

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Mehrdad Bokhour, Esq. (Cal. Bar No. 285256)
mehrdad@bokhourlaw.com
BOKHOUR LAW GROUP, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493 | Fax: (310) 675-0861

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO

MARIA SOLEDAD RANGEL MERCADO,
individually and on behalf of all others
similarly situated;

Plaintiff,

vs.

NORTH BAY DISTRIBUTION, INC., a
California Corporation; CHARTWELL
STAFFING SERVICES, INC., a New York
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: FCS057328
[Assigned to Hon. Tim P. Kam, Dept 7, for all purposes]

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing
Date: May 3, 2024
Time: 9:00 a.m.
Dept.: 7

Complaint filed: October 21, 2021

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I manage the employment department within my firm where I am also a Partner. I
4 represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge
5 of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for
6 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
7 competently testify thereto.

8 **COUNSEL'S EXPERIENCE**

9 2. I have been a member, in good standing, of the State Bar of California since 2001.
10 I am admitted to practice in the United States District Courts for the Central and Southern
11 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
12 courts in California.

13 3. I have handled over 500 employee vs. employer litigation matters during my 23
14 years in practice. Over the last 15 years, my practice has almost entirely consisted of
15 representing employees, the majority of which has included class action and representative
16 action wage and hour matters. In total, I have handled well over 250 class action and
17 representative action wage/hour cases, and have been appointed by the court as class counsel and
18 have received final court approval and judgment in close to half of those actions to date, and
19 anticipate receiving final approval in many more of those in the future.

20 4. As part of these settlements and judgments, I have recovered in excess of \$250
21 million in damages for my clients and the class members (who often work as nurses, ambulance
22 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
23 countless other trades). My team and I once held the record for the largest PAGA-only case in
24 California's history - a \$12.5 million-dollar court approved settlement, which followed extensive
25 litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
26 company (*Garcia v. Macy's*, San Bernardino Superior Court).

27 5. I have tried two major class and PAGA cases against Fortune 100 companies over
28 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County

1 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
2 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
3 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
4 the PAGA case was reversed and remanded.

5 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
6 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
7 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
8 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
9 only 5% of lawyers receive.

10 **BRIEF SUMMARY OF THE SETTLEMENT**

11 7. Following a contested but productive mediation, as well as months of
12 negotiations thereafter, Plaintiff and Defendants (collectively, the “Parties”) entered into a
13 Class Action and PAGA Settlement Agreement and Release of Claims resolving the wage and
14 hour claims of the putative class (the “Settlement Agreement”), which is attached hereto as
15 **Exhibit A**. The Settlement Agreement seeks to release and discharge Defendant from the
16 claims brought against it in exchange for Defendants’ agreement to pay \$1,500,000 on a non-
17 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
18 Settlement Amount without having to submit a claim form or take any action, except for those
19 who opt-out). Plaintiff seeks to represent a class of all current and former nonexempt
20 employees who worked at a North Bay Facility in California at any time during the Class
21 Period, including Direct Hires of North Bay and Temporary Employees assigned by Chartwell.

22 8. Under the terms of the Settlement Agreement, Defendants will not oppose Class
23 Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the
24 Settlement Amount, Class Counsel’s litigation expenses not to exceed \$25,000, Settlement
25 Administrator Costs of \$25,500, PAGA Penalties of \$100,000 of which \$75,000 will be paid to
26 the LWDA and the remaining \$25,000 will be paid to the Aggrieved Employees, and a service
27 award not to exceed \$10,000 to Plaintiff. After subtracting the agreed-upon deductions from
28 the Settlement Amount, approximately \$839,500.00 will be available to pay the Individual

Class Payments to approximately 2,500 Class Members, as follows:

Gross Settlement Amount	\$ 1,500,000.00
Attorneys' Fees (1/3)	\$ 500,000.00
Litigation Costs	\$ 25,000.00
Administrator Costs	\$ 25,500.00
PAGA Penalties	\$ 100,000.00
Class Representative Service Award	\$ 10,000.00
Net Settlement Amount	\$ 839,500.00

9. Assuming that 2,500 Class Members collectively worked 112,000 Workweeks during the Class Period, then each Class Member will receive approximately \$7.50 per Workweek.

10. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks Worked he/she is credited with working during the Class Period (attached hereto as **Exhibit B**).

PROCEDURAL BACKGROUND

11. My office and my co-counsel have performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, Plaintiff's Counsel (i.e., my office) believes this settlement to be fair, reasonable, and adequate.

12. After being retained by Plaintiff, my co-counsel submitted an October 20, 2021, letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit C**. The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

13. The next day, we filed a putative class action in the Solano County Superior Court against Defendant North Bay. Then, on December 27, 2021, Plaintiff filed the operative First

1 Amended Complaint, adding Defendant Chartwell and alleging class and PAGA claims,
2 including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to
3 provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay wages each
4 period and upon separation of employment, (f) failure to provide accurate itemized wage
5 statements, (g) unfair and unlawful competition, and (h) PAGA penalties.

6 14. Defendants retained counsel and immediately began to defend the case. And,
7 during the early stages of this case, Defendant Chartwell filed two separate motions to compel
8 arbitration. The first (as to Plaintiff's individual and class action claims) was set for hearing on
9 September 19, 2022, and the second (as to Plaintiff's PAGA claims) was set for hearing on
10 November 7, 2022. At the hearing on September 19, 2022, the Court did not grant or deny
11 Defendant's motion; instead, the Court set an evidentiary hearing for November 7, 2022 (the
12 same day as the hearing on Chartwell's second motion) to take evidence prior to determining
13 whether Plaintiff and Chartwell entered into an arbitration agreement. The Court also allowed
14 for the parties to: (1) take depositions regarding the evidentiary issues, and (2) submit
15 supplemental briefing regarding whether Plaintiff's claims against Defendant North Bay should
16 proceed in court rather than arbitration. At that juncture, counsel for the Parties met and
17 conferred and agreed that, that given the size and scope of the class and PAGA claims in the
18 case, the unsettled issues relating to whether this case would proceed to arbitration, in whole or
19 part, and the burden, expense and risk associated with continuing to litigate this matter, the case
20 was a candidate for mediation. Ultimately, the Parties scheduled mediation.

21 15. In preparation for the mediation, the Parties informally exchanged documents and
22 information that allowed both sides to calculate the potential damages and evaluate potential risk,
23 including policies and procedures pertaining to each claim alleged, and statistics relating to the
24 number of current and former employees, number of shifts, pay periods worked and other things.
25 Defendant also provided its written policies and practices and a robust sampling of payroll and
26 timekeeping records for Class Members covering over 196,950 shifts worked. This information
27 enabled both parties to take a deep dive into the claims. Additionally, during this process,
28 Plaintiff and her counsel analyzed, researched, and investigated the potential issues, including

1 matters related to the calculation of damages, trial, and appellate issues and risks.

2 16. On July 25, 2023, Plaintiff and Defendant participated in mediation before Lynn
3 Frank, who is one of the most highly experienced and respected class action mediators in
4 California. The matter did not resolve at mediation, but the Parties continued negotiations and
5 Ms. Frank issued a mediator's proposal which was accepted by the Parties on in the latter part of
6 2023. The Parties memorialized the terms of the settlement in a long-form Settlement
7 Agreement. Under the terms of the settlement, the Parties now seek preliminary approval of the
8 Settlement.

9 **EVALUATION OF THE SETTLEMENT**

10 17. In preparation for mediation, Peter Carlson, a senior associate within my office,
11 our co-counsel, and I formulated a damages model and risk analysis based upon detailed data
12 obtained through informal discovery and information exchanges. The summary of the claims
13 below is based on calculations by our expert and us, and the risks that we potentially faced,
14 giving significant credit to the defenses that Defendants raised or would likely raise in further
15 proceedings.

16 18. Following the informal exchange and other information provided by Defendants,
17 we estimated the following data points through the date of mediation: (1) 600 Direct Hires, (2)
18 67,000 Direct Hire Workweeks, (3) 1,900 Temporary Employees, and (4) 45,000 Temporary
19 Employee Workweeks. From these metrics, and when factoring in claim certification
20 probabilities and liability probabilities, we formulated detailed damages models to value the
21 claims in preparation for mediation and to reach a realistic and reasonable resolution.

22 19. Plaintiff contended that her strongest claims were for unpaid wages arising from
23 three different violations. *First*, Plaintiff argued that she and the Class Members were required to
24 undergo a security check every time they left the facility *after clocking out*, in violation of
25 California law. *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (off-the-clock security checks are
26 compensable because the employees are subject to the company's control and the searches were
27 primarily for the company's benefit). *Second*, Plaintiff also alleged that, during the COVID-era,
28 Defendants failed to compensate the Class for pre-shift temperature checks and screenings.

1 *Boone v. Amazon Servs., LLC* (E.D. Cal. 2022) 562 F.Supp.3d 1103 (pre-shift COVID
2 temperature checks constitute “hours worked” and must be compensated). *Third*, Plaintiff
3 alleged that Defendants paid the Class on an hourly basis with additional earned compensation
4 but failed to include this nondiscretionary compensation in the regular rate calculations and
5 overtime compensation. In total, Plaintiff calculated that the maximum potential damages for
6 these claims (combined) was \$1,683,528.

7 20. However, this maximum figure fails to account for various risks and defenses
8 which had to be considered at mediation. For example, Defendants contended that the arbitration
9 agreement was enforceable and would bring a complete end to these claims. Plaintiff assigned a
10 20% risk to this defense/argument. Defendants also argued that the claims were inherently
11 unmanageable as they would rely on individualized testimony as to the amount of
12 uncompensated “off-the-clock” time while underdoing security and COVID screenings; thus,
13 Defendants argued this was the prototypical example where certification would be denied
14 because of individualized issues; thus, Plaintiff assigned another 40% risk at the class
15 certification stage. Then, as to the merits, Defendants argued that it paid all wages owed and the
16 Class Members were not required to perform any off-the-clock work. Indeed, Defendants
17 provided information that many of these practices (such as the security check) did not even exist
18 at other facilities – as such, Plaintiff assigned another 20% risk on the merits, resulting in risk-
19 adjusted value of the unpaid wage claims of \$646,475.

20 21. Plaintiff also alleged meal and rest break claims against Defendants. After expert
21 review of the timekeeping records, Plaintiff’s counsel estimated a 36.2% violation rate for meal
22 periods and 25% for rest breaks. Given the total number of shifts at issue (approximately
23 537,600), this established maximum values of \$3,063,180 for meal periods (537,600 total shifts x
24 36.2% violation rate x \$15.74 per LC § 226.7) and \$2,115,456 for rest breaks (537,600 total
25 shifts x 25% violation rate x \$15.74 per LC § 226.7).

26 22. However, Defendants raised numerous arguments in response to this claim,
27 including that they maintained fully compliant written policies and specifically authorized the
28 Class Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a

1 break or take a short/late break. Therefore, Defendants asserted that a fact-finder would have to
2 determine for each Class Member whether a break was missed and why, and why a break was
3 noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to
4 Defendants. These defenses are factored into Plaintiffs' analysis in two ways. First, these issues
5 raise questions regarding whether the meal and rest break claims could be certified, and Plaintiffs
6 placed a 40% risk at the class certification stage for meal periods and a 40% risk for rest breaks.
7 Second, these defenses also go toward the merits given the evidentiary question of proving the
8 number of meal and rest violations. As such, Plaintiffs placed a 40% risk on the merits for meal
9 breaks, and an additional 40% risk on the merits for rest breaks. Plaintiff also assigned the same
10 20% risk as to the arbitration agreement, so this sets the risk-adjusted value for the meal claims
11 as \$882,196 ($\$3,063.180 \times 20\% \text{ arb agreement risk} \times 30\% \text{ class cert risk} \times 30\% \text{ merits risk}$) and
12 for the rest break claims as \$609,251 ($\$2,115,456 \times 20\% \text{ arb agreement risk} \times 40\% \text{ class cert risk}$
13 $\times 40\% \text{ merits risk}$).

14 23. Finally, Plaintiff alleged claims for waiting time penalties and wage statement
15 violations. But these claims were entirely derivative of the claims above, meaning that they only
16 had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum
17 values for these claims were as follows: (1) \$6,044,160 [1,600 former employees x \$15.74 per
18 hour x 8 hours per day x 30 days], and (2) \$4,008,000 for wage statement violations [40,580
19 wage statements at the \$50/\$100 formula under § 226(e)].

20 24. But Defendants raised a variety of defenses to these derivative claims that
21 impacted the valuation. Namely, Defendants argued that the wage statements did not violate
22 Labor Code § 226 and, even if there was a "technical" violation, Plaintiff would be unable to
23 prove the required "knowing and intentional" and "injury" elements. Based on these facts and
24 defenses, Plaintiff applied the 20% risk as to the arbitration agreement, a 40% risk at class
25 certification, and estimated another 40% risk on the merits, leading to a risk-adjusted value of
26 \$1,154,304 for the wage statement claims.

27 25. Then, as to the waiting time penalty claim, Plaintiff's valuation had to account for
28 the fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those

claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here, Defendants argued there was no “willful” violation since they had compliant written policies and any deviations therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiffs’ counsel applied the 20% arbitration risk, a 40% risk at class certification and a 50% risk on the merits, leading to a risk-adjusted value of \$1,450,598.

26. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

•	Unpaid Wage Claims	\$	646,475
•	Meal and Rest Break Claims	\$	1,491,447
•	Wage Statement Claims	\$	1,154,304
•	Waiting Time Penalty Claims	\$	1,450,598
•	Total Risk Adjusted Penalties and Damages	\$	4,742,824

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

27. The settlement was the product of extensive arm’s length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

28. The settlement will result in a fair payment to each class member based on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and her counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys’ fees and costs. After evaluating the significant risks attendant with

1 further litigation described above and weighing them against the benefits of a known
2 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
3 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
4 reasonable resolution of the claims alleged.

5 29. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
6 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
7 and investigation, making it possible to exercise informed judgment throughout the settlement
8 process, including significant document review (e.g. documents pertaining to Defendants'
9 policies and procedures, personnel documents, among others), and conducted an extensive
10 analysis of the detailed class-wide data provided by Defendant.

11 30. Based on my experience in other cases, including wage and hour matters, I
12 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
13 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
14 settlement at this time is in the best interests of the class. The settlement provides each class
15 member with compensation for the alleged violations when viewed in relation to the costs and
16 risks inherent in obtaining class certification and proceeding to trial.

17 31. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and
18 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

19 32. Of course, the settlement amount represents a compromise figure, taking into
20 account the various risks surrounding class certification and the merits of Defendants' asserted
21 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
22 members, with no reversion to Defendant.

23 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

24 33. Plaintiff seeks an enhancement payment of \$10,000 for her service to the class,
25 which I believe is fair and warranted. Ms. Rangel came forward in an effort to effectuate a
26 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
27 She assumed significant risk in bringing this litigation—namely, had she lost, she would have
28 been ordered to pay Defendants' costs.

34. Plaintiff provided invaluable assistance to my office and the Class in this case, including providing factual background for the Class Complaint; reviewing the litigation documents; providing information and documents about Defendant's policies and practices; participating in phone calls to discuss litigation and settlement strategy; and reviewing the settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of the reasons why she believes that the service award should be approved.

**ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE
REQUESTED FEES AND COSTS**

35. As set forth above, I have handled over 250 class and representative actions, have been appointed as class counsel and have successfully resolved over half of those cases, and many others remain pending and will successfully resolve in the future.

36. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, my firm and my co-counsel paid all costs including filing fees, court costs, research fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

37. It is my experience that attorney fee awards of one-third of a common fund settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee is further warranted because it is within the range of reasonableness typically awarded in class actions. The litigation costs are reasonably capped at \$25,000 and will be based on the actual amount of costs incurred at the time of final approval.

SETTLEMENT ADMINISTRATOR

38. The parties request that the Court appoint CPT Group to serve as the Settlement Administrator. CPT Group is experienced in administering class action settlements, and has provided a proposal to administer this settlement for a total of \$25,500, which is attached hereto as **Exhibit D**.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

40. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “A.”

41. The proposed Class Notice is attached as Exhibit “B.”

42. A true and correct copy of the notice letter we submitted to the LWDA is attached as Exhibit “C.”

43. CPT’s proposal to administer the Settlement is attached hereto as Exhibit “D.”

44. The LWDA’s confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit “E.”

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 13, 2024, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Mehrdad Bokhour, Esq. [CSB No. 285256]
mehrdad@bokhourlaw.com
BOKHOUR LAW GROUP, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, CA 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

Attorneys for Plaintiff and Putative Classes

[Counsel for Defendant North Bay Distribution, Inc., on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

MARIA SOLEDAD RANGEL MERCADO,
individually and on behalf of all others
similarly situated;

Plaintiff,

vs.

NORTH BAY DISTRIBUTION, INC., a
California Corporation; CHARTWELL
STAFFING SERVICES, INC., a New York
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: FCS057328

*[Assigned to Hon. Tim P. Kam, Dept 7, for
all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 **LightGabler**

2 By: Jonathan Fraser Light (State Bar #101049)

3 Jamie N. Stein (State Bar #219761)

4 Glenn J. Dickinson (State Bar #159753)

5 760 Paseo Camarillo, Suite 300

6 Camarillo, CA 93010

7 (805) 248-7208

8 (805) 248-7209 (fax)

9 jlight@lightgablerlaw.com

10 jstein@lightgablerlaw.com

11 gdickinson@lightgablerlaw.com

12 Attorneys for Defendant North Bay Distribution, Inc.

13 Alexander L. Conti, Esq. (California Bar No. 155945)

14 CONTI LAW

15 23 Corporate Plaza, #150

16 Newport Beach, CA 92660

17 Telephone: (949) 791-8555

18 Facsimile: (949) 791-8556

19 Email: aconti@conti-law.com

20 Attorneys for Defendant CHARTWELL STAFFING SERVICES, INC.

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Maria Soledad Rangel Mercado, individually and on behalf of all others
3 similarly situated, and on behalf of the State of California, and Defendants North Bay
4 Distribution, Inc., and Chartwell Staffing Services, Inc., and is approved by their respective
5 counsel of record, subject to the terms and conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Maria Soledad*
8 *Rangel Mercado v. North Bay Distribution, Inc., et al.*, Solano County Superior Court, Case No.
9 FCS057328.

10 2. "Administrator" means and refers to CPT Group, the third-party class action
11 settlement administrator agreed to by the Parties, which will provide the Notice to the Class
12 Members and distribute the settlement amounts as described in this Agreement.

13 3. "Administration Costs" means the costs payable from the Settlement Amount to
14 the Administrator for administering this Settlement, including, but not limited to, translating the
15 Notice, printing, distributing, and tracking documents for this Settlement, tax reporting, and
16 deposit of the employee and employer share of payroll taxes, unclaimed property due diligence,
17 reporting and remittance obligations, distributing the Settlement Amount, and providing
18 necessary reports and declarations, as requested by the Parties. The Administration Costs shall
19 be paid from the Settlement Amount, including, if necessary, any such costs in excess of the
20 amount represented by the Administrator as being the maximum costs necessary to administer
21 the Settlement.

22 4. "Aggrieved Employee(s)" means all current and former nonexempt employees
23 who worked at a North Bay Facility in California at any time during the PAGA Period, including
24 Direct Hires of North Bay and Temporary Employees assigned by Chartwell.

25 5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
26 Action and PAGA Settlement Agreement and Release of Claims.

27 6. "Class" means all current and former nonexempt employees who worked at a
28 North Bay Facility in California at any time during the Class Period, including Direct Hires of

1 North Bay and Temporary Employees assigned by Chartwell.

2 7. “Class Counsel” refers to Brian Mankin and Peter Carlson of Lauby, Mankin &
3 Lauby LLP, along with Mehrdad Bokhour of Bokhour Law Group, P.C.

4 8. “Class Data of North Bay” means a complete list that Defendant North Bay will
5 diligently and in good faith compile from its records and provide to the Administrator on one
6 spreadsheet which shall include, for each Class Member that was directly employed by North
7 Bay: the individual’s full name, last known address, Social Security Number, and total Weeks
8 Worked during the PAGA Period and the Class Period (or alternatively may include hire and
9 termination dates).

10 9. “Class Data of Chartwell” means a list that that Defendant Chartwell will
11 diligently and in good faith compile from its records and provide to the Administrator on one
12 spreadsheet which shall include, for each Class Member that was directly employed by Chartwell
13 and assigned to work at a North Bay Facility: the individual’s full name, last known address,
14 Social Security Number, and total Weeks Worked during the PAGA Period and the Class Period
15 (or alternatively may include hire and termination dates).

16 10. “Class Member(s)” refers to individual members of the Class.

17 11. “Class Period” is deemed to be any time during the period of October 21, 2017,
18 through July 25, 2023.

19 12. “Class Representative” or “Plaintiff” means and refers to Plaintiff Maria Soledad
20 Rangel Mercado.

21 13. “Complaint” refers to the operative First Amended Class and PAGA
22 Representative Complaint filed in Solano County Superior Court on December 27, 2021.

23 14. “Court” (or “Judge”) means the California Superior Court, County of Solano.

24 15. “Defendant Chartwell” or “Chartwell” means and refers to Defendant Chartwell
25 Staffing Services, Inc., who employed and assigned Temporary Employees to work at a North
26 Bay Facility.

27 16. “Defendant Chartwell’s Counsel” means and refers to Alexander L. Conti, Esq..

28 17. “Defendant North Bay” or “North Bay” means and refers to Defendant North

1 Bay Distribution, Inc.

2 18. “Defendant North Bay’s Counsel” means and refers to LightGabler.

3 19. “Direct Hires of North Bay” or “Direct Hires” means and refers to individuals
4 who were hired directly by North Bay and employed to work at a North Bay Facility.

5 20. “Effective Date” means the date by when both of the following have occurred: (a)
6 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
7 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
8 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
9 one or more Participating Class Members objects to the Settlement, five business days after the
10 deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment
11 is filed, the day after the appellate court affirms the Judgment and issues a remittitur, and other
12 appeals are exhausted.

13 21. “Escalator Clause:” Defendant North Bay represents that the Class Members
14 consisting of Direct Hires of North Bay worked a total of approximately 67,000 Workweeks
15 during the Class Period. Defendant Chartwell represents that the Class Members consisting of
16 Temporary Employees assigned by Chartwell worked a total of approximately 45,000
17 Workweeks during the Class Period. If the total count of 112,000 Workweeks (as contained in
18 the Class Data) increases by more than 10 percent of this number (*i.e.*, above 123,200
19 Workweeks), then the Settlement Amount shall increase by \$13.39 for each Workweek above
20 123,200.

21 22. “Final Approval” refers to the order of the Court granting final approval of this
22 Settlement Agreement and entering a judgment approving this Agreement on substantially the
23 terms provided herein or as may be modified by subsequent agreement of the Parties.

24 23. “Individual Class Payment” refers to each Participating Class Members share of
25 the Net Settlement Amount, as further discussed in Paragraph 51(c) below.

26 24. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
27 PAGA Penalties, as further discussed in Paragraph 51(c) below.

28 25. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 51(b)

1 below.

2 26. “North Bay Facility” means and refers to North Bay’s facilities in California
3 where the Class Members performed work, and includes: (a) 2031 Cessna Dr., Vacaville, CA
4 95688, (b) 2050 Cessna Dr., Vacaville, CA 95688, (c) 2029 E. Monte Vista Ave., Vacaville, CA
5 95688, (d) 2131 Icon Way, Vacaville, CA 95688, (e) 4995 Industrial Way, Benecia, CA 94510,
6 and (f) 13454 Larwin Cir., Santa Fe Springs, CA 90670.

7 27. “Notice” means the notice of proposed class settlement that will be sent to the
8 Class Members and which will advise each Class Member of the settlement and his or her
9 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
10 setting of a Final Approval Hearing.

11 28. “Objecting Class Member” means a Class Member, other than Plaintiff, who
12 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 73(c)
13 below.

14 29. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
15 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
16 Code Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*, “PAGA”), as well
17 as the Individual PAGA payment allocated to each Aggrieved Employee.

18 30. “PAGA Period” is deemed to be any time during the period of October 21, 2020,
19 through July 25, 2023.

20 31. “Participating Class Member” means any and all Class Members who are deemed
21 to participate and receive an Individual Class Payment, and do not opt-out by submitting timely
22 valid Requests for Exclusion.

23 32. “Parties” or “Settling Parties” mean Plaintiff, and Defendant North Bay, and
24 Defendant Chartwell.

25 33. “Preliminary Approval Order” means the judicial Order to be entered by the
26 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
27 and providing for the issuance of the Notice to the Class, an opportunity to opt out of the
28 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final

1 approval hearing on the fairness of the terms of Settlement, including approval of attorneys' fees
2 and costs. Provided that the motion is consistent with the terms herein, Defendant North Bay
3 and Defendant Chartwell will not object to Plaintiff's motion for preliminary approval but will
4 be provided with an opportunity to review and comment upon the motion before it is filed.

5 34. "QSF" means the Qualified Settlement Fund set up by the Administrator for the
6 benefit of the Participating Class Members and Aggrieved Employees, and from which the
7 settlement payments shall be made.

8 35. "Released Class Claims" or "Class Claims" by the Participating Class Members
9 upon Final Approval of the Settlement will include all claims asserted in the Complaint or that
10 reasonably could have been alleged based on the allegations, the facts, statutory citation and/or
11 legal theories contained in the Complaint, including: (a) failure to pay minimum wages, (b)
12 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest
13 breaks, (e) failure to timely pay wages upon separation of employment, (f) failure to provide
14 accurate itemized wage statements, (g) unfair and unlawful competition, and (h) all other claims
15 for statutory penalties based on the facts or claims alleged in the Complaint.

16 36. "Released PAGA Claims" or "PAGA Claims" means any and all PAGA claims
17 that Plaintiff alleged against the Released Parties, on behalf of herself and the State of California,
18 based on the facts stated in the Complaint in the Action and in the LWDA notice letter, including
19 all PAGA claims seeking civil penalties premised upon (a) failure to pay minimum wages, (b)
20 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest
21 breaks, (e) failure to timely pay wages each period and upon separation of employment, (f)
22 failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties
23 recoverable under PAGA based on the facts or claims alleged in the Complaint. The time period
24 governing the Released PAGA Claims shall be any time during the PAGA Period.

25 37. "Released Parties" means Defendant North Bay and Defendant Chartwell and
26 their officers, directors, employees, and agents.

27 38. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 73(a)
28 below.

39. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the Class Members.

40. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to Class Representative Maria Soledad Rangel Mercado in addition to her Individual Class Payment as a Participating Class Member and Individual PAGA Payment as an Aggrieved Employee.

41. “Settlement Amount” is \$1,500,000.00 payable by North Bay, subject to the Escalator Clause and exclusive of Defendant North Bay’s obligation to fund its share of payroll taxes, as further discussed in Paragraph 51(c) below.

42. “Temporary Employees” refers to individuals who were employed by Chartwell and assigned to work at a North Bay Facility in California at any time during the Class Period and/or PAGA Period.

43. “Work Weeks” or “Weeks Worked” in the context of a Class Member means any and all work weeks during the Class Period during which the Class Member worked at least one day at a North Bay Facility. Likewise, in the context of Aggrieved Employees, it means any and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at least one day at a North Bay Facility. Any partial Work Weeks will be rounded up to the next whole number.

B. General Terms

44. On October 21, 2021, Plaintiff filed a putative class action in the Solano County Superior Court against Defendant North Bay. Then, on December 27, 2021, Plaintiff filed the operative First Amended Complaint, adding Defendant Chartwell and alleging class and PAGA claims, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and (h) PAGA penalties.

45. The Defendants deny Plaintiff’s claims and allegations and contend that the Action is not suitable for class certification.

1 46. The Class Representative believes she can proceed with the representative and
2 class claims, that the Action is meritorious, and that class certification is appropriate.

3 47. The Parties have conducted a thorough investigation into the facts of the Action.
4 This includes conducting an extensive exchange of informal discovery, including a sampling of
5 payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about
6 and has done extensive research with respect to the applicable law and potential defenses to the
7 claims of the Class. Class Counsel has diligently pursued an investigation of the Class
8 Members' claims. Based on the foregoing data and on their own independent investigation and
9 evaluation, Class Counsel is of the opinion that the settlement with Defendant North Bay and
10 Defendant Chartwell for the consideration and on the terms set forth in this Settlement
11 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in
12 light of all known facts and circumstances, including the risk of significant delay and uncertainty
13 associated with litigation, various defenses asserted by Defendant North Bay and Defendant
14 Chartwell, and numerous potential appellate issues.

15 48. On July 25, 2023, Plaintiff, Defendant North Bay, and Defendant Chartwell
16 participated in a full-day mediation with Lynn Frank, Esq., a well-respected wage-and-hour
17 mediator. Although the matter did not settle at mediation, the Parties continued to negotiate and
18 exchange documents to facilitate settlement discussions. Ultimately, with further help from the
19 mediator, the Parties reached this Settlement.

20 49. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
21 to be performed or judgment to be entered pursuant to the terms of the Settlement and
22 Agreement, shall be construed as an admission by either Defendant of any wrongdoing or
23 violation of any statute or law or liability on the claims or allegations in the Action.

24 50. Stipulation for Class Certification. For settlement purposes only, Defendant
25 North Bay and Defendant Chartwell will stipulate that the Participating Class Members may be
26 conditionally certified as a Class. This stipulation to certification is in no way an admission that
27 class action certification is proper and shall not be admissible in this or in any other action except
28 for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to

1 issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall
2 become null and void ab initio and shall have no bearing on, and shall not be admissible in
3 connection with, the issue of whether certification would be appropriate in a non-settlement
4 context. Defendant North Bay and Defendant Chartwell expressly reserve their rights and
5 declare that they would continue to oppose class certification and the substantive merits of the
6 case should the Court fail to issue Final Approval. Plaintiff expressly reserves her rights and
7 declares that she will continue to pursue class certification and a trial should the Court fail to
8 issue Final Approval.

9 **C. Terms of Settlement**

10 51. The financial terms of the Settlement are as follows:

11 (a) Settlement Amount: The Parties agree to settle this Action for the
12 payment by Defendant North Bay of the Settlement Amount, subject to the Escalator Clause and
13 Defendant North Bay's obligation to separately pay its share of the employer payroll taxes on the
14 wage portion of the Individual Class Payments, which is the maximum amount that will be paid
15 by Defendant North Bay and includes Individual Class Payments, Class Counsel's Attorneys'
16 Fees and Costs Award, the Service Payment to the Class Representative, Administration Costs,
17 and PAGA Penalties.

18 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
19 Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class
20 Representative as awarded by the Court, the Administration Costs, and PAGA Penalties. If the
21 Court reduces the Attorneys' Fees and Costs Award, Service Award, or Administrator Costs, or
22 either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be
23 placed in the Net Settlement Amount and allocated to the Class.

24 (c) The Individual Class Payment for each Class Member will be calculated
25 by the Administrator using the Class Data of North Bay and Class Data of Chartwell as follows.
26 Compensable workweeks will be all Weeks Worked by the Class Members during the Class
27 Period. The dollars per compensable work week will be calculated by dividing the total Weeks
28 Worked by Class Members into the Net Settlement Amount to determine a per work week value

1 (“Workweek Value”). The Workweek Value will be multiplied by the number of Weeks
2 Worked by a Participating Class Member during the Class Period to determine the distribution
3 for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the
4 Administrator shall proportionately increase the Individual Class Payments for each Participating
5 Class Member so that the amount actually distributed to Participating Class Members equals 100
6 percent of the Net Settlement Amount.

7 (d) Allocation of Individual Class Payments: The Individual Class Payments
8 to Participating Class Members will be allocated as follows: 20 percent will be allocated as
9 wages subject to withholding of all applicable local, state and federal taxes; and 80 percent will
10 be allocated for interest and statutory penalties (pursuant to, *e.g.*, California Labor Code sections
11 203, 210, 226) from which no taxes will be withheld. The Administrator will issue to each
12 Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms
13 with respect to the wage allocation and a Form 1099 with respect to the penalties and interest
14 allocations.

15 (e) Service Payment to Class Representative: The amount, if any, awarded to
16 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
17 exceed \$10,000, in exchange for the service that Plaintiff performed on behalf of the Class.
18 Defendant North Bay and Defendant Chartwell agree not to oppose this request. The Service
19 Payment to Plaintiff will be paid out of the Settlement Amount. The Class Representative will be
20 issued an IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
21 responsible to pay all applicable taxes on this payment. The Parties agree that any amount
22 awarded as the Service Payment to Plaintiff less than the requested amount shall not be a basis
23 for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount
24 for the Service Payment, the difference shall be added to the Net Settlement Amount to be
25 distributed to the Participating Class Members.

26 (f) Attorneys’ Fees and Costs Award: Defendant North Bay and Defendant
27 Chartwell agree to not oppose a request by Class Counsel to the Court for an award of attorneys’
28 fees of one-third of the Settlement Amount (*i.e.*, \$500,000 unless the Escalator Clause is

1 triggered), plus reasonable litigation costs not to exceed \$25,000 (“Attorney’s Fees and Cost
2 Award”). Defendant North Bay and Defendant Chartwell agree not to oppose any contention by
3 Class Counsel that attorneys’ fees should be based on the common fund theory. The Attorney’s
4 Fee and Cost Award shall be paid from the Settlement Amount, and, except for this award,
5 Defendant North Bay shall have no further obligation to pay any attorneys’ fees, costs, or
6 expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by
7 Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to
8 the Participating Class Members. Any Court order awarding less than the amount sought by
9 Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the
10 Settlement. The Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the
11 amount of attorneys’ fees and costs awarded by the Court.

12 (g) Administration Costs: The fees and other charges of the Administrator
13 will be paid from the Settlement Amount, not to exceed \$25,500, unless (1) the Escalator Clause
14 is triggered (whereby any reasonable increase in Administration Costs shall be paid from the
15 increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all
16 Parties and the Court.

17 (h) PAGA Penalties: The Parties agree that \$100,000 is allocated to PAGA
18 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
19 amount, \$75,000 (75 percent) shall be paid to the LWDA in satisfaction of civil penalties under
20 the PAGA and \$25,000 (25 percent) will form the Individual PAGA Payments to the Aggrieved
21 Employees, which shall be calculated and allocated pro-rata on a Work Week basis, which will
22 be treated entirely as civil penalties and shall be reported as required on an IRS Form 1099.
23 Class Counsel shall give proper notice to the LWDA of the Settlement.

24 (i) Tax Liability: Class Counsel, Defendant North Bay and Defendant
25 Chartwell make no representations as to the tax treatment or legal effect of settlement amounts
26 called for hereunder, and Plaintiff and the Class Members are not relying on any statement or
27 representation by Class Counsel, Defendant North Bay, or Defendant Chartwell in this regard.
28 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they

1 will be solely responsible for the payment of any taxes and penalties assessed on their respective
2 Individual Class Payments and Individual PAGA Payments, described herein. Forms 1099 will
3 be distributed in the manner required by the Internal Revenue Code of 1986 (the “Code”) and
4 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
5 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
6 Section may be modified in a manner to bring Defendant North Bay into compliance with any
7 such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand and
8 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
9 their respective payments described herein.

10 (j) No Tax Advice: Neither Plaintiff, Class Counsel, Defendants, nor Defense
11 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
12 Settlement be relied upon as such within the meaning of United States Treasury Department
13 Circular 230 (31 CFR Part 10, as amended) or otherwise.

14 (k) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement.
15 Under no circumstances will any portion of the Settlement Amount revert to Defendant North
16 Bay. Participating Class Members and Aggrieved Employees will not have to make a claim in
17 order to receive an Individual Class Payment or Individual PAGA Payment. Distributions in the
18 form of Individual Class Payment or Individual PAGA Payments will be made directly to each
19 Participating Class Member and Aggrieved Employee. The Administrator shall be responsible
20 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
21 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks
22 delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

23 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
24 reasonable and will so represent same to the Court.

25 **D. Release by the Participating Class Members**

26 52. Upon entry of the Final Approval Order and Defendant North Bay’s funding of
27 the entire Settlement Amount, and except as to such rights or claims as may be created by this
28 Agreement, Plaintiff and the Participating Class Members will forever completely release and

1 discharge the Released Parties from the Released Class Claims for the Class Period.

2 53. Each Participating Class Member will be deemed to have made the foregoing
3 Release as if by manually signing it.

4 54. Class Representative, on behalf of herself and the Class, acknowledges and agrees
5 that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and
6 that the payments set forth herein constitute payment of all sums allegedly due to them. Class
7 Representative, on behalf of herself and the Class, acknowledges and agrees that Labor Code §
8 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides in pertinent
9 part as follows: “An employer shall not require the execution of any release of any claim or right
10 on account of wages due, or to become due, or made as an advance on wages to be earned, unless
11 payment of those wages has been made.”

12 **E. Release of PAGA Claims**

13 55. Upon entry of the Final Approval Order and Defendant North Bay’s funding of
14 the entire Settlement Amount, Plaintiff – in her individual capacity and on behalf of the State of
15 California and LWDA – shall completely release and discharge the Released Parties from the
16 Released PAGA Claims for the PAGA Period.

17 56. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
18 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
19 releasing the Released PAGA Claims.

20 57. It is the intent of the Parties that the Final Approval Order shall have full
21 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

22 **F. Release by Plaintiff and Class Representative**

23 58. Class Representative does hereby, for herself and her spouses, heirs, successors,
24 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
25 personal representatives, and assigns forever and completely release and discharge the Released
26 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
27 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
28 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated

1 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
2 from the beginning of time through the execution of this Agreement, whether known or
3 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
4 upon, or relating to Class Representative's work at any North Bay Facility or the remuneration
5 for or termination of her employment in connection therewith (the "Class Representative's
6 Claims").

7 59. Without limiting the generality of the foregoing, this general release by Plaintiff
8 includes all federal, state and local statutory claims, federal and state common law claims
9 (including but not limited to those for contract, tort and equity), including without limitation the
10 Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil
11 Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
12 Standards Act, the Employment Retirement Security Income Act of 1974, the California
13 Constitution, the California Fair Employment and Housing Act, the California Unfair
14 Competition Act (California Business and Professions Code section 17200 et seq.), and the
15 California Labor Code.

16 60. Plaintiff agrees that there is a risk that any injury that she may have suffered by
17 reason of the Released Parties' relationship with her might not now be known, and there is a
18 further risk that said injuries, whether known or unknown at the date of this Settlement
19 Agreement, might possibly become progressively worse, and that as a result thereof further
20 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
21 discharge the Released Parties, and understands that by the execution of this Settlement
22 Agreement no further claims for any such injuries that existed at the time of the execution of this
23 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
24 period from the beginning of time to the execution of this Settlement Agreement.

25 61. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
26 Section 1542 of the Civil Code of the State of California and does so understanding and
27 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
28 of the State of California states:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
3 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
4 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
5 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
6 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
7 OR RELEASED PARTY.

8 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
9 full and complete release and discharge of all parties, Class Representative expressly
10 acknowledges that this Settlement Agreement is intended to include in its effect, without
11 limitation, all claims that Class Representative knew of, as well as all claims that he does not
12 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
13 period from the beginning of time to the execution of this Settlement Agreement, and that this
14 Settlement Agreement contemplates the extinguishment of any such Class Representative's
15 Claims. Notwithstanding the above, the general release by Class Representative shall not extend
16 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
17 that may not be released by law.

18 **G. Interim Stay of Proceedings**

19 62. Pending completion of all of the prerequisites necessary to effectuate this
20 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
21 except such as are necessary to effectuate the Settlement.

22 **H. Notice Process**

23 63. Appointment of Administrator. The Parties have agreed to the appointment of the
24 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
25 using standard devices to obtain forwarding addresses, independently reviewing and verifying
26 documentation associated with any claims or opt-out requests, resolving any disputes regarding
27 the calculation or application of the formula for determining the Individual Class Payment and
28 Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class
Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other
tasks as set forth herein or as the Parties mutually agree or that the Court orders.

1 64. Disputes Regarding Administration. Any and all disputes relating to
2 administration of the Settlement by the Administrator (except for disputes regarding Class Data)
3 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
4 and conditions of this Agreement, until Plaintiff and Defendant North Bay notify the Court that
5 all payments and obligations contemplated by this Agreement have been fully carried out. Prior
6 to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve
7 the dispute without the necessity of Court intervention. The Administrator shall also be
8 responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and
9 Class Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
10 Agreement. The Administrator shall also be responsible for setting up all necessary tax accounts
11 and forwarding all payroll taxes and penalties to the appropriate government authorities.

12 65. Class Data.

13 (a) Within fourteen (14) days after entry of the Preliminary Approval Order,
14 Defendant North Bay and Defendant Chartwell shall each provide to the Administrator the Class
15 Data of their respective employees who are Class Members.

16 (b) To the extent that the Class Data cannot be obtained, Class Counsel,
17 Defendant North Bay, and Defendant Chartwell will meet and confer and seek court approval for
18 an alternative process to give notice (such as public notice).

19 66. Combined Class Data. Upon receipt of the Class Data of North Bay and the Class
20 Data of Chartwell, the Administrator will combine the lists and run a check of the Class
21 Members' addresses against those on file with the U.S. Postal Service's National Change of
22 Address List. All Class Data provided to the Administrator will remain confidential and will not
23 be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to
24 Defendant North Bay's express written consent, or by order of the Court. Although Class
25 Counsel will not be provided with Class Data, nothing herein shall prevent Class Counsel from
26 communicating with Class Members regarding the Action and Settlement.

27 67. Total Workweeks. At least five (5) days prior to mailing the Notice, the
28 Administrator shall provide a spreadsheet to Class Counsel, Defendant North Bay's Counsel, and

1 Defendant Chartwell's Counsel containing a preliminary calculation of all payments to be paid
2 from the Settlement Amount, including the estimated Individual Class Payments to each Class
3 Member and Individual PAGA Payments to each Aggrieved Employee (a person's name shall be
4 redacted and a control number used in place of the name). If the total Workweeks worked by all
5 Class Members triggers the Escalator Clause, the Administrator shall notify the Parties of the
6 increased Settlement Amount, and related increased payments from the Settlement Amount,
7 including increased Attorneys' Fees and Costs and any increased Administration Costs, all of
8 which shall be subject to Court approval. Any additional payment required under the escalator
9 clause shall be paid by North Bay. Also, if the Escalator Clause is triggered, the Administrator
10 shall edit the Notice to reflect the new and increased amounts.

11 68. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
12 to the Class Members, by first class mail, in English and Spanish, within ten (10) calendar days
13 following the Administrator's receipt of the Class Data. The Administrator shall use standard
14 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
15 envelopes are returned.

16 69. Returned Notice. The Administrator will take steps to ensure that the Notice is
17 received by all Class Members, including utilization of the National Change of Address Database
18 maintained by the United States Postal Service to review the accuracy of and, if possible, update
19 a mailing address. Notices will be re-mailed to any Class Member for whom an updated address
20 is located within ten (10) calendar days following both the Administrator learning of the failed
21 mailing and its receipt of the updated address. The Notice shall be identical to the original
22 Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or
23 objection must be returned by the later of the Response Deadline or fifteen (15) days after the
24 remailing of the Notice.

25 70. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
26 if an envelope has not been returned to Administrator by the Response Deadline that the Class
27 Member received the Notice.

28 71. Disputes Regarding Class Data. Class Members are deemed to participate in the

1 Settlement unless they opt out, and Aggrieved Employees may not opt out of the Released
2 PAGA Claims. The Notice will inform each Class Member of his/her estimated Individual Class
3 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
4 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
5 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
6 than the records show by timely submitting evidence to the Administrator. The Combined Class
7 Data will be presumed determinative absent reliable evidence to rebut the Combined Class Data,
8 but the Administrator will evaluate the evidence submitted by the Class Member and provide the
9 evidence submitted to Class Counsel and to Defendant North Bay's Counsel or Defendant
10 Chartwell's Counsel as appropriate, and Counsel agree to meet and confer in good faith about the
11 evidence to determine the Class Member's actual number of Work Weeks and estimated
12 Individual Class Payment and Individual PAGA Payment. If Counsel are unable to agree, they
13 agree to submit the dispute to the Court to render a final decision. Class Members and
14 Aggrieved Employees will have until the Response Deadline to dispute Weeks Worked, object or
15 opt out, unless extended by the Court.

16 72. Declaration of Due Diligence. The Administrator shall provide counsel for the
17 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
18 diligence and proof of mailing with regard to the mailing of the Notice.

19 73. Class Members' Rights. Each Class Member will be fully advised of the
20 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
21 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
22 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
23 in accordance with the following guidelines:

24 (a) Requests for Exclusion from Class. Any Class Member, other than
25 Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion" to
26 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
27 should state:

28 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE
NORTH BAY LAWSUIT. I UNDERSTAND THAT IF I ASK TO

1 BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL
2 NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM
3 THIS LAWSUIT.”

4 To be valid, any Request for Exclusion must include the full name, address, telephone
5 number, last four digits of the social security number or date of birth, and signature of the Class
6 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
7 Administrator at the specified address set forth in the Notice. Any such Request must be made in
8 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
9 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
10 Member who timely requests exclusion in compliance with these requirements: (i) will not have
11 any rights under this Agreement, including the right to object, appeal or comment on the
12 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
13 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
14 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
15 Released PAGA Claims to the fullest extent permitted by law and will receive an Individual
16 PAGA Payment. All Parties and their counsel, including Defendants and their agents, shall not
17 encourage or solicit opt-outs or objections, directly or indirectly, through any means.

18 (b) Binding Effect on Participating Class Members. All Participating Class
19 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
20 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
21 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
22 Settlement.

23 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
24 does not submit a valid and timely Request for Exclusion may object to the terms of this
25 Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her
26 objection which must be postmarked by the Response Deadline at the address set forth in the
27 Notice. Such objection shall include the Objecting Class Member’s full name, address,
28 telephone number, last four digits of the social security number or date of birth, signature, and
relevant dates of employment, in addition to the case name and number, the basis for the

objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Class Member is represented by counsel, the name and address of his or her counsel. The Administrator shall provide objections, if any, to Class Counsel, Defendant North Bay's Counsel, and Defendant Chartwell's Counsel, within three (3) calendar days of receipt, and the Administrator shall attach the same to its declaration of due diligence and file with the Court prior to the Final Approval Hearing. An Objecting Class Member remains eligible to receive monetary compensation from the Settlement. Plaintiff, Defendant North Bay, and Defendant Chartwell shall not be responsible for any fees, costs, or expenses incurred by an Objecting Class Member and/or his or her counsel related to any objections to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure § 663.

(d) Failure to Object. Any Class Member who does not timely and properly become a party of record by objecting in accordance with Paragraph 73(c), intervening or filing a motion to vacate the judgment waives any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California Code of Civil Procedure section 473, and extraordinary writs.

(e) Responses to Objections. Counsel for the Parties may file a response to any objections submitted by an Objecting Class Member at least five (5) court days before the date of the Final Approval Hearing.

(f) Class Members will have until the Response Deadline to object or submit a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose jointly to counsel for the Parties what objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request of counsel for the Parties.

74. Declaration of Due Diligence. The Administrator shall provide counsel for the Parties, no later than 7 calendar days after the Response Deadline, a declaration of due diligence

1 and proof of mailing with regard to the mailing of the Notice, and shall attach all Requests for
2 Exclusion and objections to the declaration.

3 75. Funding of the Settlement Amount. Defendant North Bay shall fund the
4 Settlement Amount based on the payment plan below by wiring the full amount owed of each
5 installment payment (plus any employer payroll tax obligations owed on each installment) to the
6 Administrator on or before each payment due date.

7 (a) By the later of May 10, 2024, or 15 days after the Effective Date,
8 Defendant North Bay shall fund one-half (50 percent) of the Settlement Amount (which is
9 \$750,000 unless the Escalator Clause is triggered), plus the required employer-side taxes on that
10 sum. The Administrator shall hold this money in an interest-bearing account pending receipt of
11 the full Settlement Amount. In the event that Defendant North Bay fails to make this payment
12 within 5 calendar days of the due date, Class Counsel shall send a notice of default to Defendant
13 North Bay's Counsel. Defendant North Bay will then have seven (7) calendar days after issuance
14 of the notice of default to cure and bring all payments up to the current required amount. If
15 Defendant North Bay fails to timely cure the late payment, all remaining balances shall
16 immediately become due and payable.

17 (b) By the later of January 10, 2025, or 15 days after the Effective Date,
18 Defendant North Bay shall fund the second half (50 percent) of the Settlement Amount, plus the
19 required employer-side taxes on that sum, which represents the remaining balance of the
20 Settlement Amount.

21 76. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
22 full Settlement Amount into the QSF, the Administrator will mail the Individual Class Payments
23 and Individual PAGA Payment to Participating Class Member and Aggrieved Employee, the
24 payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the
25 Class Representative, the payment to the LWDA for PAGA penalties, and will pay itself the
26 Administration Costs. To comply with California Rules of Court, rule 3.771, settlement checks
27 shall include the following language on the check: "A Court has approved settlement of the class
28 action and PAGA representative actions and entered judgment for claims asserted in *Rangel v.*

1 *North Bay Distribution, Inc., et al.*, Solano Superior Court Case No. FCS057328.

2 77. Deadline for Cashing Settlement Checks. Participating Class Members and
3 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
4 their settlement check. The release will be binding upon all Participating Class Members who do
5 not cash their checks within the 180-day period. In the event that any settlement check is
6 returned to the Administrator within 180 days of mailing, the Administrator will, within five (5)
7 business days of receipt of the returned settlement check, perform a skip trace to locate the
8 individual, and notify counsel for the Parties of the results. If a new address is located by these
9 means, the Administrator will have ten (10) business days to re-issue the check. Neither
10 Defendant North Bay, Defendant North Bay's Counsel, Defendant Chartwell, Defendant
11 Chartwell's Counsel, Class Counsel, Plaintiff, nor the Administrator will have any liability for
12 lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized
13 negotiation of settlement checks. Without limiting the foregoing, in the event a Participating
14 Class Member and/or Aggrieved Employee notifies the Administrator that he or she believes that
15 a check has been lost or stolen, the Administrator shall immediately stop payment on such check.
16 If the check in question has not been negotiated prior to the stop payment order, the
17 Administrator will issue a replacement check.

18 (a) If any Participating Class Member's check is not cashed within the time
19 periods noted above, the check will be void and a stop-payment will be issued, and the
20 Administrator shall issue the unclaimed funds to the California State Controller's Office in the
21 name of the Class Member.

22 (b) If any Aggrieved Employee's check is not cashed within the time periods
23 noted above, the check will be void and a stop-payment will be issued, and the Administrator
24 shall issue the unclaimed funds to the California State Controller's Office in the name of the
25 Aggrieved Employee.

26 **I. Duties of the Parties Prior to the Court's Approval**

27 78. Promptly after execution of this Agreement, Plaintiff will move the Court for
28 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order

1 accomplishing the following:

- 2 (a) Approving as to form and content the proposed Notice;
- 3 (b) Directing the mailing of the Notice by first class mail to the Class
- 4 Members;
- 5 (c) Preliminarily approving this Settlement;
- 6 (d) Preliminarily certifying the class for purposes of this Settlement;
- 7 (e) Advising the LWDA of the proposed Settlement; and
- 8 (f) Scheduling the Final Approval Hearing on the issue of whether this
- 9 Settlement should be finally approved as fair, reasonable and adequate.

10 **J. Duties of the Parties Following Court's Final Approval**

11 79. In connection with the Final Approval Hearing provided for in this Agreement,

12 Class Counsel shall submit a proposed Final Approval Order:

- 13 (a) Approving the Settlement, adjudging the terms thereof to be fair,
- 14 reasonable and adequate, and directing consummation of its terms and provisions;
- 15 (b) Approving Class Counsel's application for an award of attorneys' fees and
- 16 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
- 17 and the payment to the Administrator for costs of administering the settlement; and
- 18 (c) Entering judgment approving settlement.

19 **K. Voiding the Agreement**

20 80. If the Court fails or refuses to issue the Final Approval Order or fails to approve

21 any material condition of this Agreement which effects a fundamental change of the Settlement,

22 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the

23 option of either Party.

24 81. If the number of valid Requests for Exclusion exceeds five percent (5%) of the

25 total of all Class Members, Defendant North Bay may elect, but is not obligated, to withdraw

26 from the Settlement, by notifying Class Counsel, Defendant Chartwell's Counsel, and the Court

27 of its election to withdraw not later than seven days after the Administrator sends the final list of

28 Requests for Exclusion to all Counsel. If Defendant North Bay withdraws, the Settlement shall

1 be void ab initio, have no force or effect whatsoever, and no Party will have any further
2 obligation to perform under this Agreement.

3 82. If the Settlement is voided or fails for any reason, Plaintiff, Defendant North Bay,
4 and Defendant Chartwell will have no further obligations under the Settlement, including any
5 obligation by Defendant North Bay to pay the Settlement Amount, or any obligation to pay any
6 amounts that otherwise would have been owed under this Settlement.

7 83. If the Settlement is voided or fails for any reason, any costs incurred by the
8 Administrator shall be borne equally by Defendant North Bay and Plaintiff, unless otherwise
9 specified in this Agreement.

10 **L. Other Terms**

11 84. Waiver. The waiver by one Party of any breach of this Agreement by another
12 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

13 85. Parties' Authority. The signatories hereto represent that they are fully authorized
14 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

15 86. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
16 accomplish the terms of this Agreement, including but not limited to, execution of such
17 documents and to take such other action as may reasonably be necessary to implement the terms
18 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
19 contemplated by this Agreement and any other efforts that may become necessary by order of the
20 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
21 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
22 cooperation of Defendant North Bay, Defendant North Bay's Counsel, Defendant Chartwell, and
23 Defendant Chartwell's Counsel, take all necessary steps to secure the Court's preliminary and
24 final approval of the settlement, and the final entry of judgment.

25 87. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
26 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
27 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
28 cause of action or rights released and discharged by this Agreement.

1 88. No Admission. Defendant North Bay and Defendant Chartwell deny any and all
2 liability to Plaintiff and/or any Class Member and/or Aggrieved Employee in this Action, as to
3 any and all causes of action that were asserted or that might have been asserted in this Action.
4 Nonetheless, Defendant North Bay and Defendant Chartwell wish to settle and compromise the
5 matters at issue in the Complaint to avoid further substantial expense and the inconvenience and
6 distraction of protracted and burdensome litigation. Defendant North Bay and Defendant
7 Chartwell have taken into account the uncertainty and risks inherent in litigation, and without
8 conceding any infirmity in the defenses that they have asserted or could assert against Plaintiff,
9 have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner
10 and upon the terms and conditions set forth in this Agreement.

11 89. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
12 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
13 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
14 Defendant North Bay, Defendant Chartwell, or any of the other Released Parties. Each of the
15 Parties hereto has entered into this Agreement with the intention of avoiding further disputes and
16 litigation with the attendant inconvenience and expenses. This Agreement is a settlement
17 document, and it, along with all related documents such as the notices, and motions for
18 preliminary and final approval, shall, pursuant to California Evidence Code § 1152 and/or
19 Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action
20 or proceeding to approve the settlement, and/or interpret or enforce this Agreement. The
21 stipulation for class certification as part of this Agreement is for settlement purposes only and if,
22 for any reason the settlement is not approved, the stipulation will be of no force or effect.

23 90. No Publicity. The Parties will not publicize the Settlement or disclose it to third
24 parties prior to the Court granting Preliminary Approval, except as required or necessary to
25 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
26 Class Representative agree that they will not discuss the Settlement with the media, any
27 settlement and verdict reporting service, any social media postings or other Internet postings.
28 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or

1 other case materials in the Action related to seeking and obtaining Court approval of this
2 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
3 Members or their representatives about this Settlement, including through the posting of Court-
4 filed documents on Class Counsel's websites for access solely by the Class Members, or to
5 prevent the Parties or their representatives from communicating with financial or legal advisors
6 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
7 the Action has been settled on terms mutually agreeable to the Parties.

8 91. Notices. Unless otherwise specifically provided herein, all notices, demands or
9 other communications given hereunder shall be in writing and shall be deemed to have been duly
10 given as of the third business day after mailing by United States registered or certified mail,
11 return receipt requested, addressed:

12 *To the Class:*

13 Brian J. Mankin
14 *brian@lmlfirm.com*
15 Lauby, Mankin & Lauby LLP
16 5198 Arlington Ave, PMB 513
17 Riverside, CA 92504
18 Tel: (951) 320-1444 | Fax: (951) 320-1445

19 *To Defendant North Bay:*

20 Glenn Dickinson, Esq.
21 *gdickinson@lightgablerlaw.com*
22 LightGabler
23 760 Paseo Camarillo, Suite 300
24 Camarillo, CA 93010
25 Tel: (805) 248-7208 | Fax: (805) 248-7209

26 *To Defendant Chartwell:*

27 Alexander L. Conti, Esq.
28 *aconti@conti-law.com*
29 23 Corporate Plaza, Suite 150
30 Newport Beach, CA 92660
31 Glenn Dickinson, Esq.
32 Tel: (949) 478-6653 | Fax: (949) 791-8556

33 ///

1 92. Construction. The Parties hereto agree that the terms and conditions of this
2 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
3 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
4 to which any Party or her or its counsel participated in the drafting of this Agreement. Plaintiff,
5 Defendant North Bay, and Defendant Chartwell expressly waive the common-law and statutory
6 rule of construction that ambiguities should be construed against the drafter of an agreement and
7 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
8 all cases construed as a whole, according to its fair meaning.

9 93. Captions and Interpretations. Paragraph titles or captions contained herein are
10 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
11 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
12 contractual and not merely a recital.

13 94. Modification. This Agreement may not be changed, altered, or modified, except
14 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
15 Agreement may not be discharged except by performance in accordance with its terms or by a
16 writing signed by all of the Parties hereto.

17 95. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
18 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
19 provide written notice to the other Party and allow an opportunity to cure the alleged
20 deficiencies, and Plaintiff, Defendant North Bay, and Defendant Chartwell may agree to seek the
21 help of the Mediator to resolve any dispute they are unable to resolve informally. During this
22 period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to
23 any legal action or other proceeding instituted by any person or entity other than Plaintiff,
24 Defendant North Bay, or Defendant Chartwell.

25 96. Choice of Law. This Settlement Agreement shall be governed by and construed,
26 enforced and administered in accordance with the laws of the State of California, without regard
27 to its conflicts-of-law rules.
28

97. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

98. Binding On Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

99. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Notice will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Class Member.

100. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: 1/8/2024 _____

Plaintiff and Class Representative

Maria S Rangel

Maria Soledad Rangel Mercado

Dated: _____

Defendant North Bay Distribution, Inc.

By: _____ (name)

_____ (title)

1 97. Integration Clause. This Settlement Agreement contains the entire agreement
2 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
3 or contemporaneous agreements, understandings, representations, and statements, whether oral
4 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
5 hereunder may be waived except in writing.

6 98. Binding On Assigns. This Agreement shall be binding upon and inure to the
7 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
8 successors and assigns.

9 99. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
10 because the members of the Class are numerous, it is impossible or impractical to have each
11 Class Member execute this Agreement. The Notice will advise all Class Members of the binding
12 nature of the release provided herein and such shall have the same force and effect as if this
13 Agreement were executed by each Class Member.

14 100. Counterparts. This Agreement may be executed in counterparts, and when each
15 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
16 original, and, when taken together with other signed counterparts, shall constitute one fully
17 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
18 signatures shall have the same force and effect as an original.

19
20 Dated: _____

Plaintiff and Class Representative

21
22 _____
Maria Soledad Rangel Mercado

23
24 Dated: 1/8/2024

Defendant North Bay Distribution, Inc.

25 *Dominik Dittrich*

26 By: Dominik Dittrich (name)

27 CEO (title)

1 Dated: _____

Defendant Chartwell Staffing Services, Inc.

3 By: _____ (name)

5 _____ (title)

6 **APPROVED AS TO FORM:**

7 Dated: 1/8/2024

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP



Brian J. Mankin
Attorneys for Plaintiff

BOKHOUR LAW GROUP, P.C.



Mehrdad Bokhour
Attorneys for Plaintiff

16 Dated: _____

DEFENDANT NORTH BAY’S COUNSEL
LIGHTGABLER

18 _____
Glenn Dickinson, Esq.
Attorneys for Defendant North Bay

21 Dated: _____

DEFENDANT CHARTWELL’S COUNSEL

23 _____
Alexander L. Conti, Esq.
Attorneys for Defendant Chartwell

1 Dated: 1-8-2024

Defendant Chartwell Staffing Services, Inc.



By: Alexander L. Conti (name)

Authorized Agent (title)

6 **APPROVED AS TO FORM:**

7 Dated: _____

CLASS COUNSEL

LAUBY, MANKIN & LAUBY LLP

9
10 Brian J. Mankin
11 Attorneys for Plaintiff

12 BOKHOUR LAW GROUP, P.C.

13
14 Mehrdad Bokhour
15 Attorneys for Plaintiff

16 Dated: 1/8/2024

DEFENDANT NORTH BAY'S COUNSEL
LIGHTGABLER



18 Glenn Dickinson, Esq.
19 Attorneys for Defendant North Bay

20 Dated: 1-8-2024

DEFENDANT CHARTWELL'S COUNSEL



23 Alexander L. Conti, Esq.
24 Attorneys for Defendant Chartwell

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Maria Soledad Rangel Mercado v. North Bay Distribution, Inc., et al.

(Solano County Superior Court, Case No. FCS057328)

***The Solano County Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (the “Action”) filed by Plaintiff and Class Representative Maria Soledad Rangel Mercado (“Plaintiff” or “Class Representative”) against Defendants North Bay Distribution, Inc. (“North Bay”) and Chartwell Staffing Services, Inc. (“Chartwell”) (collectively, the “Defendants”) for alleged violations of the California Labor Code. (As used in this Notice, Plaintiff and Defendants shall collectively be referred to as the “Parties”).

The Action was filed by Plaintiff and seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of the “Class Members,” defined as all current and former nonexempt employees who worked at a North Bay Facility in California at any time during the Class Period (October 21, 2017, through July 25, 2023), including Direct Hires of North Bay and Temporary Employees assigned by Chartwell; and (2) penalties under the California Private Attorneys General Act (“PAGA”) for the “Aggrieved Employees,” defined as all current and former nonexempt employees who worked at a North Bay Facility in California at any time during the PAGA Period (October 21, 2020, through July 25, 2023), including Direct Hires of North Bay and Temporary Employees assigned by Chartwell.

The proposed Settlement has two main parts: (1) a Class Settlement requiring North Bay to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring North Bay to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, and the Parties’ current assumptions, your Individual Class and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[CLASS MEMBER NAME] || [ID/CONTROL NUMBER]

Two Parts	Weeks Worked	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Please note that the actual amount you receive may be different from the above and will depend on several factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.).

If you believe that you worked more weeks during the periods discussed above, you can submit a challenge by **DATE**, 2024 (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires North Bay to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you are a Class Member and/or Aggrieved Employee as defined in this Notice, you have a few options as shown

in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do <u>not</u> wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Individual PAGA Payments will be sent to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to dispute your credited Weeks Worked). Defendants’ records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: INSERT DATE, 2024 TIME: INSERT TIME	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative, Maria Soledad Rangel Mercado is a former employee of Defendants. The Action accuses Defendants of violating California labor laws due to the alleged: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay final wages, (f) failure to provide accurate itemized wage statements; and (g) unfair and unlawful competition. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

Defendants strongly deny violating any laws or failing to pay any wages and contends that they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merits of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) North Bay has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. North Bay Will Pay \$1,500,000 as the Settlement Amount. North Bay has agreed to pay \$1,500,000 (the “Settlement Amount”) into an account controlled by the Administrator. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel’s attorneys’ fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, North Bay will fund the Settlement in two installments, with the final payment likely in January 2025, assuming that no Class Member objects or intervenes in the Settlement, which will delay payments until after the deadline to file an appeal or an appeal is resolved.

2. Court Approved Deductions from Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to one-third of the Settlement Amount to Class Counsel for attorneys' fees (\$500,000.00) and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$10,000 to Class Representative as a Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representative's Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$25,500.00 to the Administrator for services administering the Settlement (unless the Court approves a higher or lower amount).
- D. Up to \$100,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% to Individual PAGA Payments to all Aggrieved Employees, which will be divided based on their share of Weeks Worked during the PAGA Period.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. North Bay will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check are sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you opt-out of the Settlement no later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void; Defendants will not pay any money and Class Members will not release any claims against Defendants.

8. Administrator. The Court has appointed a neutral company, CPT Group (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion and Objections (if any). The Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and North Bay has fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or the Released Parties entities based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release: All Participating Class Members release the Released Parties from all claims asserted in the Complaint or that reasonably could have been alleged based on the allegations, the facts, statutory citation and/or legal theories contained in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay wages upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and (h) all other claims for statutory penalties based on the facts or claims alleged in the Complaint. (the “Released Class Claims”). “Released Parties” means Defendants North Bay and Chartwell and their officers, directors, employees, and agents.

10. Release of Released PAGA Claims. After the Court's judgment is final, and North Bay has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff, the State of California, the LWDA and Aggrieved Employees shall release the Released Parties from all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of herself and the State of California, based on the facts stated in the Complaint in the Action and in the LWDA notice letter, including all PAGA claims seeking civil penalties premised upon (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under PAGA based on the facts or claims alleged in the Complaint. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$25,000 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until **INSERT DATE HERE** ("Response Deadline") to dispute the number of Workweeks credited to you by submitting evidence to the Administrator.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of weeks worked based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a "Request for Exclusion" letter/card postmarked no later than , 2024 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE NORTH BAY DISTRIBUTION LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT."

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PAGA Payments.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Rangel Mercado v. North Bay Distribution, Inc.*, and include your identifying information (full name, address, telephone number,

approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by [REDACTED], 2024 (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2024 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (*Rangel Mercado v. North Bay Distribution, Inc.* Case No. FCS057328), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2024.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in in Department 4 of the Superior Court for the State of California, County of Solano, 600 Union Ave., Fairfield, CA 94533, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff’s request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail.

Settlement Administrator
Name
Mailing Address
Telephone Number

If you wish to communicate directly with Class Counsel, you may contact them at the contact information noted here:

Class Counsel	
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Mehrdad Bokhour, Esq. <i>mehrdad@bokhourlaw.com</i> Bokhour Law Group, P.C. 1901 Avenue of the Stars, Suite 450 Los Angeles, CA 90067 Tel: (310) 975-1493

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on XX, 2024 and which is available to be inspected at any time during regular business hours the Office of the Clerk, Solano County Superior Court, located at 600 Union Ave., Fairfield, CA 94533.

**DO NOT TELEPHONE THE SUPERIOR COURT
TO OBTAIN INFORMATION ABOUT THE SETTLEMENT**

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “C”



BOKHOUR
LAW GROUP

MEHRDAD BOKHOUR
Attorney at Law

1901 Avenue of the Stars | Suite 450
Los Angeles | California 90067

tel 310 975 1493
fax 310 675 0861

October 20, 2021

SUBMITTED VIA LWDA'S PAGA CLAIM NOTICE ONLINE PORTAL

COPIES SENT VIA CERTIFIED MAIL TO:

North Bay Distribution, Inc. c/o Agent for Service of Process Attn: S. Scott Reynolds 411 Davis Street, Suite 201 Vacaville, California 95688	North Bay Distribution, Inc. 2050 Cessna Drive Vacaville, California 95688
Chartwell Staffing Services Inc. c/o Agent for Services of Process Attn: Cogency Global Inc. 1325 J. Street, Suite 1550 Sacramento, California 95814	Chartwell Staffing Services Inc. 245 Centerville Road, Suite 10 Lancaster, PA 17603

Re: Maria Soledad Rangel Mercado v. North Bay Distribution, Inc., et al.
Notice of Intent to File Suit for California Labor Code § 2698 et seq. Penalties

To Whom It May Concern:

This office, along with Lauby, Mankin & Lauby LLP, represent Maria Soledad Rangel Mercado (hereinafter "Plaintiff" or "Ms. Mercado") and a proposed group of current and former employees working for North Bay Distribution, Inc. and Chartwell Staffing Services, Inc. ("North Bay" or the "Company") and other related or affiliated entities within the State of California for violations of the Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 227.3, 510, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and 1199.5, and all applicable Industrial Welfare Commission Wage Orders ("Wage Orders").

This letter shall serve as notification under Labor Code § 2699.3 (hereinafter "PAGA Notice"). The \$75 filing fee made payable to the California Labor and Workforce Development Agency for the Private Attorneys General Act Notice ("PAGA Notice") and a copy of this PAGA Notice was submitted electronically to the Department of Industrial Relations.

Ms. Mercado wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of the following group of “Aggrieved Employees”:

All non-exempt employees who worked for North Bay Distribution, Inc., Chartwell Staffing Services, Inc. and any of their related, merged, and/or affiliated entities in California during the one year immediately preceding the filing of this PAGA Notice and continuing into the present and ongoing. (“Aggrieved Employees”)

North Bay, headquartered in Vacaville, Solano, is a nationally recognized all-in-one 3rd party logistics company. Chartwell Staffing Services, Inc. provides temporary staffing services to North Bay at all relevant times.

At all relevant times, Plaintiff and other aggrieved employees regularly worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek. Ms. Mercado alleges that other aggrieved employees were also subjected to the same policies, procedures, and practices, working conditions, and corresponding wage and hour violations to which Plaintiff was subjected during her employment with North Bay.

In performing their job duties, Ms. Mercado and other Aggrieved Employees were regularly required to work long hours, both before and after their schedule shifts, without payment for all hours worked.

First, from at least one year ago and continuing until the present, North Bay’s security policies/procedures required Ms. Mercado and other Aggrieved Employees to go through security checkpoints when entering the work facility at the beginning of each shift. North Bay’s security checkpoint would often result in delays and time spent without pay. Nonetheless, North Bay required Plaintiff and other Aggrieved Employees to go through the security checkpoints before clocking in for payroll purposes at the beginning of their shift. Despite being subject to North Bay’s control while waiting to go through the security checkpoints, North Bay did not provide any compensation for the time it took to complete this process.

As a result of North Bay’s security checkpoint, Plaintiff and other Aggrieved Employees were not fully compensated for all minimum and overtime wages as required by the California Labor Code and applicable Wage Orders. North Bay will have no valid defense to this claim given the California Supreme Court’s recent unanimous decision in *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038, which held that employees “must be paid” during security checks since “it is clear that [employees] are subject to [the employer’s] control while awaiting, and during, [the] exit searches.”

As a result, Plaintiff and other Aggrieved Employees were not properly paid for all hours worked, including minimum and overtime wages, in violation of Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

Moreover, at all relevant times, Plaintiff and other Aggrieved Employees regularly worked shifts in excess of 6 hours and 10 hours, but were not always provided with legally compliant off-duty first meal periods of at least thirty (30) minutes before the end of the fifth hour and a second meal period before the end of the tenth hour of work due to North Bay's unlawful meal period policies/practices and work requirements that prevented Plaintiff and other Aggrieved Employees from taking timely and compliant meal periods.

As a result, Plaintiff and other Aggrieved Employees would often be unable to take compliant meal breaks and were required to work through their meal periods due to the demands of the job. Despite knowing that Plaintiff and other Aggrieved Employees were often unable to take a meal period, North Bay failed to inform and permit Aggrieved Employees from taking compliant meal periods. North Bay also failed to have a mechanism that paid Aggrieved Employees meal period premiums for missed or non-complaint meal periods in violation of Labor Code § 226.7.

Furthermore, at all relevant times, Plaintiff and other aggrieved employees were also not provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction thereof as mandated by California law. Specifically, in light of the stringent work demands imposed by North Bay, Plaintiff and other aggrieved employees were often unable to take complaint rest periods of 10 minutes time for every 4 hours worked, or major fraction thereof.

On occasions when Plaintiff and other aggrieved employees worked more than 10 hours in a shift, North Bay failed to authorize and/or permit a third mandated rest break. Finally, Plaintiff and other aggrieved employees were not provided rest period premiums for their missed or non-compliant rest breaks.

Accordingly, due to North Bay' uniform rest period policies/practices, Plaintiff and other Aggrieved Employees were also regularly denied legally compliant rest breaks in violation of Labor Code 226.7, 512, and applicable Wage Orders.

As a result of North Bay' failure to pay Plaintiff and other Aggrieved Employees for all hours they were subject to the control of North Bay, including all minimum and overtime wages, failure to adequately compensate Plaintiff and other aggrieved employees at the appropriate legal overtime rate, and failure to pay for rest period premiums for missed/non-compliant meal and rest periods, North Bay issued wage statements which failed to accurately identify the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code §226(a) (1, 2, 5, and 9).

Labor Code § 226(a) obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;

- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

In addition, as to Plaintiff and other similarly aggrieved employees, North Bay also failed and continues to fail to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(9). Specifically, North Bay' wage statements fail to state all applicable hourly rate(s) in effect during the pay period in violation of Labor Code § 226(a)(9) and fail to accurately state total hours worked during the pay period, in violation of Labor Code § 226(a)(2).

Plaintiff is thus informed and believes that North Bay uniformly furnished inaccurate and non-compliant wage statements to Plaintiff and other Aggrieved Employees which failed to include total hours worked and the applicable hourly rates (including applicable overtime rate) in effect during all pay periods.

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

Thus, for the violations of Labor Code section 226 described above, Plaintiff and other aggrieved employees may also recover Labor Code § 226.3 penalties for North Bay' violations of Labor Code § 226(a). As such, the wage statements North Bay issued to Plaintiff and other aggrieved employees are in violation of Labor Code § 226 (a)(9). Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and North Bay has violated Labor Code §226(a)(9) with respect to Plaintiff and other aggrieved employees. Consequently, because North Bay failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §§ 226(e) and 2698 *et seq.*

Finally, North Bay also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Similarly, North Bay failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages, as it routinely failed to pay departing Aggrieved Employees within the time limits imposed by California law. Moreover, because of North Bay's failure to pay all minimum and overtime wages, and meal and rest period premiums for non-complaint breaks, North Bay also failed and continues to fail to pay Plaintiff and other aggrieved employees all wages owed at their time of separation from employment in

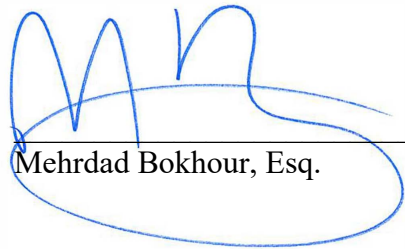
California Labor and Workforce Development Agency
October 20, 2021
Page 5

violation of Labor Code §§ 201-203 and applicable Wage Orders. Thus, aggrieved employees would be entitled to recover penalties under Labor Code §§ 201-203 and 2698 *et seq.*

Pursuant to Labor Code § 2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the date of this notice whether your office intends to investigate the violations alleged herein above. We understand that if we do not receive a response from your office within sixty-five (65) calendar days of this PAGA Notice, Plaintiff may thereafter pursue her interests and the interests of similarly aggrieved employees with a civil complaint against North Bay for its violations of the California Labor Code and applicable Wage Orders.

While it is our intent to pursue a PAGA representative and/or Class Action lawsuit against North Bay for unpaid wages and civil penalties under Labor Code § 2699, it is our firm's policy to attempt to negotiate an early resolution of all matters where possible and beneficial to all aggrieved employees. If, however, North Bay is interested in attempting to resolve this matter, please contact me or have your lawyer contact our office so that we can discuss an informal discovery plan and the possibility of early mediation on or before **November 24, 2021**.

Very truly yours,



Mehrdad Bokhour, Esq.

EXHIBIT “D”

CASE NAME: RANGEL v NORTH BAY

Date: December 14, 2023

Requesting Attorney: Brian Mankin

Plaintiff or Defense: Plaintiff

Firm Name: Lauby Mankin & Lauby LLP

Telephone: (951) 320-1444

Email: brian@lmlfirm.com

All-In Settlement

Class Size: 2,500

Opt-Out Rate: 1.5%

No. of Checks Issued: 2,463

Postage Total: \$4,122.05

Grand Total: \$32,736.10

NOT TO EXCEED: \$25,500.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. All Pertinent Documents will be Posted on a Case Specific Website. Notice will be Translated into Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	7	\$665.00
Programming: Data Base Setup	\$150.00	7	\$1,050.00
Static Website	\$500.00	1	\$500.00
Spanish Translation	\$1,200.00	1	\$1,200.00
TOTAL			\$3,415.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA and Further Skip Trace if Necessary. CPT will Mail a Full-Length Notice & 1-Page Exclusion Form in English and Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$250.00	1	\$250.00
XML Lex ID Skip Trace	\$0.75	250	\$187.50
Print & Mail Notice Packets	\$1.50	2,500	\$3,750.00
First-Class Postage (up to 2 oz.)*	\$0.87	2,500	\$2,175.00
TOTAL			\$6,552.50

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 5% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 70% of the Undeliverable Notice Packets are Rемаiled.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	3	\$180.00
Update Undeliverable Mail Database	\$0.50	125	\$62.50
Skip Trace for Best Address	\$1.00	111	\$111.00
Print & Remail Notice Packets	\$1.50	88	\$132.00
First-Class Postage (up to 2 oz.)	\$0.87	88	\$76.56
TOTAL			\$562.06

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Out Requests	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out & Change of Address Processing	\$2.00	38	\$75.00
Print & Mail Deficiency/Dispute Notices	\$1.50	2	\$3.00
First-Class Postage (up to 1 oz.)	\$0.66	2	\$1.32
Review & Process Deficiency Responses	\$10.00	1	\$10.00
		TOTAL	\$394.32

TELEPHONE SUPPORT

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	500	\$1,500.00
		TOTAL	\$1,800.00

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	2,463	\$246.25
		TOTAL	\$681.25

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	6	\$900.00
Project Manager: Correspondence w/Parties	\$95.00	3	\$285.00
Programming: Setup & Printing of Checks	\$150.00	4	\$600.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	2,463	\$6,156.25
First-Class Postage (up to 1 oz.)*	\$0.66	2,463	\$1,625.25
		TOTAL	\$10,466.50

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	12	\$1,800.00
Update Undeliverable Checks Database	\$0.50	197	\$98.50
Skip Trace for Best Address	\$1.00	197	\$197.00
Remail Undeliverable Checks	\$2.50	179	\$447.50
First-Class Postage (up to 1 oz.)	\$0.66	179	\$118.14
Re-Issue Checks as Required	\$5.00	124	\$620.00
First-Class Postage (up to 1 oz.)	\$0.60	124	\$74.40
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$6,395.54

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	517	\$77.55
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	52	\$260.00
First-Class Postage (up to 1 oz.)	\$0.66	52	\$34.32
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$2,468.93

GRAND TOTAL \$32,736.10

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
- Confidentiality.** Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; **provided, however,** that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT “E”