), a mediator with considerable experience mediating wage and hour class actions. This took place only after the Parties exchanged extensive informal information, documents, and data. The mediation resulted in the Parties agreeing to a Memorandum of Agreement memorializing the general terms of this Settlement Agreement.

38. Benefits of Settlement Agreement to Settlement Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate

their disputes through trial and potential appeals. Plaintiff has also considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both generally and in response to Defendant's defenses, and the difficulties in establishing damages for the Class Members. Moreover, Plaintiff and Class Counsel have considered the Defendant's financial status and ability to pay any judgment or award following litigation. Thus, Plaintiff and Class Counsel have determined that the terms set forth in this Settlement Agreement are fair, adequate, and reasonable, and in the best interests of the SCMs.

39. Defendant's Reasons for Settlement Agreement. Defendant has concluded that further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant's time and resources have been and, unless this Settlement Agreement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff and the putative Class Members. Defendant has also considered the risks of further litigation in reaching its decision to enter into this Settlement Agreement. Although Defendant continues to contend that it is not liable for any of Plaintiff's claims, Defendant has agreed to settle along the terms set forth in this Settlement Agreement and fully resolve the Lawsuit.

a. Class Members' Claims. The Class Representative claims that his allegations have merit in regards to the putative Class Members. This Settlement Agreement is a compromise of disputed claims. The monies paid in this Settlement Agreement are genuinely disputed and the Parties agree that the provisions of Labor Code section 206.5 do not apply to this Settlement Agreement. Nothing in this Settlement Agreement or its exhibits, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against the putative Class Members or Class Counsel as to the merits of the claims asserted.

b. Defendant's Defenses. Defendant claims that the Released Claims have no merit. This Settlement Agreement is a compromise of disputed claims. The Settlement funds are genuinely disputed and the Parties agree that the provisions of Labor Code section 206.5 do not apply to this Settlement Agreement. Nothing in this Settlement Agreement or its exhibits, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against Defendant as to the merits of the claims asserted.

III. TERMS OF SETTLEMENT AGREEMENT

40. Settlement Agreement Consideration by Defendant. Defendant shall pay the MSA and nothing more than the MSA.

41. General Release of Claims By Plaintiff. As of the Effective Date, in exchange for the consideration in this Settlement Agreement, Plaintiff, for himself and his heirs, successors and assigns, hereby waives, releases, acquits and forever discharges the Released Parties from any and all Released Claims as well as any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date he signs this Settlement Agreement, including but not limited to, any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the

Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiff expressly waives and relinquishes any and all claims, rights or benefits he may have under California Civil Code §1542, which provides as follows: **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.** Plaintiff may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but he expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist at the time he signed this Settlement Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff' employment with Defendant. The Parties further acknowledge, understand and agree that this Settlement Agreement would not have been finalized without this representation and commitment from Plaintiff.

42. Personal Guaranty: Upon presentation of financial statements establishing that Irfan Jaffery is, personally or through a solely held LLC, owner of 90% of DeliverMD, Irfan Jaffery agrees to personally guarantee the payments and other consideration by Defendants

43. Conditions Precedent: This Settlement Agreement will become final and effective only upon the occurrence of all of the following events:

- a. The Final Effective Date occurs; and
- b. Defendant does not invoke its right to revoke the Settlement Agreement as described herein (**"Option to Revoke or Modify Settlement Agreement"**).

44. Nullification of Settlement Agreement. In the event that this Settlement Agreement fails to become effective, or is reversed, withdrawn or modified, or in any way prevents

or prohibits Defendant from obtaining a complete resolution of the claims as described herein:

- a.** This Settlement Agreement shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
- b.** The conditional class certification (obtained for any purpose) shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
- c.** None of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments in the Lawsuit, including with respect to the issue of class certification.

45. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Settlement Class for the Class Period for purposes of the Settlement Agreement only, and to agree that Plaintiff Gregory Seiler shall be appointed as Class Representative, and that Marten Law Group, PC shall be appointed Class Counsel.

46. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and SCMs are not relying on any statement or representation by the Parties in this regard. SCMs understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the ISPs they receive, and that they will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of their ISPs.

47. Circular 230 Disclaimer. Each Party to this Settlement Agreement acknowledges and agrees that no provision of this Settlement Agreement, and no written communication or disclosure between the Parties or their attorneys, was intended to be relied upon as tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); and that each Party has relied exclusively on their own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement Agreement; and that

each Party is not entitled to rely upon any communication or disclosure by any attorney or advisor to avoid any tax penalty.

48. Preliminary Approval Motion. Within 30 days of execution of this Settlement Agreement, Plaintiff shall file with the Court a Motion for Order Granting Preliminary Approval and supporting papers, which shall include this Settlement Agreement.

49. Settlement Administrator. By accepting the role as Settlement Administrator, the Settlement Administrator is bound to all of the terms, conditions and obligations described in this Settlement Agreement. Among these obligations, the Settlement Administrator shall have sole and exclusive responsibility for:

- a. Calculating the Qualified Workweeks, Payment Ratio, and the ISP for each Settlement Class Member;
- b. Processing and mailing payments to the Class Representative, Class Counsel, LWDA, and SCMs;
- c. Printing and mailing the Notices to the Class Members as directed by the Court;
- d. Receiving and reporting objections, opt outs, Requests for Exclusion, and Notices of Objection;
- e. Deducting all legally required taxes from the ISPs and distributing tax forms;
- f. Processing and mailing any tax payments to the appropriate state and federal taxing authorities;
- g. Providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement Agreement; and,
- h. Other tasks that the Parties mutually agree on, or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of its duties. Defendant and Defense Counsel shall have no responsibility for validating or ensuring the accuracy of the

Settlement Administrator's work. Plaintiff, Class Counsel, Defendant and Defense Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the ISPs or any other distribution of monies contemplated by this Settlement Agreement.

50. Notice Procedure.

a. Class Data. The Settlement Administrator shall not provide the Class Data to Class Counsel or Plaintiff or any third party, or use the Class Data or any of its information for any purpose other than to administer this Settlement Agreement. Defendant shall provide the Settlement Administrator with the Class Data to prepare and mail the Notices to the SCMs. This shall take place within fourteen (14) calendar days after the date that both of the following has occurred: (a) the Preliminary Approval Date; and (b) the date on which Defendant receives sufficient and reasonable written assurances from the Settlement Administrator that the Administrator will maintain the confidentiality of the Class Data.

b. Notices.

- i.** The Notice of Class Action and PAGA Settlement mailed out to Class Members (the "Notice") shall be in a form substantially similar to the form attached as Exhibit 1. The Notice shall inform Class Members to notify the Settlement Administrator of their current mailing address where the ISP should be mailed following the Effective Date. The Notice shall include the release to be given by each SCM in exchange for the ISP.
- ii.** The Notice shall also provide each SCM's starting and ending dates of employment in a class position during the Settlement Class Period, the number of Qualified Workweeks calculated by the Settlement Administrator, and the Settlement Administrator's calculation of each SCM's estimated ISP.
- iii.** The Notice's mailing envelope shall include the following language:

“IMPORTANT LEGAL DOCUMENT- YOU MAY GET MONEY FROM A CLASS ACTION SETTLEMENT AGREEMENT; A PROMPT REPLY IS REQUIRED TO PRESERVE YOUR RIGHTS.”

c. Notice By First Class U.S. Mail. No later than fourteen (14) calendar days after receiving the Class Data from Defendant as provided herein, the Settlement Administrator shall mail copies of the Notice to all Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member.

d. Undeliverable Notices. Any Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. If any Notices sent to SCMs currently employed by Defendant are returned to the Settlement Administrator as non-delivered and no forwarding address is provided, the Settlement Administrator shall notify Defendant. Defendant will request that the currently employed SCM provide a corrected address to the Defendant to forward to the Settlement Administrator. Class Members who received a re-mailed Notice shall have their Response Deadline extended fifteen calendar (15) days from the original Response Deadline.

i. Disputes Regarding ISPs. SCMs will have the opportunity, should they disagree with the estimated number of Qualified Workweeks stated on their Notice, to provide documentation and/or an explanation to show contrary employment dates. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an

adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any ISP under the terms of this Settlement Agreement, and that determination shall be binding upon the SCM and the Parties.

- ii. Disputes Regarding Administration of Settlement Agreement.** Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement Agreement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

g. Requests for Exclusion.

- i.** The Notice shall include an explanation that Class Members who wish to exclude themselves from the Settlement Agreement are required to submit a written Request for Exclusion by the Response Deadline. The written Request for Exclusion must state that the Class Member wishes to exclude himself or herself from the Settlement Agreement and (1) must contain the name, address, and the last four digits of the Social Security number and/or Employee ID number of the person requesting exclusion; (2) must be signed by the Class Member; (3) must be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address; and (4) should identify this action somehow as *Seiler v. Smoakland Distribution, LLC et al.*, Case Number 21CV003855, filed in the Superior Court of California, County of Alameda.
- ii.** The Request for Exclusion will not be valid if it is not timely submitted, or if it is not signed by the Class Member, or if it does not contain the name and address of the Class Member. The date of the postmark on the return mailing envelope for the Request for Exclusion

shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Class Members who fail to submit a valid and timely written Request for Exclusion on or before the Response Deadline shall be Settlement Class Members (“SCMs”) who are bound by all terms of the Settlement Agreement, and any final judgment entered in this Lawsuit, if the Settlement Agreement is approved by the Court.

iii. Any Class Member who requests to be excluded from the Settlement Agreement will not be entitled to any recovery under the Settlement Agreement and will not be bound by its terms or have any right to object, appeal or comment on it. Nothing in this Settlement Agreement can be construed as a waiver of any defense that Defendant or the Released Parties have or could assert against anyone who timely serves a Request for Exclusion. Class Members who are also PAGA Employees are not able to request exclusion from the PAGA Payment and they will release the Released PAGA Claim whether they opt-out of the Settlement or not.

iv. No later than five (5) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted written Requests for Exclusion.

v. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion from the Settlement Agreement.

h. Objections.

i. The Notice shall state that SCMs who wish to object to the Settlement Agreement should mail to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark date of the mailing shall be deemed the exclusive

means for determining that a Notice of Objection was served timely.

ii. SCMs who submit a timely Notice of Objection will have a right to appear at the Final Approval/Settlement Agreement Fairness Hearing in order to have their objections heard by the Court. The Notice of Objection should be signed by the SCM and state the case name and number, the name and address of the SCM, the last four digits of the SCM's Social Security number and/or Employee ID number, the basis for the objection, and if the SCM intends to appear at the Final Approval/Settlement Agreement Fairness Hearing. Class members may also object by appearing at the final approval hearing and presenting their objections.

iii. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage SCMs to object to the Settlement Agreement or appeal from the Order and Final Judgment.

iv. Class Members who submit a written Request for Exclusion are not entitled to object to the Settlement Agreement, except as to the PAGA allocation.

v. The Settlement Administrator shall send all objections to Class Counsel and Defense Counsel. Class Counsel will be responsible for filing the Notices of Objection with the Court in advance of the Final Approval Hearing. Plaintiff and/or Defendant may file oppositions to Notices of Objection no later than nine (9) court days prior to the date of the Final Approval/Settlement Agreement Fairness Hearing.

vi. Defendant shall not be responsible for the fees, costs, or expenses incurred by Plaintiff, Class Counsel, or SCMs arising from or related to any objection to the Settlement Agreement or related to any appeals thereof.

50. Funding and Allocation of the Maximum Settlement Amount. Upon satisfaction of the preconditions described in this Settlement Agreement, and pursuant to the timeline and

instructions below, Defendant will deposit the MSA into a Qualified Settlement Fund to be established by the Settlement Administrator.

51. Funding Due Date.

a. The Settlement Administrator shall set up a Qualified Settlement Account (“QSA”) which Defendant shall have the option of making payments into towards the MSA prior to the due date for those payments. Any portion of the MSA which remains unpaid as of the Effective Date will be paid in biweekly payments over a two-year period beginning 30 calendar days following the Effective Date. Any interest which accrues on the MSA sums paid into the QSA prior to distribution by the Settlement Administrator will become part of the NSA. To clarify, if for example there are no objectors and the Court enters final approval and judgment on November 1, 2024, that is the Effective Date. Defendant would then have 30 days plus two years, or 25 months, to fund the QSA with biweekly payments. In this instance, the QSA would be fully funded by December 1, 2026.

b. **Individual Settlement Payments.** ISPs shall be paid from the NSA and shall be paid pursuant to the following formula:

i. **Calculation of Individual Settlement Payments (“ISPs”).** Using the Class Data, the Settlement Administrator will calculate the total Qualified Workweeks for all SCMs. The respective Qualified Workweeks for each SCM will be divided by the total Qualified Workweeks for all SCMs, resulting in the Payment Ratio for each individual SCM. Each SCM’s Payment Ratio will then be multiplied by the NSA to calculate each SCM’s estimated ISP. The ISP will be provided only to the individual SCM. Each ISP will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). The ISP checks will include an endorsement confirming that by cashing the check, each SCM is releasing state and federal claims covered by the Released Claims.

ii. Calculation of PAGA Payments: The parties have allocated \$10,000 to the PAGA Payment, with \$7,500 being paid to the California Labor and Workforce Development Agency, and \$2,500 will remain in the NSA and be distributed as described in this Settlement Agreement. The PAGA Payment and the \$2,500 portion of it that will be paid to PAGA Employees will be divided up amongst them on the same pro-rata calculation for determining the Payment Ratio for the SCMs. However, Defendant's counsel has informed Plaintiff there are 1027 Settlement Class Members who worked in the Class Period. Of these individuals, there are two individuals that have passed away, based on information and belief; at least ten individuals that have settled their applicable claims thereby precluding them from recovery in this matter (including both individual and PAGA claims); and another seven currently represented by Carlos Jato in his related lawsuit, for which Mr. Jato has stated will opt out of this matter. The court denied class certification in Mr. Jato's current case in relation to this action, and most of those individuals have also received payment of the applicable PAGA penalties due to a prior PAGA-only matter Mr. Jato previously pursued, which the parties settled. Dividing \$2,500 by the number of individuals employed during the applicable PAGA period is not a substantial enough amount to justify the expense of printing and mailing separate checks. Therefore, for the Class Members who are also PAGA Employees, their Individual Settlement Payment will be added together with their pro rata share of the NSF and their pro rata share of the \$2,500 for the portion of the PAGA Payment allocated to the PAGA Employees. Even if a Settlement Class member determines to opt out of the Settlement, they will receive their pro rata portion of the \$2,500 employee component of the PAGA Payment, as

aggrieved employees cannot opt-out of the PAGA penalty claim. *See, e.g., Robinson v So. County Oil* (2020) 53Cal.App.476).

iii. Tax Allocation. For tax purposes, each ISP shall be allocated as follows: 20% as wages subject to IRS Form W-2 reporting and applicable taxes/withholdings, and 80% as penalties and interest for which an IRS Form 1099 will be issued.

iv. Mailing. After the Effective Date of the Settlement occurs and after Defendant has made the final installment payment to the Qualified Settlement Fund to fully fund it with the Maximum Settlement Amount, then within twenty-five (25) calendar days of that final funding date, the Administrator will mail ISPs by regular, First Class, U.S. Mail to each SCM.

v. Uncashed Checks. Any checks issued to SCMs shall remain valid and negotiable for one hundred and eighty (180) days after the date they are issued. In the event an ISP check has not been cashed within one hundred and eighty (180) days, all such checks shall be voided and funds associated with such voided checks, plus any accrued interest that has not otherwise been distributed, shall be paid out in accordance with Code of Civil Procedure section 384 or any other method of distribution consistent with Code of Civil Procedure section 384. The Parties agree that the *cy pres* recipient shall be Safe Place for Youth (SPY), or other mutually agreeable *cy pres* recipient should the Court not approve the Parties' proposed beneficiary and/or as otherwise consistent with Code of Civil Procedure section 384.

c. Class Representative Service Award ("CRSA").

i. Defendant agrees not to oppose or object to a Class Representative Service Award ("CRSA") of up to seventy-five hundred dollars (\$7,500)

to Plaintiff in exchange for her General Release of claims, including the Released Claims, and for his time, effort and risk in bringing and prosecuting this matter. The CRSA shall be in addition to the Plaintiff's ISP as a SCM.

- ii. The Settlement Administrator shall pay the CRSA to Plaintiff from the MSA no later than twenty-five (25) calendar days after the Effective Date. Any portion of the requested CRSA that is not awarded to the Class Representative shall become part of the NSA.
- iii. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Plaintiff for the CRSA. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the CRSA and shall hold harmless Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the CRSA.
- iv. If the Court reduces or does not approve the requested CRSA, Plaintiff shall not have the right to revoke the Settlement Agreement, which shall remain binding.

d. Class Counsel Award.

- i. In consideration for settling the Lawsuit and for all Released Claims to the Released Parties, as well as the General Release of claims by Plaintiff, Class Counsel intends to apply for an award of attorneys' fees not to exceed one-third of the MSA (\$82,500.00), plus costs and expenses supported by declaration.
- ii. Class Counsel, Plaintiff and the SCMs will not apply to the Court for any additional payment of attorney fees and costs, or for an increase in the MSA. The Parties agree that, over and above the Court-approved Class Counsel Award, each of the Parties, including all SCMs, shall bear their own fees and costs, including, but not limited to, those related to the

investigation, filing, or prosecution of the Lawsuit; the negotiation, execution, or implementation of this Settlement Agreement; and/or the process of obtaining, administering, or challenging an Order Granting Preliminary Approval and/or Final Approval.

- iii. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the NSA and shall be distributed to SCMs as provided in this Settlement Agreement.
- iv. The Settlement Administrator shall pay the Class Counsel Award to Class Counsel from the MSA no later than twenty-five (25) calendar days after the Effective Date.
- v. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Award. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Class Counsel for the payment.
- vi. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement Agreement, or to appeal such an order, and the Settlement Agreement will remain binding.

e. **PAGA Payment.** Ten Thousand Dollars (\$10,000) shall be allocated from the MSA for the release of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the \$10,000 payment, or \$7,500, to the California Labor and Workforce Development Agency (the “PAGA Payment”) no later than twenty-five (25) calendar days after the Effective Date. Twenty-five (25%) of the remaining amount of the \$10,000 payment, or \$2,500, will remain in the NSA and be distributed as described in this Settlement Agreement. Class Counsel will take all action required by California Labor Code section 2699(l).

f. **Settlement Administrator Costs.** The Settlement Administrator shall be

paid for the costs of administration of the Settlement Agreement from the MSA. The Settlement Administrator, Phoenix Settlement Administrators, has provided a not to exceed quotation for administration for \$11,950.00. The Settlement Administrator shall be paid the Settlement Administrator Costs no later than fourteen (14) calendar days after Defendant provides the full MSA amount to the Settlement Administrator for disbursement under this Settlement Agreement.

52. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, the execution of necessary documents and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's Preliminary and Final Approval of this Settlement Agreement. The Parties also agree to cooperate in the Settlement Administrator process. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. Class Counsel will also notify Defense Counsel if subpoenaed or upon receipt of any other request for documents or information regarding any other lawsuit filed, or potential lawsuit, against the Released Parties that covers or includes any SCMs and the Released Claims.

53. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to request the preliminary approval of the Settlement Agreement, and the setting of a date for a Final Approval/Settlement Agreement Fairness Hearing. The Preliminary Approval Order shall provide for the Notice of Class Action and PAGA Settlement (the "Notice") to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval Hearing, Plaintiff shall submit this Settlement Agreement and the proposed Notice.

54. Final Approval Motion. At the earliest practicable time following the expiration of the Response Deadline, Plaintiff shall file with the Court a Motion for Order Granting Final Approval and Entering Judgment, requesting final approval of the Settlement Agreement and a

determination of the amounts payable for the CRSA, the Class Counsel Award, the PAGA Payment, and the Settlement Administration Costs.

a. Declaration by Settlement Administrator. The Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement Agreement detailing the number of Notices mailed and re-mailed to Class Members, the number of undeliverable Notices, the number of timely requests for exclusion, the number of Notices of Objections received, the amount of the average, highest, and lowest ISP, the Settlement Administration Costs, and any other information as the Parties mutually agree on, or that the Court orders the Settlement Administrator to provide.

b. Final Approval Order and Judgment. The Parties shall present an Order Granting Final Approval of Class Action and PAGA Settlement Agreement to the Court for its approval, and Judgment thereon consistent with the terms and conditions of this Settlement Agreement.

55. Option to Revoke or Modify Settlement Agreement.

a. Defendant has the unilateral right to revoke the Settlement Agreement if, after the Response Deadline, the number of Class Members who submitted timely and valid written requests for exclusion from the Settlement Agreement equals at least 10% of all Class Members. If Defendant exercises the option to terminate this Settlement Agreement, Defendant shall provide written notice to Class Counsel within seven (7) calendar days after the Response Deadline, and pay all Settlement Administrator Costs incurred up to the date of the termination. The Parties shall proceed in all respects as if this Settlement Agreement had not been executed.

b. The number of putative Class Members is currently estimated to be 1027 as of June 15, 2024. Of these individuals, there are two individuals that have passed away, based on information and belief; at least ten individuals that have settled their applicable claims thereby precluding them from recovery in this matter (including

both individual and PAGA claims); and another seven currently represented by Carlos Jato in his related lawsuit, for which Mr. Jato has stated will opt out of this matter, leaving the remaining number at 1008. If the Class Data shows that the number of Class Members increases by more than 10% at the time of Preliminary Approval, Plaintiff has the right to request a corresponding increase in the MSA.

57. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Lawsuit, except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval/Settlement Agreement Fairness Hearing to be conducted by the Court.

58. Nullification of Settlement Agreement. In the event that the Court does not grant final approval, or the Court does not enter a final judgment as provided herein, or the Settlement Agreement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the beginning. In such a case, the entire MSA money shall be returned to the Defendant, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any costs already incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties. In the event an appeal is filed from the Court's final judgment, or any other appellate review is sought, administration of the Settlement Agreement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator within thirty (30) days of said notification.

59. No Effect on Employee Benefits. Amounts paid to Plaintiff or other SCMs pursuant to this Settlement Agreement shall not be deemed pensionable earnings or have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff or SCMs.

60. Exhibits and Headings. The terms of this Settlement Agreement include the terms set forth in Exhibit 1. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for ease of reference only and do not constitute a part of this Settlement Agreement.

61. Amendment or Modification. With Court approval, this Settlement Agreement may be amended or modified only by a written instrument that is signed by counsel for all Parties or their successors-in-interest, and signed by the Parties or their successors-in-interest.

62. Entire Settlement Agreement. This Settlement Agreement and its exhibits constitute the entire Settlement Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its exhibits.

63. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate actions needed by this Settlement Agreement to effectuate its terms. The person signing this Settlement Agreement on behalf of Defendant represents and warrants that they are authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiff represents that he is authorized to sign this Settlement Agreement and that he has not assigned, transferred, or encumbered any claim, or part of a claim, demand, cause of action or any rights herein released and discharged or covered by this Settlement Agreement to any third-party.

64. Binding on Successors and Assigns. The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.

65. California Law Governs. All terms of this Settlement Agreement and its exhibits, and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.

66. Counterparts. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves copies or originals of the signed counterparts.

67. This Settlement Agreement Is Fair, Adequate and Reasonable. The Parties believe that this Settlement Agreement is a fair, adequate and reasonable Settlement Agreement of this Lawsuit and have arrived at this Settlement Agreement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or their counsel participated in the drafting of this Settlement Agreement.

68. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection to it, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement Agreement and all orders and judgments entered in connection to it.

69. Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement, including the fact of the Settlement Agreement, its terms or contents, and the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except for the Notice to Class Members to effectuate the terms of the Settlement Agreement. This section means that Plaintiff and Class Counsel agree not to issue press releases, communicate with or respond to any media or publication entities, publish information in any manner or form, whether printed or electronic, on any medium, or otherwise communicate, whether by print, video, website, recording or any other medium, with any person or entity concerning the Settlement Agreement, including the fact of the Settlement Agreement, its terms or contents and the negotiations underlying the Settlement Agreement, except as shall be contractually required to effectuate the terms of the Settlement Agreement. However, for the

limited purpose of allowing Class Counsel to prove adequacy as class counsel in other lawsuits, Class Counsel may disclose the name of the Parties in this Lawsuit, the venue/case number of this Lawsuit, and the fact that this Lawsuit settled on a class-wide basis (but not any other Settlement Agreement details) for such purposes.

70. No Unalleged Claims. Plaintiff and Class Counsel represent that they, as of the date of execution of this Settlement Agreement, have no intention of pursuing any claims against Defendant in any judicial, administrative, or arbitral forum, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant, and that Plaintiff's Counsel is not currently aware of any facts or legal theories upon which any claims or causes of action could be brought against Defendant, other than those facts or legal theories alleged in the FAC in this Lawsuit. Plaintiff and Plaintiff's Counsel further represent and agree that they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant. The Parties agree that this Settlement Agreement would not have been finalized without this representation. Nothing in this Paragraph will be construed as a restraint on the right of any counsel to practice.

71. Waiver of Certain Appeals. The Parties agree to waive all appeals from the Court's final approval of the Settlement Agreement, unless the Court modifies the Settlement Agreement.

72. No Admissions by the Parties. Plaintiff alleges that the Released Claims have merit, while Defendant contends that they lack merit. This Settlement Agreement is a compromise of disputed claims. Nothing contained in this Settlement Agreement, no documents referred to herein, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against the Defendant or Plaintiff as to the merits or lack thereof of the claims asserted.

73. Notice of Settlement Agreement to LWDA. Plaintiff will provide notice of this Settlement Agreement to the Labor Workforce Development Agency ("LWDA") as required by Labor Code Section 2699(1)(2).

IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement Agreement is voluntarily executed by the Parties and their attorneys as of the dates noted.

Dated: Oct 10, 2024, 2024

Gregory Seiler
Gregory Seiler (Oct 10, 2024 16:02 PDT)

Gregory Seiler, individually and on behalf of others similarly situated and aggrieved

Dated: Nov 12, 2024, 2024

SMOAKLAND DISTRIBUTION LLC

Chang Yi
Chang Yi (Nov 12, 2024 17:56 PST)

By: Chang Yi
Its: Chief Legal Officer

APPROVED AS TO FORM:

Dated: Oct 18, 2024, 2024

MATERN LAW GROUP, PC

Joshua D. Boxer
By: Joshua D. Boxer
Counsel for Gregory Seiler

Dated: Nov 12, 2024, 2024

AD ASTRA LAW GROUP, LLP

Sean Gentry
Sean Gentry (Nov 12, 2024 18:23 PST)

Sean Gentry
Counsel for SMOAKLAND DISTRIBUTION, LLC