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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

HEATHER BOONE and ROXANNE
RIVERA, on behalf of themselves and all
others similarly situated,

Plaintiffs,

CRISTIAN BARRERA, individually,

Plaintiff,

v.

AMAZON.COM SERVICES, LLC,

Defendant.

Case No. 1:21-CV-00241-NODJ-BAM – LEAD
Case No. 1:22-CV-00146-NODJ-BAM-MEMBER

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CLASS ACTION SETTLEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among Plaintiffs Heather Boone, Roxanne Rivera, and Cristian Barrera (the “Named Plaintiffs”), on behalf of themselves, the Settlement Class, as defined below, the State of California, the PAGA Settlement Members, as defined below, and the Non-California FLSA Opt-In Plaintiffs, as defined below, on the one hand, and Defendant Amazon.com Services LLC (“Defendant”) on the other.

Named Plaintiffs and Defendant (collectively, the “Parties”) enter into this Agreement to effectuate a full and final settlement and preclusive judgment resolving completely and to the fullest extent permitted by law the Released Class Claims, the Released Non-California Claims, and the Released PAGA Claims, as defined below, and brought against Amazon in *Boone v. Amazon.com Services, LLC*, Case No. 1:21-cv-00241-NODJ-BAM (E.D. Cal.), including those in member case *Barrera v. Amazon.com Services LLC*, Case No. 1:22-cv-00146-NODJ-BAM (E.D. Cal.), and *Barrera v. Amazon.com Services LLC*, Case No. 30-2022-01242167-CU-OE-CXC (Orange Cnty. Super.). This Agreement is intended to fully and finally compromise, resolve, discharge, and settle the Released Class Claims, the Released Non-California Claims, and the Released PAGA Claims, as defined and on the terms set forth below, and to the full extent reflected herein, subject to the approval of the Court.

I. RECITALS

WHEREAS, on February 23, 2021, Heather Boone and Roxanne Rivera filed a putative class and collective action in the Eastern District of California against Defendant alleging various wage-and-

hour violations, *Boone v. Amazon.com Services, LLC*, Case No. 1:21-cv-00241-NODJ-BAM (E.D. Cal.) (“*Boone*”);

WHEREAS, on May 14, 2021, Boone and Rivera amended their complaint in *Boone*;

WHEREAS, on November 12, 2021, Cristian Barrera filed a putative class action in the Orange County Superior Court of California against Defendant alleging various wage-and-hour violations, *Barrera v. Amazon.com Services, LLC*, Case No. 90-2021-01231643-CU-OE-CXC (“*Barrera I*”);

WHEREAS, on April 27, 2021 and January 16, 2024, Boone and Rivera filed written consent forms signed by Taylor Bouie, Camryn McSweeney, Omar Ramirez Vazquez, and George Werito in which each of these four individuals expressly authorized Boone, Rivera, and Hodges & Foty, LLP to prosecute his/her claims for unpaid wages on his/her behalf and designated Boone, Rivera, and Hodges & Foty, LLP to make decisions on his/her behalf, including negotiating a resolution of his/her claims and entering into an agreement with counsel in *Boone*, with the understanding that he/she would be bound by such decisions;

WHEREAS, on December 28, 2021, Defendant removed *Barrera I* to the United States District Court for the Central District of California (*Barrera v. Amazon.com Services LLC*, Central District of Cal. Case No. 8:21-cv-02122-CJS-KES);

WHEREAS, on January 14, 2022, Boone and Rivera amended their complaint again to add claims under the California Private Attorneys General Act, codified in California Labor Code §§ 2698 *et seq.*, (“PAGA”);

WHEREAS, on January 25, 2022, Barrera filed a PAGA action in Orange County Superior Court against Defendant alleging various wage-and-hour violations, *Barrera v. Amazon.com Services LLC* (Orange County Sup. Ct. Case No. 30-2022-01242167-CU-OE-CXC) (*Barrera II*) (collectively with *Boone* and *Barrera I*, the “Actions”);

WHEREAS, on February 7, 2022, *Barrera I* was transferred to the Eastern District of California (*Barrera v. Amazon.com Services LLC*, Eastern District of Cal. Case No. 1:22-cv-00146-NODJ-BAM);

WHEREAS, on March 11, 2023, Boone and Rivera moved to appoint their counsel, the law firm of Hodges & Foty, LLP, as interim class counsel under Federal Rule of Civil Procedure 23(g), which Defendant did not oppose;

1 WHEREAS, on April 8, 2023, plaintiffs Boone and Rivera and Defendant attended a mediation
2 session with experienced professional mediator Lisa Klerman, and, in preparation for the mediation,
3 engaged in written discovery and informal exchanges of information, documents, and voluminous data,
4 which enabled a thorough evaluation of the claims, and the likely outcomes, risks, and expense of
5 pursuing litigation;

6 WHEREAS, on April 28, 2023, the Parties stipulated that *Barrera I* should be consolidated
7 with *Boone* and that Barrera's counsel would not oppose Boone and Rivera's motion for appointment
8 as interim class counsel;

9 WHEREAS, on May 8, 2023, this Court consolidated *Boone* and *Barrera I*, designating *Boone*
10 as the lead case;

11 WHEREAS, on May 30, 2023, Magistrate Judge McAuliffe recommended that the Court grant
12 Boone and Rivera's motion to appoint their counsel, Hodges & Foty, LLP, as interim class counsel;

13 WHEREAS, after the April 7, 2023 mediation, the Parties continued to have discussions with
14 the assistance of Ms. Klerman and were able to reach an agreement in principle to resolve the Actions;

15 WHEREAS, on October 18, 2023, this Court adopted in full Magistrate Judge McAuliffe's
16 recommendation and granted Boone and Rivera's motion to appoint their counsel, Hodges & Foty,
17 LLP, as interim class counsel;

18 WHEREAS, the Parties agree that Magistrate Judge Barbara McAuliffe will handle the review
19 and approval of the settlement, but in the event that the settlement is not finalized or approved, the
20 Parties shall proceed before the district court for all proceedings;

21 WHEREAS, the Parties desire to fully, finally, and forever settle, compromise, and discharge
22 all disputes and claims that exist between them arising from the factual allegations that underlie the
23 Actions concerning any and all claims asserted therein, including:

24 Named Plaintiffs' Class Claims for: (1) failure to pay all wages in violation of Labor Code
25 §§ 204, 1194, 1194.2, 1197, 1197.1, 1198, (2) failure to pay overtime wages in violation of Labor Code
26 §§ 510, 558, and IWC Wage Order 42001, (3) failure to provide accurate itemized wage statements in
27 violation of Labor Code § 226, (4) failure to maintain accurate records in violation of Labor Code
28 §§ 226 and 1174, (5) failure to wages upon separation of employment in violation of Labor Code

1 §§ 201-203, 218, and (6) engaging in unlawful, unfair and/or fraudulent business practices in violation
2 of Business & Professions Code §§ 17200 *et seq.*

3 Named Plaintiffs' PAGA Claims for: (1) failure to timely compensate for all hours worked,
4 including minimum, regular, and /or overtime wages in violation of Labor Code §§ 204, 210, 510, 558,
5 1194, 1197, 1197.1, and 1198, (2) failure to pay all wages due and owing upon separation of
6 employment and/or the mandatory waiting time penalties in violation of Labor Code §§ 201-203, and
7 210, and (3) failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226
8 and 226.3.

9 Non-California FLSA Opt-In Plaintiffs' Claims for failure to pay overtime in violation of the
10 Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("FLSA").

11 To achieve a full and complete release of Defendant (and the "Released Parties" as defined in
12 this Agreement) of such disputes and claims, the Named Plaintiffs, Non-California FLSA Opt-In
13 Plaintiffs, and Participating Settlement Class Members, as defined in this Agreement (which include
14 any legal heirs and/or successors-in-interest of all Participating Settlement Class Members), through
15 execution of the Agreement, acknowledge that this Settlement Agreement is intended to include in its
16 effect the entirety of the releases described in Paragraphs 31, 32, 33, 63, and 64 of this Agreement.

17 II. DEFINITIONS

18 In addition to the terms defined elsewhere in this Settlement Agreement, capitalized terms used
19 in this Settlement Agreement shall have the meanings set forth below:

20 1. "Actions" means *Boone v. Amazon.com Services, LLC*, Case No. 1:21-cv-00241-NODJ-
21 BAM (E.D. Cal.), including member case *Barrera v. Amazon.com Services LLC*, Case No. 1:22-cv-
22 00146-NODJ-BAM (E.D. Cal.), and *Barrera v. Amazon.com Services LLC*, Case No. 30-2022-
23 01242167-CU-OE-CXC (Orange Cnty. Super.).

24 2. "Attorneys' Fees and Costs" means attorneys' fees sought by Class Counsel for
25 litigation and resolution of the Actions, and all reasonable costs incurred by Class Counsel in the
26 Actions as outlined in this Agreement. Subject to review and approval by the Court, Class Counsel
27 have indicated that they intend to seek attorneys' fees of not more than one third (1/3) of the Gross
28 Settlement Fund, or One Million Eight Hundred Thirty-Three Thousand Three Hundred Thirty-Three

1 Dollars and Thirty-Three Cents (\$1,833,333.33) plus reasonable costs and expenses in an amount not
2 to exceed One Hundred Thousand Dollars (\$100,000.00), which shall be paid from the Gross
3 Settlement Fund.

4 3. "Class Counsel" means and includes Don Foty and David Hodges of Hodges & Foty,
5 LLP.

6 4. "Class Counsel Award" means any attorneys' fees, expenses, or costs awarded to Class
7 Counsel by the Court.

8 5. "Class List" means a confidential list of all Settlement Class Members and PAGA
9 Settlement Members that Defendant will diligently and in good faith compile from its records and
10 provide to the Settlement Administrator within thirty (30) calendar days after entry of an order granting
11 Preliminary Approval of this Settlement. The Class List will include, to the extent available from
12 Defendant's records, each Class Member's full name; most recent mailing address, personal email
13 address, and telephone number contained in Defendant's personnel records; Social Security number;
14 the number of "weeks worked" or "workweeks" that each Class Member worked during the Class
15 Period according to Defendant's records; and any other information needed to calculate Individual
16 Settlement Payments. The data provided to the Settlement Administrator will be treated as confidential
17 and will not be disclosed to anyone, except as may be required to applicable tax authorities, pursuant
18 to Defendant's express written consent, by order of the Court, or to carry out the reasonable steps
19 described in this Settlement to locate missing Settlement Class Members. The data provided to the
20 Settlement Administrator will not be shared with Class Counsel.

21 6. "Class Period" means the period from April 1, 2020 through July 17, 2021 for Class
22 Members who did not work at the facility known as OAK4 in Tracy, California, and from April 1, 2020
23 through February 23, 2022 for Class Members who worked at the facility known as OAK4 in Tracy,
24 California.

25 7. "Class Representative Enhancement Payment" means the amounts to be paid to Named
26 Plaintiffs, subject to final approval by the Court, in recognition of their effort and work in prosecuting
27 the Actions on behalf of Settlement Class Members, and for their general release of claims under Civil
28 Code section 1542. Subject to the Court granting final approval of this Settlement Agreement and

subject to the exhaustion of any and all appeals, Named Plaintiffs have stated that they will request Court approval of Class Representative Enhancement Payments of Thirty Thousand Dollars (\$30,000.00) total, representing Ten Thousand Dollars (\$10,000.00) to each of the three Named Plaintiffs.

8. “Court” or “Eastern District of California” means the U.S. District Court for the Eastern District of California.

9. “Defendant” means defendant Amazon.com Services, LLC.

10. “Effective Date” means the later of: (i) if no timely objections are filed, or if filed, are withdrawn prior to final approval, the date upon which the Court enters an order granting Final Approval of the Settlement Agreement; or (ii) if timely objections are filed and not withdrawn, then either five (5) calendar days from the final resolution of any appeals timely filed or the expiration date of the time for filing or noticing any such appeals, provided that the Settlement is finally approved without material modification.

11. “Final Approval” means the entry of an order that the Named Plaintiffs and Defendant will jointly seek from the Court, and the entry of which shall reflect the Court’s Judgment finally approving the Settlement Agreement.

12. “Final Approval Hearing” means the hearing that is to take place after the entry of the Preliminary Approval Order and after the date the Settlement Administrator sends Notice Packets to Settlement Class Members for purposes of: (i) entering Final Approval; (ii) determining whether the Settlement Agreement shall be approved as fair, reasonable, and adequate; and (iii) ruling upon an application by Class Counsel for Attorneys’ Fees and Costs and Named Plaintiffs’ Class Representative Enhancement Payments.

13. “FLSA Period” means the period from April 1, 2020 through March 31, 2022.

14. “Funding Date” means thirty (30) calendar days after the Effective Date.

15. “Gross Settlement Fund” means the non-reversionary amount of Five Million Five Hundred Thousand Dollars (\$5,500,000.00), to be paid by Defendant that includes all Individual Settlement Payments to Participating Settlement Class Members, Participating Settlement Class Members’ shares of applicable payroll tax payments (including FICA, FUTA, and SDI contributions),

the Class Representative Enhancement Payments to Named Plaintiffs, the Non-California Payments to Non-California FLSA Opt-In Plaintiffs, the PAGA Settlement Amount for release of all PAGA claims, Attorneys' Fees and Costs, and Settlement Administration Costs. In addition to the amount provided as part of the Gross Settlement Fund, Defendant agrees to pay the employer's share of applicable payroll tax payments ("Employer's Payroll Tax Payments"). Other than the Employer's Payroll Tax Payments, in no event will Defendant be liable in these Actions for more than the Gross Settlement Fund set forth in this Paragraph.

16. "Individual Settlement Payment" means each Participating Settlement Class Member's respective share of the Net Settlement Amount.

17. "Individual PAGA Payment" means each PAGA Settlement Member's respective share of the 25% of the PAGA Settlement Amount allocated to PAGA Settlement Members.

18. "Named Plaintiffs" means Heather Boone, Roxanne Rivera, and Cristian Barrera.

19. "Net Settlement Amount" means the portion of the Gross Settlement Fund remaining after deducting the Class Representative Enhancement Payments, the Non-California Payments, the Class Counsel Award, Settlement Administration Costs, and the PAGA Settlement Amount. The entirety of the Net Settlement Amount will be distributed to Participating Settlement Class Members *pro rata*, on a per "weeks worked" or "workweek" basis. There will be no reversion of the Net Settlement Amount to Defendant.

20. "Non-California FLSA Opt-In Plaintiffs" means Taylor Bouie, Camryn McSweeney, Omar Ramirez Vazquez, and George Werito.

21. "Non-California Payment" means the amounts to be paid to Non-California FLSA Opt-In Plaintiffs that total Two Hundred Dollars (\$200.00), representing Fifty Dollars (\$50.00) to each of the four Non-California FLSA Opt-In Plaintiffs.

22. "Notice of Objection" means a Settlement Class Member's valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector's full name, address, and signature; (ii) the case name and case number; (iii) a written statement of the grounds for the objection; and (iv) a statement whether the objector intends to appear at the Final Approval Hearing. Unless the Court orders otherwise, any Settlement Class Member who

1 does not submit a timely written objection to the Settlement, who fails to appear at the Final Approval
2 Hearing to lodge his or her objection, or who fails to otherwise comply with the requirements of this
3 Paragraph, will be foreclosed from objecting to the Settlement and seeking any adjudication or review
4 of the Settlement, by appeal or otherwise.

5 23. “Notice Packet” means the Notice of Class Action Settlement, substantially in the form
6 attached as **Exhibit A**.

7 24. “PAGA Period” means the period from April 1, 2020 through July 17, 2021 for PAGA
8 Settlement Members who did not work at the facility known as OAK4 in Tracy, California, and from
9 April 1, 2020 through February 23, 2022 for PAGA Settlement Members who worked at the facility
10 known as OAK4 in Tracy, California.

11 25. “PAGA Settlement Amount” means the amount that the Parties agree to allocate to the
12 PAGA Settlement Members and the California Labor and Workforce Development Agency (“LWDA”) in
13 connection with resolution of the PAGA claims in the Actions. The Parties agree that One Hundred
14 Thousand Dollars (\$100,000.00) of the Gross Settlement Fund will be allocated to the resolution of
15 PAGA Settlement Members’ claims arising under PAGA. As required by PAGA, Seventy-Five
16 Percent (75%), or Seventy-Five Thousand Dollars (\$75,000.00), of the PAGA Settlement Amount will
17 be paid to the LWDA (“LWDA Payment”), and Twenty-Five Percent (25%), or Twenty-Five Thousand
18 Dollars (\$25,000.00), of the PAGA Settlement Amount will be distributed to PAGA Settlement
19 Members on a *pro rata* basis based on their respective number of “weeks worked” or “workweeks”
20 during the PAGA Period.

21 26. “PAGA Settlement Members” means all non-exempt employees of Defendant in
22 California during the PAGA Period who underwent one or more COVID-19 temperature screenings.

23 27. “Participating Settlement Class Members” means all Settlement Class Members who do
24 not submit timely and valid Requests for Exclusion.

25 28. “Parties” means Named Plaintiffs and Defendant, collectively.

26 29. “Preliminary Approval” means the Court order granting preliminary approval of this
27 Settlement Agreement.
28

1 30. “Qualified Settlement Fund” means a fund, account, or trust satisfying the requirements
2 of 26 C.F.R. § 1.468B-1, established by the Settlement Administrator for the purpose of distributing
3 the Gross Settlement Fund according to the terms of this Settlement Agreement.

4 31. “Released Class Claims” means all claims, actions, demands, causes of action, suits,
5 debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the facts and
6 legal theories asserted in the operative complaints of the Actions, or which relate to the primary rights
7 asserted in the operative complaints, including without limitation claims for (1) failure to pay all wages
8 in violation of Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1, 1198, (2) failure to pay overtime wages
9 in violation of Labor Code §§ 510, 558, and IWC Wage Order 42001, (3) failure to provide accurate
10 itemized wage statements in violation of Labor Code § 226, (4) failure to maintain accurate records in
11 violation of Labor Code §§ 226 and 1174, (5) failure to pay wages upon separation of employment in
12 violation of Labor Code §§ 201-203, 218, (6) engaging in unlawful, unfair and/or fraudulent business
13 practices in violation of Business & Professions Code §§ 17200 *et seq.*, and (7) failure to pay overtime
14 wages in violation of 29 U.S.C. § 207. Notwithstanding the above, the Released Class Claims shall
15 only include claims related to or arising from COVID-19 screenings. The period of the Released Class
16 Claims shall extend to the limits of the Class Period. The *res judicata* effect of the Judgment will be
17 the same as that of the Release.

18 32. “Released Non-California Claims” means all claims, actions, demands, causes of action,
19 suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the
20 facts and legal theories asserted in the Second Amended Complaint in *Boone*, or which relate to the
21 primary rights asserted in the Second Amended Complaint in *Boone*, including without limitation
22 claims for failure to pay overtime in violation of 29 U.S.C. §§ 201 *et seq.* Notwithstanding the above,
23 the Released Non-California Claims shall only include claims related to or arising from COVID-19
24 screenings. The period of the Released Non-California Claims shall extend to the limits of the FLSA
25 Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

26 33. “Released PAGA Claims” means all claims for civil penalties pursuant to PAGA based
27 on the facts and legal theories asserted in the operative complaints of the Actions, or which relate to
28 the facts and legal theories asserted in the operative complaints, including without limitation PAGA

1 claims for (1) failure to timely compensate for all hours worked, including minimum, regular, and /or
2 overtime wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1197, 1197.1, and 1198,
3 (2) failure to pay all wages due and owing upon separation of employment and/or the mandatory
4 waiting time penalties in violation of Labor Code §§ 201-203, and 210, and (3) failure to furnish
5 accurate itemized wage statements in violation of Labor Code §§ 226 and 226.3. Notwithstanding the
6 above, the Released PAGA Claims shall only include claims related to or arising from COVID-19
7 screenings. The period of the Released PAGA Claims shall extend to the limits of the PAGA Period.
8 The *res judicata* effect of the Judgment will be the same as that of the Release. Named Plaintiffs'
9 LWDA notices are attached as **Exhibit B** to this Settlement Agreement.

10 34. "Released Parties" means Defendant and each of its past, present, and/or future, direct,
11 and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys,
12 insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates,
13 divisions, predecessors, successors, assigns, and joint ventures.

14 35. "Request for Exclusion" means a timely letter submitted by a Settlement Class Member
15 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth
16 the name and address of the Settlement Class Member requesting exclusion; (ii) include the case name
17 and case number; (iii) be signed by the Settlement Class Member; (iv) be returned to the Settlement
18 Administrator; (v) clearly state that the Settlement Class Member does not wish to be included in the
19 Settlement; and (vi) be faxed or postmarked on or before the Response Deadline.

20 36. "Response Deadline" means the deadline by which Settlement Class Members must
21 postmark or fax to the Settlement Administrator Requests for Exclusion, Notices of Objection, or
22 disputes to workweeks. The Response Deadline will be sixty (60) calendar days from the initial
23 emailing or mailing of the Notice Packet by the Settlement Administrator, unless the sixtieth (60th)
24 day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the
25 next day on which the U.S. Postal Service is open.

26 37. "Settlement Administration Costs" means the reasonable fees and expenses payable
27 from the Gross Settlement Fund to the Settlement Administrator for administering this Settlement,
28 including, but not limited to, emailing, creating a website, responding to inquiries from Settlement

1 Class Members, printing, distributing, and tracking forms for this Settlement, calculating estimated
2 amounts per Settlement Class Member, tax reporting, distributing the LWDA Payment, Gross
3 Settlement Fund, and Class Counsel Award, providing necessary reports and declarations, and other
4 duties and responsibilities set forth herein to process this Settlement, as requested by the Parties. The
5 Parties have agreed to allocate up to Three Hundred Ninety Two Thousand Three Hundred Forty-One
6 Dollars to Settlement Administration Costs. The Settlement Administration Costs will be paid from
7 the Gross Settlement Fund. In the event the allocated Settlement Administration Costs exceed the
8 actual costs incurred by the Settlement Administrator, the difference shall be a part of the Net
9 Settlement Amount and distributed the Participating Settlement Class Members.

10 38. "Settlement Administrator" means Rust Consulting, which the Parties have agreed to,
11 subject to approval by the Court for the purposes of administering this Settlement. The Parties each
12 represent that they do not have any financial interest in the Settlement Administrator or otherwise have
13 a relationship with the Settlement Administrator that could create a conflict of interest.

14 39. "Settlement Class Member(s)" or "Settlement Class" means all current and former non-
15 exempt employees of Defendant in California during the Class Period who underwent one or more
16 COVID-19 temperature screenings.

17 III. TERMS OF AGREEMENT

18 Named Plaintiffs, on behalf of themselves, the Settlement Class, and the Non-California FLSA
19 Opt-In Plaintiffs, and Defendant agree as follows:

20 40. Amendment of Complaint for Settlement Purposes. For the purpose of this settlement
21 only, the Parties agree that plaintiffs Boone and Rivera will file a third amended complaint in *Boone v.*
22 *Amazon.com Services, LLC*, Case No. 1:21-cv-00241-NODJ-BAM (E.D. Cal.) pursuant to Rule
23 15(a)(2) that removes their collective action claims brought under the FLSA, 29 U.S.C. § 216(b). To
24 the extent a formal motion is needed to seek leave to file the third amended complaint, Plaintiffs will
25 be responsible for drafting said motion. The Parties agree that the mutually agreed upon third amended
26 complaint is for settlement purposes only and that Defendant has no obligation to respond to the third
27 amended complaint. The Parties further agree that, by assenting to the filing of the third amended
28 complaint in *Boone* for purposes of this Settlement only, Defendant does not admit any facts or waive

any defenses. In the event the Parties' settlement agreement is not approved, Defendant agrees to consent to the filing of a fourth amended complaint that includes the FLSA collective action claims by plaintiffs Boone and Rivera for the purpose of reverting to the operative complaint that was in place immediately prior to the filing of the third amended complaint, and Named Plaintiffs agree that Defendant would have no obligation to respond to any such fourth amended complaint, and that Defendant's answer to Boone and Rivera's Second Amended Complaint would remain its operative answer.

41. Preliminary Approval Motion. The Parties agree to present the Settlement for Preliminary Approval, and consent to continued jurisdiction if Preliminary Approval is granted, in the Eastern District of California, and Named Plaintiffs further agree to endeavor in good faith to file a Motion for Preliminary Approval, including all executed and necessary exhibits, within thirty (30) calendar days of executing this Settlement Agreement.

42. Funding of the Gross Settlement Fund and Employer's Payroll Tax Payments. By the Funding Date, Defendant will make a one-time deposit of the Gross Settlement Fund of Five Million Five Hundred Thousand Dollars (\$5,500,000.00) plus the Employer's Share of Payroll Taxes into a Qualified Settlement Fund to be established by the Settlement Administrator in exchange for the promises set forth in this Settlement Agreement, including the Releases by the Participating Settlement Class Members, PAGA Settlement Members, Non-California FLSA Opt-In Plaintiffs, and Named Plaintiffs. The Individual Settlement Payments are not being made for any other purpose and will not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation. After the Effective Date, the Gross Settlement Fund will be used to pay: (i) Individual Settlement Payments; (ii) the PAGA Settlement Amount; (iii) the Class Representative Enhancement Payments; (iv) the Non-California Payments; (v) the Class Counsel Award; and (vi) Settlement Administration Costs.

43. Non-Reversionary Settlement. Participating Settlement Class Members are entitled to one hundred percent (100%) of the Net Settlement Amount, to be distributed as outlined in Paragraph 19. Defendant maintains no reversionary right to any portion of the Net Settlement Amount, including any increase in the Net Settlement Amount resulting from a reduction in the Class Representative

Enhancement Payments, the Non-California Payments, the Class Counsel Award, the PAGA Settlement Amount, and/or the Settlement Administration Costs. If there are any timely submitted opt outs or a reduction in the Class Representative Enhancement Payments, the Non-California Payments, the Class Counsel Award, the PAGA Settlement Amount, and/or the Settlement Administration Costs, the Settlement Administrator shall proportionately increase the Individual Settlement Payments for each Participating Settlement Class Member so that the amount actually distributed to Participating Settlement Class Members equals one hundred percent (100%) of the corresponding Net Settlement Amount. If the amount of the Employer's Share of Payroll Taxes is overestimated, however, funds equivalent to the overestimated amount shall revert to Defendant.

44. Attorneys' Fees and Costs. Class Counsel shall apply to the Court for attorneys' fees of not more than one-third (1/3) of the Gross Settlement Fund, or One Million Eight Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$1,833,333.33) plus reasonable costs and expenses in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) subject to approval by the Court. The Settlement Administrator (and not Defendant) shall issue an IRS Form 1099 to Class Counsel reflecting the Class Counsel Award. Defendant will not be responsible for attorneys' fees for or costs and expenses incurred by counsel for Named Plaintiffs' that is not Class Counsel. Payment to Parmet PC and The Nourmand Law Firm shall be made from the Class Counsel Award.

45. Class Representative Enhancement Payments. In exchange for general releases of all known and unknown claims that they may have against Defendant and Released Parties based on their employment with Defendant (including a waiver of claims under Civil Code section 1542), and in recognition of their service to the class, Named Plaintiffs shall apply for Class Representative Enhancement Payments of Thirty Thousand Dollars (\$30,000.00) total, representing Ten Thousand Dollars (\$10,000.00) to each of the three Named Plaintiffs. The Class Representative Enhancement Payments will be paid from the Gross Settlement Fund and will be in addition to Named Plaintiffs' Individual Settlement Payments paid pursuant to the Settlement Agreement. The Settlement Administrator (and not Defendant) shall issue an IRS Form 1099 to each of the Named Plaintiffs reflecting their Class Representative Enhancement Payments. Named Plaintiffs agree to assume

responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, from their Class Representative Enhancement Payments. In addition, Named Plaintiffs shall hold Defendant and the Released Parties harmless and indemnify and defend Defendant and the Released Parties for all taxes, interest, penalties, and costs incurred by Defendant or the Released Parties by any reason of any claims relating to their non-withholding of taxes from the Class Representative Enhancement Payments. However, prior to seeking indemnity, including incurring defense costs, Defendant will present the claim to the Named Plaintiffs to attempt to resolve.

46. Non-California Payments. The Non-California FLSA Opt-In Plaintiffs shall each receive Fifty Dollars (\$50.00) for a total allocation of Two Hundred Dollars (\$200.00). The Non-California Payments will be paid from the Gross Settlement Fund. The Settlement Administrator (and not Defendant) shall issue (1) an IRS Form W-2 to each of the Non-California FLSA Opt-In Plaintiffs reflecting Fifty Percent (50%) of their Non-California Payments; and (2) an IRS Form 1099 to each of the Non-California FLSA Opt-In Plaintiffs reflecting Fifty Percent (50%) of their Non-California Payments. Non-California FLSA Opt-In Plaintiffs agree to assume responsibility of remitting to the Internal Revenue Service and any other relevant taxing authority the amounts required by law, if any, from their Non-California Payments. In addition, Non-California FLSA Opt-In Plaintiffs shall hold Defendant and the Released Parties harmless and indemnify and defend Defendant and the Released Parties for all taxes, interest, penalties, and costs incurred by Defendant or the Released Parties by any reason of any claims relating to their non-withholding of taxes from the Non-California Payments. However, prior to seeking indemnity, including incurring defense costs, Defendant will present the claim to the Non-California FLSA Opt-In Plaintiffs to attempt to resolve.

47. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs it incurs for purposes of administering the Settlement and distributing payments from the Gross Settlement Fund. These costs, which will be paid from the Gross Settlement Fund, will include, *inter alia*, calculating, paying, and reporting the required tax payments on the Individual Settlement Payments; the issuing and collection of 1099 and W-2 IRS Forms; distributing Notice Packets; processing Requests for Exclusion, Notices of Objection, and workweek disputes; performing

skip trace on Notice Packets returned as undeliverable; calculating and distributing from the Gross Settlement Fund all Individual Settlement Payments, the PAGA Settlement Amount, the Class Representative Enhancement Payments, the Non-California Payments, and the Class Counsel Award; and providing necessary reports and declarations, among other tasks that the parties may agree upon or as set forth in this Agreement.

48. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount of One Hundred Thousand Dollars (\$100,000.00) from the Gross Settlement Fund will be designated for satisfaction of Named Plaintiffs' and PAGA Settlement Members' PAGA claims. Pursuant to PAGA, Seventy-Five Percent (75%), or Seventy-Five Thousand Dollars (\$75,000.00), of the PAGA Settlement Amount will be paid to the LWDA, and Twenty-Five Percent (25%), or Twenty-Five Thousand Dollars (\$25,000.00), will be distributed on a *pro rata* basis to the PAGA Settlement Members based on the number of "weeks worked" or "workweeks" during the PAGA Period. This amount will not revert to Defendant.

49. Net Settlement Amount. The entire Net Settlement Amount will be distributed to Participating Settlement Class Members as provided in Paragraphs 19 and 43. No portion of the Net Settlement Amount will revert to or be retained by Defendant.

50. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount to Settlement Class Members who do not opt out on a *pro rata* basis depending on the number of "weeks worked" or "workweeks" (defined as any calendar week during the Class Period) in which a Settlement Class Member performed at least one day of work for Defendant. Settlement Class Members do not need to submit a claim to participate and receive their Individual Settlement Payment.

51. Individual PAGA Payment Calculations. Individual PAGA Payments will be calculated and apportioned from the 25% portion of the PAGA Settlement Amount allocated to PAGA Settlement Members on a *pro rata* basis depending on the number of "weeks worked" or "workweeks" in which a PAGA Settlement Member performed at least one day of work for Defendant during the PAGA Period. PAGA Settlement Members do not need to submit a claim to participate in the PAGA portion of the Settlement and also may not opt out of the resolution of the PAGA claim.

52. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Settlement Class Members and Individual PAGA Payments made to PAGA Settlement Members under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Members may be eligible, including, but not limited to, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Settlement Class Members may be entitled under any benefit plans. For the avoidance of doubt, no Settlement Class Member shall be entitled to any additional right, contribution, or amount under any benefit plan as a result of this Settlement or payments made hereunder.

53. Administration Process. The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement, including by first using electronic notice rather than mail notice where personal email addresses are available.

54. Notice to Labor and Workforce Development Agency. Upon the filing of the Motion for Preliminary Approval, Defendant's Counsel will notify the LWDA of this Settlement Agreement. Within ten (10) calendar days of the entry of the Court's order granting Preliminary Approval and of the Court's entry of Judgment, Defendant's Counsel will provide the LWDA with copies of that order and Judgment consistent with Paragraph 33 of this Agreement and California Labor Code sections 2699(l)(1)(2)–(3).

55. Preparation of the Class List. Within thirty (30) calendar days of the entry of the Court's order granting Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. Within fifteen (15) calendar days after the Response Deadline, the Settlement Administrator will provide to counsel for Defendant the list of Participating Settlement Class Members, which, unless the Court orders otherwise, shall exclude individuals who filed a timely Request for Exclusion.

1 56. Notice by Email or First-Class U.S. Mail. Within thirty (30) calendar days after
2 receiving the Class List from Defendant, the Settlement Administrator will send a Notice Packet to all
3 Settlement Class Members. The Settlement Administrator will use the most current, known personal
4 email addresses identified in the Class List. If there is no personal email address in the Class List, the
5 Settlement Administrator will mail a Notice Packet via regular First-Class U.S. Mail, using the most
6 current, known mailing addresses identified in the Class List.

7 57. Confirmation of Contact Information in the Class Lists and Resending Notices Where
8 Initial Notice is Returned as Non-Deliverable. Prior to the initial distribution of Notice Packets, the
9 Settlement Administrator will perform a search based on the National Change of Address Database for
10 information to update and correct for any known or identifiable address changes for those Settlement
11 Class Members who do not have a personal email address included in the Class List. The Settlement
12 Administrator also will perform a search based on the National Change of Address Database for
13 information to update and correct for any known or identifiable address changes for those Settlement
14 Class Members whom were sent a Notice Packet via email and the Settlement Administrator received
15 an auto-reply indicating the email was non-deliverable. Any Notice Packets sent via email for which
16 the Settlement Administrator receives an auto-reply indicating the email was non-deliverable on or
17 before the Response Deadline will be sent promptly via regular First-Class U.S. Mail within five (5)
18 business days of receipt of the auto-reply. Any Notice Packets sent via regular First-Class U.S. Mail
19 and returned to the Settlement Administrator as non-deliverable on or before the Response Deadline,
20 regardless of whether the Notice Packet was first sent via email, will be sent promptly via regular First-
21 Class U.S. Mail within five (5) business days of receipt to any forwarding address affixed thereto and
22 the Settlement Administrator will indicate the date of such remailing on the Notice Packet. If no
23 forwarding address is provided, the Settlement Administrator will promptly attempt to determine the
24 correct address using a skip-trace or other search using the name, address, and/or Social Security
25 number of the Settlement Class Member involved, and will then perform a single re-mailing within
26 five (5) business days of receipt. Settlement Class Members will have until the later of ten (10) calendar
27 days from the date of the re-mailing or the Response Deadline, to submit a Notice of Objection, Request
28 for Exclusion, or workweeks dispute.

1 58. Notice Packets. All Settlement Class Members will be sent a Notice Packet. Each
2 Notice Packet will provide: (i) information regarding the nature of the Actions; (ii) a summary of the
3 Settlement Agreement's principal terms; (iii) the Settlement Class definition; (iv) the total number of
4 workweeks each respective Settlement Class Member worked for Defendant during the Class Period;
5 (v) the dates which comprise the Class Period and the PAGA Period; (vi) instructions on how to submit
6 Requests for Exclusion, Notices of Objection, and workweeks disputes; (vii) the deadlines by which
7 the Settlement Class Member must postmark or fax Requests for Exclusion, Notices of Objection, and
8 workweeks disputes; (viii) the claims to be released; and (ix) the Settlement Administrator's contact
9 information, including the website address where the electronic versions of the materials in the Notice
10 Packet will be available. Settlement Class Members and PAGA Settlement Members will be
11 specifically informed that neither Defendant nor Class Counsel make any representations regarding the
12 tax implications of any amounts paid under this Settlement Agreement and that if Settlement Class
13 Members or PAGA Settlement Members have any questions regarding those implications, they can
14 and should consult a tax expert. The Parties' proposed Notice Packet is attached hereto as **Exhibit A**.

15 59. Disputed Information in Notice Packets. Settlement Class Members will have an
16 opportunity to dispute the workweek information provided in their Notice Packets. To the extent
17 Settlement Class Members dispute their employment dates or the number of workweeks on record,
18 Settlement Class Members may produce evidence to the Settlement Administrator showing that such
19 information is inaccurate by the Response Deadline. The Settlement Administrator will decide the
20 dispute. Defendant's records will be presumed correct, but the Settlement Administrator will evaluate
21 the evidence submitted by the Settlement Class Member and will make the final decision as to the
22 merits of the dispute. All disputes will be decided by the Settlement Administrator within fifteen (15)
23 business days of the Response Deadline.

24 60. Request for Exclusion Procedures. Any Settlement Class Member wishing to opt out
25 of the Settlement Agreement must sign and fax or mail a written Request for Exclusion to the
26 Settlement Administrator by the Response Deadline. In the case of Requests for Exclusion that are
27 mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine
28 whether a Request for Exclusion has been timely submitted. Consistent with California law, PAGA

1 Settlement Members may not opt out of the PAGA Settlement. Any Settlement Class Member who
2 timely submits a Request for Exclusion will still receive an Individual PAGA Payment representing
3 their portion of the PAGA Settlement Amount. All signatories and their counsel must not encourage
4 opt-outs. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means.
5 Objective statements to Settlement Class Members who call Class Counsel with inquiries regarding the
6 Settlement Agreement, or the exercise of Class Counsel's ethical obligations, shall not be deemed a
7 violation of the prohibitions contained herein.

8 61. Defective Submissions. If a Settlement Class Member's Request for Exclusion is
9 defective as to the requirements listed herein, that Settlement Class Member will be given an
10 opportunity to cure the defect(s). The Settlement Administrator will send the Settlement Class Member
11 a cure letter within three (3) business days of receiving the defective submission to advise the
12 Settlement Class Member that his or her submission is defective and that the defect must be cured to
13 render the Request for Exclusion valid. The Settlement Administrator will send the cure letter by the
14 last method by which the Settlement Administrator sent the Notice Packet to the Settlement Class
15 Member. The Settlement Class Member will have until the later of (i) the Response Deadline or (ii)
16 ten (10) calendar days from the date of the cure letter to postmark or fax a revised Request for
17 Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within that period,
18 it will be deemed untimely.

19 62. Cancellation of Settlement Agreement. Within fourteen (14) calendar days of the
20 Response Deadline, as defined in the Court's Order granting Preliminary Approval of the Settlement,
21 Defendant will have the option, in its sole discretion, to void the Settlement Agreement in its entirety
22 if ten percent (10%) or more of all individuals eligible to become members of the Settlement Class
23 submit timely and valid Requests for Exclusion or are otherwise deemed by the Court not to be bound
24 by the Settlement. If Defendant exercises this option, it shall be responsible for all Settlement
25 Administration Costs incurred to the date of cancellation.

26 63. Releases.

27 (a) Release of Class Claims by Participating Settlement Class Members. The
28 Parties agree that upon the Effective Date and Defendant's full funding of the

1 Gross Settlement Fund, it is their intent that the terms set forth in this Settlement
2 Agreement will release any further attempt by lawsuit, administrative claim or
3 action, arbitration, demand, claims for civil penalties, or other action of any kind
4 by each and all of the Participating Settlement Class Members, who shall release
5 their right to pursue any and all claims against the Released Parties for the
6 Released Class Claims, as fully described in Paragraph 31, arising during the
7 Class Period.

8 (b) Release of PAGA Claims by PAGA Settlement Members. The Parties agree
9 that upon the Effective Date and Defendant's full funding of the Gross
10 Settlement Fund, it is their intent that the terms set forth in this Settlement
11 Agreement will release any further attempt by lawsuit, administrative claim or
12 action, demand, claims for civil penalties, or other action of any kind by each
13 and all of the PAGA Settlement Members, who shall release their right to pursue
14 any and all claims against the Released Parties for the Released PAGA Claims,
15 as fully described in Paragraph 33, arising during the PAGA Period.

16 (c) Release of Claims by Named Plaintiffs. Upon the Effective Date and
17 Defendant's full funding of the Gross Settlement Fund, in addition to the claims
18 being released by all Participating Settlement Class Members and PAGA
19 Settlement Members, Named Plaintiffs will release and forever discharge the
20 Released Parties, to the fullest extent permitted by law, of and from any and all
21 claims, known and unknown, asserted and not asserted, which Named Plaintiffs
22 have or may have against the Released Parties based in any way on, or otherwise
23 related to or arising from, their employment with Defendant as of the date of
24 execution of this Settlement Agreement. The releases include, but are not
25 limited to, all disputes relating to or arising out of any state, local, or federal
26 statute, ordinance, regulation, order, or common law, including, but not limited
27 to, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000(e)
28 *et seq.*; the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 *et seq.*; the

Equal Pay Act, as amended, 29 U.S.C. § 206(d); the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 *et seq.* and Code of Federal Regulations; the Orders of the California Industrial Welfare Commission regulating wages, hours and working conditions; the California Fair Employment & Housing Act, as amended, Cal. Govt. Code §§ 12900 *et seq.*; the California Family Rights Act of 1991, as amended; Cal. Govt. Code § 12945.2; the California Unruh Civil Rights Act, as amended, Cal. Civ. Code §§ 51 *et seq.*; the California Labor Code (including any claim for civil penalties under the California Labor Code Private Attorneys General Act); the California Government Code; Article 1 of the California Constitution; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701 *et seq.*; the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12100 *et seq.*; the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 *et seq.* and any state law equivalent; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*; the National Labor Relations Act, as amended, 29 U.S.C. §§ 151 *et seq.*; California Business and Professions Code §§ 17200 *et seq.*; other statutory and common law claims; statutory or common law rights to attorneys' fees and costs, penalties/fines, and/or punitive damages; any action based on contract, quasi-contract, quantum meruit, implied contract, tort, wrongful or constructive discharge, breach of the covenant of good faith and fair dealing, defamation, libel, slander, immigration issues, infliction of emotional distress, negligence, assault, battery, conspiracy, harassment, retaliation, discrimination on any basis prohibited by statute or public policy, conversion, any interference with business opportunity or with contract or based upon any other theory; and/or similar causes of action.

(d) Named Plaintiffs' General Release. Upon the Effective Date, to the extent allowed by California law, the Named Plaintiffs waive all rights and benefits afforded by section 1542 of the California Civil Code. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR

SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(e) Non-California FLSA Opt-In Plaintiffs' Release. The Parties agree that upon the Effective Date and Defendant's full funding of the Gross Settlement Fund, it is their intent that the terms set forth in this Settlement Agreement will release any further attempt by lawsuit, administrative claim or action, demand, claims for civil penalties, or other action of any kind by each and all of the Non-California FLSA Opt-In Plaintiffs, who shall release their right to pursue any and all claims against the Released Parties for the Released Non-California Claims, as fully described in Paragraph 32, arising during the FLSA Period.

64. Older Workers' Benefit Protection Act Waiver.

(a) Named Plaintiffs specifically intend that the claims they are releasing herein include any claims that Named Plaintiffs may have under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers' Benefit Protection Act of 1990.

(b) Named Plaintiffs are advised to consult with their counsel before signing this Settlement Agreement because Named Plaintiffs are permanently giving up significant legal rights. Named Plaintiffs acknowledge that they has been so advised.

(c) Named Plaintiffs acknowledge that they have been given at least twenty-one (21) calendar days to execute and return this Settlement Agreement and have been advised that, after they execute this Settlement Agreement, Named Plaintiffs have seven (7) calendar days to reconsider and revoke the Settlement Agreement, recognizing that Named Plaintiffs will not be provided anything under this Settlement Agreement until at least that seven (7)-day revocation period has expired. The general release will then become effective on the

1 eighth (8th) calendar day after it is signed, provided that Named Plaintiffs do
2 not revoke it.

3 (d) In order to effectively revoke this general release, the Parties agree that Named
4 Plaintiffs must provide written notice of such revocation within seven (7)
5 calendar days after Named Plaintiffs execute this Settlement Agreement to
6 counsel for Defendant, Bradley Hamburger and Tiffany Phan, via email to
7 bhamburger@gibsondunn.com and tphan@gibsondunn.com.

8 65. Settlement Terms Bind All Class Members Who Do Not Opt Out. Any Settlement Class
9 Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely and
10 valid Request for Exclusion (*i.e.*, all Participating Settlement Class Members) will be bound by all of
11 its terms, including those pertaining to the Released Class Claims and Released PAGA Claims, as well
12 as any Judgment that may be entered by the Court if it grants final approval of the Settlement. The
13 Settlement Agreement shall constitute, and may be pleaded as, a complete and total defense to any
14 Released Class Claims or Released PAGA Claims currently pending or raised in the future.
15 Notwithstanding the foregoing, this Settlement Agreement, if approved, precludes further PAGA
16 claims that are released herein irrespective of whether a Request for Exclusion is submitted. As a
17 result, all PAGA Settlement Members—regardless of whether they submit a Request for Exclusion—
18 shall receive a check for their share of the PAGA Settlement Amount when settlement payments are
19 delivered, and they will be bound by a release of the PAGA claims as outlined in Paragraph 63(b).

20 66. Notice of Objection Procedures. To object to the Settlement Agreement, a Settlement
21 Class Member must mail or fax a valid Notice of Objection to the Settlement Administrator on or
22 before the Response Deadline. The Notice of Objection must be signed by the Settlement Class
23 Member and contain all information required by this Settlement Agreement. The postmark or fax-
24 stamp date will be deemed the exclusive means for determining that the Notice of Objection is timely.
25 The Settlement Administrator will notify any person from whom it receives a Notice of Objection that
26 is not timely and/or valid if, in fact, such Notice of Objection is not timely and/or valid. Any disputes
27 regarding the timeliness, validity, or effectiveness of a Notice of Objection shall be decided by the
28 Settlement Administrator consistent with the terms of this Agreement, and with the Parties' input, if

appropriate. Settlement Class Members who fail to object in the manner specified above will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement, unless they appear at the Final Approval Hearing and state their objection at that time. Settlement Class Members who submit timely Notices of Objection may appear at the Final Approval Hearing in order to have their objections heard by the Court. If the Court permits, Settlement Class Members who have not submitted a written Notice of Objection in compliance with the Settlement Agreement may still appear at the Final Approval Hearing and present their objections. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written objections to the Settlement Agreement or appeal from the Final Approval Order and Judgment. Class Counsel will not represent any Settlement Class Members with respect to any such objections to this Settlement.

67. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that identifies the number of Settlement Class Members who have submitted valid Requests for Exclusion, or objected to the Settlement, and whether any Settlement Class Member has submitted a challenge to any information contained in his or her Notice Packet as provided in Paragraph 58. Additionally, the Settlement Administrator will provide counsel for both Parties with any updated reports regarding the administration of the Settlement Agreement as needed or requested, as consistent with the terms of the Settlement Agreement.

68. Distribution Timing of Individual Settlement Payments. The Settlement Administrator will distribute the funds in the Gross Settlement Fund within the time period set forth with respect to each category of payment.

(a) Class Counsel Award and Class Representative Enhancement Payments:

Within twenty-one (21) calendar days of the Funding Date, the Settlement Administrator will issue payments for the Class Counsel Award and Class Representative Enhancement Payments in the amounts awarded by the Court.

(b) Non-California Payments: Within twenty-one (21) calendar days of the Funding Date, the Settlement Administrator will issue payments for the Non-California Payments in the amounts awarded by the Court.

(c) Individual Settlement Payment and PAGA Settlement Amount: Within twenty-one (21) calendar days of the Funding Date, the Settlement Administrator will issue the LWDA Payment to the LWDA, the Individual Settlement Payments to the Participating Settlement Class Members, and the Individual PAGA Payments to the PAGA Settlement Members. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement in the amount approved by the Court.

(d) Payroll Tax Payments and Penalties: The Settlement Administrator will also issue Defendant's share of applicable employer payroll tax payments and penalties to the appropriate government authorities.

69. Un-cashed Settlement Checks. Individual Settlement Payment and/or Individual PAGA Payment checks remaining un-cashed for more than one hundred eighty (180) calendar days after issuance will be void. Funds from the uncashed checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Sections 1500 *et seq.*, for the benefits of those Participating Settlement Class Members and PAGA Settlement Members who did not cash their checks, until such time they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code Section 384, as the entire Net Settlement Amount (plus the PAGA Settlement Amount) will be paid to the Participating Settlement Class Members and PAGA Settlement Members, whether or not they all cash their Individual Settlement Payment and/or Individual PAGA Payment checks.

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

71. Treatment of Individual Settlement Payments. For tax purposes, the Individual PAGA Payments from the PAGA Settlement Amount will be treated as 100% penalties and will be reported on IRS Form 1099. Individual Settlement Payments will be allocated as follows: (i) Fifty Percent (50%) to settlement of wage claims and (ii) Fifty Percent (50%) to settlement of claims for interest and statutory penalties. The portion allocated to wages shall be reported on an IRS Form W-2 and the portion allocated to interest and penalties shall be reported on an IRS Form 1099 by the Settlement Administrator. Each Non-California Payment will be allocated as follows: (i) Fifty Percent (50%) to settlement of wage claims and (ii) Fifty Percent (50%) to settlement of claims for liquidated damages. The portion allocated to wages shall be reported on an IRS Form W-2 and the portion allocated to liquidated damages shall be reported on an IRS Form 1099 by the Settlement Administrator. Named Plaintiffs and Participating Settlement Class Members shall be solely responsible for taxes associated with the 1099 and W-2 payments, with the exception of employer payroll taxes. Participating Settlement Class Members shall be responsible for remitting to state and/or federal taxing authorities any applicable other taxes due. Neither this Agreement, nor any of its attachments, should be interpreted to contain or constitute representations or advice regarding any U.S. federal or state tax issue.

72. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Named Plaintiffs, Non-California FLSA Opt-In Plaintiffs, Participating Settlement Class Members, PAGA Settlement Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding Defendant's share of applicable employer payroll tax payments and penalties to the appropriate government authorities. All Settlement Class Members, including Named Plaintiffs, Participating Settlement Class Members and PAGA Settlement Members, and Non-California FLSA Opt-In Plaintiffs shall be solely and exclusively responsible for remitting to state and/or federal taxing authorities any applicable other taxes due and shall hold Defendant and the Released Parties harmless for any taxes, penalties, interest, liabilities, costs, and expenses caused by any such taxing authority relating in any way to the Settlement Class Members', including Named Plaintiffs', PAGA Settlement Members' and Participating

1 Settlement Class Members’, or the Non-California FLSA Opt-In Plaintiffs’ tax treatment of payments
2 made to them pursuant to this Settlement or failure to timely or properly pay any taxes owed on their
3 respective Individual Settlement Payment, Individual PAGA Payment, Class Representative
4 Enhancement Payment, or Non-California Payment. However, prior to seeking indemnity, including
5 incurring defense costs, Defendant will present the claim to the particular Settlement Class Member to
6 attempt to resolve.

7 73. Tax Liability. Defendant, Defendant’s Counsel, and Class Counsel make no
8 representation as to the tax treatment or legal effect of the payments called for hereunder, and Named
9 Plaintiffs, Non-California FLSA Opt-In Plaintiffs, Participating Settlement Class Members, and PAGA
10 Settlement Members are not relying on any statement, representation, or calculation by Defendant,
11 Defendant’s Counsel, or Class Counsel or by the Settlement Administrator in this regard.

12 74. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
13 OF THIS SECTION, THE “ACKNOWLEDGING PARTY,” AND EACH PARTY TO THIS
14 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
15 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO
16 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
17 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL
18 ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
19 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY
20 DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
21 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN,
22 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
23 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT
24 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
25 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
26 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER
27 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
28 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY

1 HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY
2 SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
3 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
4 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
5 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
6 AGREEMENT.

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

11 76. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
12 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other
13 reason, then this Settlement Agreement, will be null and void, and Boone and Rivera may file a fourth
14 amended complaint that includes the Fair Labor Standards Act collective claims for the purpose of
15 reverting to the operative complaint that was in place immediately prior to the filing of the third
16 amended complaint. Any order or judgment entered by the Court in furtherance of this Settlement
17 Agreement will likewise be treated as void from the beginning.

18 77. Termination of Settlement Agreement. Named Plaintiffs and Defendant will each have
19 the right to unilaterally terminate this Settlement Agreement by providing written notice of their
20 election to do so ("Termination Notice") to all other Parties hereto within ten (10) business days of any
21 of the following occurrences; provided, however, that the Parties agree to cooperate in good faith to
22 address any issues the Court raises in connection with issuing Preliminary and/or Final Approval of the
23 Settlement:

- 24 (a) ten percent (10%) or more of the Settlement Class Members request exclusion
25 from the Settlement Class;
- 26 (b) the Court rejects, materially modifies, materially amends or changes, or
27 declines to issue a Preliminary Approval Order or a Final Approval Order with
28

respect to the Settlement Agreement, but only if the Parties are not permitted to remedy any deficiencies the Court identifies;

(c) an appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand; or

(d) any court incorporates terms into, or deletes or strikes terms from, or modifies, amends, or changes the Preliminary Approval Order, the Final Approval Order, or the Settlement Agreement in a way that Named Plaintiffs or Defendant reasonably consider material, unless the modification or amendment is accepted in writing by all Parties, except that, as provided above, the Court's approval of Attorneys' Fees and Costs, Class Counsel Awards, Class Representative Enhancement Payments, and Non-California Payments, or their amounts, is not a condition of the Settlement Agreement, and non-substantive modifications by the Court to the language of any of the releases herein will not be construed as a material change.

78. Reversion *Nunc Pro Tunc*. If this Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not occur: (a) all Orders certifying the Settlement Class for purposes of effectuating this Settlement, and all preliminary and/or final findings regarding the Settlement Class, shall be void *ab initio* and automatically vacated upon notice to the Court, (b) the Actions shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and (c) as provided in Paragraph 40, Named Plaintiffs may file a fourth amended complaint that reverts to the operative complaint that was in place immediately prior to the filing of the third amended complaint.

79. Preliminary Approval Hearing. Named Plaintiffs will obtain a hearing date before the Court to request the Preliminary Approval of the Settlement Agreement and the entry of an order: (i) conditionally certifying the Settlement Class for settlement purposes only; (ii) granting preliminary approval to the proposed Settlement Agreement; (iii) setting a deadline for Class Counsel to file an application for Attorneys' Fees and Costs and an application for Class Representative Enhancement

1 Payments for Named Plaintiffs; and (iv) setting a date for a Final Approval Hearing. The Preliminary
2 Approval Order will provide for the Notice Packet to be sent to all Settlement Class Members as
3 specified herein. In conjunction with the Preliminary Approval hearing, Named Plaintiffs will submit
4 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed
5 Notice Packet, which will include the proposed Notice of Class Action Settlement, attached as
6 **Exhibit A**. Class Counsel will be responsible for drafting all documents necessary to obtain
7 preliminary approval.

8 80. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to
9 postmark Requests for Exclusion or Notices of Objection (and no earlier than one hundred (100)
10 calendar days after the date on which Named Plaintiffs file their Motion for Preliminary Approval) and
11 with the Court's permission, a Final Approval Hearing will be conducted to determine the Final
12 Approval of the Settlement Agreement along with the amounts properly payable for: (i) Individual
13 Settlement Payments (including all applicable taxes); (ii) the PAGA Settlement Amount; (iii) the Class
14 Representative Enhancement Payments; (iv) the Non-California Payments; (v) the Class Counsel
15 Award; and (vi) all Settlement Administration Costs. Class Counsel will be responsible for drafting
16 all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting
17 the Class Counsel Award and Class Representative Enhancement Payments application to be heard at
18 the Final Approval Hearing, which may be filed concurrently with a motion requesting final approval.

19 81. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the
20 Court or after the Final Approval Hearing, the Parties will present a proposed form of Judgment to the
21 Court for its approval, which Class Counsel shall submit to the Court that (i) approves the Settlement
22 Agreement, adjudging the terms thereof to be fair, reasonable, adequate, and directing consummation
23 of its terms and provisions; (ii) approving Class Counsel's application for an award of Attorneys' Fees
24 and Costs; (iii) approving the Class Representative Enhancement Payments; (iv) approving the Non-
25 California Payments; (v) approving the PAGA Settlement Amount; (vi) approving the Settlement
26 Administrator's fees from the Gross Settlement Amount; and (vii) barring all Participating Settlement
27 Class Members and PAGA Settlement Members from prosecuting against the Released Parties, or any
28 of them, the Released Class Claims or Released PAGA Claims. After entry of the Judgment, the Court

1 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
2 enforcement of the terms of the Settlement; (ii) Settlement administration matters; and (iii) such post-
3 Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.
4 The Parties agree that they will jointly move to dismiss with prejudice *Barrera v. Amazon.com Services*
5 *LLC*, Case No. 30-2022-01242167-CU-OE-CXC (Orange Cnty. Super.) within fourteen (14) calendar
6 days after entry of a final order by the Eastern District of California approving this Settlement
7 Agreement. The Parties further agree that they will make all reasonable efforts to ensure that *Barrera*
8 *v. Amazon.com Services LLC*, Case No. 30-2022-01242167-CU-OE-CXC (Orange Cnty. Super.)
9 remains stayed pending approval of this Settlement Agreement.

10 82. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include
11 the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
12 set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

13 83. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
14 entirety of the Parties' settlement terms and, should this Settlement Agreement receive Final Approval,
15 its terms will supersede all prior written or oral agreements between the Parties.

16 84. Amendment or Modification. No amendment, change, or modification to this
17 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

18 85. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
19 represent they are expressly authorized by the Parties whom they represent to take all appropriate action
20 required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate
21 its terms and to execute any documents required to effectuate the terms of this Settlement Agreement.
22 The Parties and their counsel will cooperate with each other and use their best efforts to effect the
23 implementation of the Settlement. If the Parties are unable to reach agreement on the form or content
24 of any document needed to implement the Settlement, or on any supplemental provisions that may
25 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the
26 Court to resolve such disagreement.

27 86. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
28 and inure to the benefit of, the successors or assigns of the Parties.

1 87. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
2 will be governed by and interpreted according to the laws of the State of California.

3 88. Execution and Counterparts. This Settlement Agreement is subject to the execution of
4 all Parties. The Settlement Agreement may be executed in one or more counterparts. All executed
5 counterparts and each of them, including facsimile and scanned copies of the signature page, will be
6 deemed to be one and the same instrument.

7 89. Acknowledgement that the Settlement Is Fair and Reasonable. The Parties believe this
8 Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at
9 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
10 account all relevant factors, present and potential. The Parties further acknowledge that they are each
11 represented by competent counsel and that they have had an opportunity to consult with their counsel
12 regarding the fairness and reasonableness of this Settlement.

13 90. Invalidity of Any Provision. Before declaring any provision of this Settlement
14 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
15 possible consistent with applicable precedents so as to define all provisions of this Settlement
16 Agreement valid and enforceable.

17 91. Waiver of Certain Appeals. With the exception of a right to appeal the reduction of any
18 award of attorneys' fees, costs, and expenses as provided herein, Named Plaintiffs and Defendant
19 hereby waive their right to appeal or seek other judicial review of any order that is materially consistent
20 with the terms of this Settlement Agreement.

21 92. Class Certification for Settlement Purposes Only. The Parties stipulate to class
22 certification of any claims not yet certified for purposes of implementing the Settlement only, and in
23 no way is that an admission by Defendant that class certification is proper. The Settlement will not be
24 admissible in any proceeding as evidence that (i) a class or collective should be certified as Named
25 Plaintiffs have proposed for any claims, including but not limited to any currently non-certified claims;
26 (ii) the Actions should proceed on a representative basis pursuant to PAGA; or (iii) Defendant is liable
27 to Named Plaintiffs or any other individuals they claim to represent in the Actions, including the Non-
28

1 California FLSA Opt-In Plaintiffs, in connection with any claims that were or could have been asserted
2 in the Actions.

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

16 94. Media Restrictions. The Parties and their counsel agree that they will not issue any
17 press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement.
18 Unless required by applicable law, neither the Named Plaintiffs, Non-California FLSA Opt-In
19 Plaintiffs, nor Class Counsel shall publicize the terms of this Settlement Agreement in any medium, or
20 initiate or issue any press release or have any communications to the press or media concerning the
21 Actions, the Settlement of the Actions, and/or this Settlement Agreement, except as posted by the
22 Settlement Administrator as ordered by the Court. Class Counsel shall not include, and shall
23 affirmatively remove, any reference to any of the foregoing subjects in any advertising, advertising
24 mass mailing, website, or other marketing or advertising communication. However, Class Counsel are
25 permitted to reference the settlement in any communication with a court or other body regarding Class
26 Counsel's past experience. If counsel for either Party receives an inquiry about the Settlement from
27 the media, counsel may respond only after the motion for Preliminary Approval has been filed and only
28 by confirming the terms of the Settlement. Notwithstanding the foregoing, nothing will prevent Class

1 Counsel from communicating confidentially with Settlement Class Members as necessary to fulfill
2 their obligations as Class Counsel.

3 95. Waiver. No waiver of any condition or covenant contained in this Settlement
4 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
5 imply or constitute a further waiver by such party of the same or any other condition, covenant, right,
6 or remedy.

7 96. Enforcement Actions. In the event that one or more of the Parties institutes any legal
8 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
9 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
10 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
11 expert witness fees incurred in connection with any enforcement actions.

12 97. Disputes Regarding Settlement Agreement. In the event that there are any disputes
13 arising out of or relating to the implementation of this Settlement Agreement, any such dispute will be
14 submitted to Lisa Klerman, Esq. or a mutually agreeable mediator for mediation.

15 98. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
16 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
17 construed more strictly against one party than another merely by virtue of the fact that it may have been
18 prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length
19 negotiations between the Parties, all Parties have contributed to the preparation of this Settlement
20 Agreement.

21 99. Representation by Counsel. The Parties acknowledge that they have been represented
22 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
23 that this Settlement Agreement has been executed with the advice of counsel. Further, Named Plaintiffs
24 and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

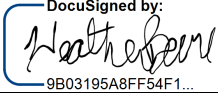
25 100. All Terms Subject to Final Court Approval. All amounts and procedures described in
26 this Settlement Agreement herein will be subject to final Court approval.

102. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, with retention of jurisdiction by the Court as provided therein, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms.

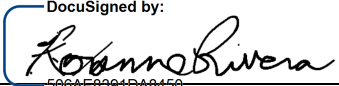
SIGNATURE PAGES FOLLOW

READ CAREFULLY BEFORE SIGNING

1
2 Dated: 2/1/2024

By: 
Heather Boone
Named Plaintiff

3
4
5
6 Dated: 2/1/2024

By: 
Roxanne Rivera
Named Plaintiff

7
8
9
10
11
12 Dated: 02/01/2024

By: 
Cristian Barrera
Named Plaintiff

13
14
15
16
17
18 Dated:

By: _____
Amazon.com Services LLC
Defendant

1
2
3 Dated:

By: _____
Heather Boone
Named Plaintiff

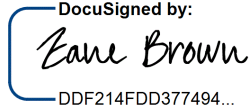
4
5
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7 Dated:

By: _____
Roxanne Rivera
Named Plaintiff

8
9
10
11
12 Dated:

By: _____
Cristian Barrera
Named Plaintiff

13
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17
18 Dated: February 2, 2024

By: _____

DDF214FDD377494...
Amazon.com Services LLC
Defendant

APPROVED AS TO FORM

Dated:

Gibson, Dunn & Crutcher LLP

By:

Bradley J. Hamburger
Attorneys for Defendant

Dated: 2/1/2024

Hodges & Foty, LLP

By:

Don J. Foty
Attorneys for Plaintiffs Heather Boone and
Roxanne Rivera, the Settlement Class, and the
Non-California FLSA Opt-In Plaintiffs

Dated:

2/1/24

The Nourmand Law Firm, APC

By:

James A. De Sario
Attorneys for Plaintiff Cristian Barrera

APPROVED AS TO FORM

Dated: 2/2/24

Gibson, Dunn & Crutcher LLP

By: 
Bradley J. Hamburger
Attorneys for Defendant

Dated:

Hodges & Foty, LLP

By: _____
Don J. Foty
Attorneys for Plaintiffs Heather Boone and
Roxanne Rivera, the Settlement Class, and the
Non-California FLSA Opt-In Plaintiffs

Dated:

The Nourmand Law Firm, APC

By: _____
James A. De Sario
Attorneys for Plaintiff Cristian Barrera

Exhibit A

NOTICE OF CLASS ACTION SETTLEMENT

Heather Boone, Roxanne Rivera, and Cristian Barrera, et al.

Plaintiffs,

v.

Amazon.com Services, LLC,

Defendant.

Eastern District of California,
Case No. 1:21-CV-0241-NODJ-BAM – LEAD

This notice affects your rights. Please read it carefully.

To: All current and former non-exempt employees of Amazon.com Services, LLC (“Defendant”) in California who underwent one or more COVID-19 temperature screenings during the period of April 1, 2020 through July 17, 2021 for individuals who did not work at the facility known as OAK4 in Tracy, California, or the period of April 1, 2020 through February 23, 2022 for those individuals who worked at the facility known as OAK4 in Tracy, California (the “Class”).

A proposed settlement (the “Settlement”) has been reached in the above-referenced class action currently pending in the United States District Court for the Eastern District of California, Case No. 1:21-CV-041-NODJ-BAM (the “Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice carefully.

As will be explained in further detail below, a lawsuit was filed against Defendant alleging that Defendant failed to pay its non-exempt employees for all time spent in COVID-19 screenings. A settlement has now been reached in this Action. You are eligible to participate in the settlement.

- **READ THIS NOTICE CAREFULLY. YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE**
- **THE COURT HAS NOT DETERMINED THAT DEFENDANT VIOLATED THE LAW. DEFENDANT DENIES THAT IT VIOLATED ANY LAWS OR THAT IT HARMED WORKERS.**

A. PURPOSE OF THIS NOTICE

The Court assigned to this Action has certified, for purposes of settlement, the following class: “All current and former non-exempt employees of Amazon.com Services, LLC in California who underwent one or more COVID-19 temperature screenings from April 1, 2020 through July 17, 2021 for those who did not work at the facility known as OAK4 in Tracy, California, and from April 1, 2020 through February 23, 2022 for those who worked at the facility known as OAK4 in Tracy, California.”

You are getting this notice because Defendant’s records indicate that you fall within a member of the Class. This Notice is intended to explain the class action settlement and your options: (1) participate in the settlement, (2) request to be excluded from the settlement, (3) object to the settlement, or (4) dispute your number of workweeks to recover from the settlement.

B. DESCRIPTION OF THE ACTION

In February 2021, Plaintiffs filed a class action lawsuit against Defendant alleging that Defendant failed to pay for all time spent by hourly employees completing COVID-19 screenings prior to the start of their shifts. Plaintiffs alleged that Defendant violated California law because it failed to pay all minimum and overtime wages due under state law for the time spent off the clock as a result of the COVID-19 screenings. They asserted claims for failure to pay minimum and overtime wages, failure to provide accurate wage statements, failure to timely pay final wages, and unfair competition. Defendant denies the allegations and maintains that it complied with the law. Both sides vigorously dispute the amount of time workers spent off the clock as a result of the COVID-19 screenings. The Parties gathered information regarding how much time was spent by Defendant’s employees undergoing COVID-19 screenings, including reviewing surveillance data, payroll data, and time clock data. Defendant argued that the time spent off the clock was very minimal, particularly after the installation of thermal cameras, and that Defendant’s employees could clock-in on a mobile device app before they began the COVID-19 screening and thus would be compensated for time spent in the screenings. Plaintiffs argued that the amount of time spent off the clock was much longer and that Defendant should have compensated employees for the time spent walking from the screening area to the time clocks. Given their differences, the Parties disagreed as to the possible outcome of the Action with respect to both liability and damages. While Plaintiffs and Defendant are prepared to proceed with litigating the Action, each side recognizes that litigating is a risky and costly proposition and that each may not prevail on any or all of the claims.

As a result, in April 2023, the Parties attended a full-day mediation with experienced mediator Lisa Klerman. Although the mediation was unsuccessful, Ms. Klerman continued to work with both sides and the Parties reached a settlement agreement at the end of August 2023.

The Settlement is the result of good-faith and arm’s-length negotiations between Plaintiffs and Defendant. Each side agrees that given the risks and expense associated with continued litigation, this settlement is fair and appropriate under the circumstances, and is in the best interests of all Class Members.

On [date of preliminary approval], the Court granted preliminary approval of this proposed settlement finding it to be fair and reasonable. You now have the right to: (1) participate in the settlement, (2) request to be excluded from the settlement, (3) object to the settlement, or (4) dispute the number of workweeks identified for you. The Court will decide whether to give final approval to the proposed Settlement at a hearing scheduled for [INSERT DATE] (“Final Approval Hearing”).

C. CLASS COUNSEL

The attorneys for the Class (“Class Counsel”) are the following:

Don Foty (dfoty@hfttrialfirm.com)
David Hodges (dhodges@hfttrialfirm.com)
HODGES & FOTY, LLP
2 Greenway Plaza, Suite 250
Houston, Texas 77046
Phone: (713) 523-0001
Fax: (713) 523-1116

D. THE PROPOSED SETTLEMENT

Subject to the Court’s final approval, the terms of the Settlement are as follows:

1. The settlement amount is \$5,500,000 (the “Settlement Amount”) from which Defendant would pay: (a) settlement payments to the participating Class Members; (b) \$75,000.00 to the Labor and Workforce Development Agency pursuant to the California Labor Code Private Attorneys General Act, (c) incentive payments to the three Named Plaintiffs of \$10,000 each that must be approved by the Court; (d) payment to the Non-California FLSA Opt-In Plaintiffs of \$200.00 total; (e) costs to a third party Administrator for administering the Settlement, (f) attorneys’ fees up to 1/3 of the Settlement Amount that must be approved by the Court, and (g) litigation expenses up to \$100,000.00 that must be approved by the Court. Each of these sums will be paid from the Settlement Amount. There will be no reversion to Defendant. The “Net Settlement” is what remains after deducting from the Settlement Amount the sums allocated to items (b) through (f) above.

2. The Net Settlement Amount will be allocated among Class Members using Defendant’s records. Specifically, Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount to Participating Class Members *pro rata*, on a per “weeks worked” or “workweek” basis.

3. Based upon the information in Defendant’s records, the total number of weeks that you worked for Defendant during the Class Period of April 1, 2020 through July 17, 2021 if you did not work at the facility known as OAK4 in Tracy, California, or from April 1, 2020 through February 23, 2022 if you worked at the facility known as OAK4 in Tracy, California is [REDACTED] workweeks. Again, your Net Settlement Amount is based upon the number of workweeks in Defendant’s records.

E. HOW TO PARTICIPATE IN THE SETTLEMENT

To participate in the Settlement, you do not need to take any further action. Upon final approval from the Court, you will receive a settlement check calculated as described in paragraph D, above.

F. HOW TO REQUEST EXCLUSION FROM THE SETTLEMENT

If you do not want to participate in the class action settlement, you must affirmatively opt out by submitting a timely and valid Request for Exclusion. Any Class Member wishing to submit a Request for Exclusion must send in an email to the Settlement Administrator or sign and postmark a written "Request for Exclusion" to the Settlement Administrator on or before the deadline of [REDACTED].

The written Request for Exclusion must be sent either by mail to:

c/o [Administrator]
P.O. Box [REDACTED],
[REDACTED], CA [REDACTED]

or by fax to:

[REDACTED].

The Request for Exclusion must: (i) set forth the name and address of the Settlement Class Member requesting exclusion; (ii) include the case name and case number; (iii) be signed by the Settlement Class Member; (iv) be returned to the Settlement Administrator; (v) clearly state that the Settlement Class Member does not wish to be included in the Settlement; and (vi) be faxed or postmarked on or before the deadline of [REDACTED]. The fax or postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. If you properly submit a timely "Request for Exclusion," you will not be eligible to receive any of the benefits under the Settlement. You will, however, retain whatever legal rights you may have against Defendant with regard to the claims set forth in the Release below.

If a Class Member's Request for Exclusion is defective as to the requirements listed above, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will send the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Settlement Administrator will send the cure letter by the last method by which the Settlement Administrator sent the Notice Packet to the Class Member. The Class Member will have until the later of (i) [REDACTED] (Response Deadline) or (ii) ten (10) calendar days from the date of the cure letter to postmark or fax a revised Request for Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

Questions? Call the Settlement Administrator toll free at 1-*-***-**** or email [REDACTED]@[REDACTED].com**

G. HOW TO OBJECT TO THE SETTLEMENT

If you do not request exclusion from the Settlement but believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement. To object to the Settlement (“Objection”), a Class Member must sign and file a written Objection to the Settlement by either (a) sending it to the Court with a postmark on or before the deadline of [REDACTED], or (b) filing it with the Court on or before the deadline of [REDACTED]. In order for the Objection to be valid, the Objection must include: (i) the objector’s full name, address, and signature; (ii) the case name and case number; (iii) a written statement of the grounds for the objection; and (iv) a statement whether the objector intends to appear at the Final Approval Hearing. The postmark or filing date of the Objection, whichever is earlier, will be deemed the exclusive means for determining that the Objection is timely. The Parties have the right to conduct reasonable discovery as to the basis of any Objection on an expedited basis.

Class Members who fail to object in the manner specified above will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement. Only Class Members who submit timely Objections as specified above will have a right to appear at the Final Approval Hearing in order to have their concerns heard by the Court but a Class Member who files a timely Objection as described above need not appear to have their Objection considered by the Court.

You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

H. HOW TO DISPUTE THE WORKWEEKS LISTED IN THIS NOTICE

If you wish to participate in the Settlement but question the number of workweeks listed in this Notice, you have an opportunity to dispute the workweek information by contacting the Settlement Administrator on or before the deadline of [REDACTED]. To the extent you dispute the employment dates or the number of workweeks on record, you may produce evidence to the Settlement Administrator showing that such information is inaccurate by [REDACTED]. The Settlement Administrator will decide the dispute. Defendant’s records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by you and will make the final decision as to the merits of the dispute. All disputes will be decided by the Settlement Administrator within fifteen (15) business days of [REDACTED] (Response Deadline).

I. RELEASE OF CLAIMS

Each individual participating in the Settlement shall release Defendant¹ from all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories

¹ The release extends to Defendant and each of its past, present, and/or future, direct, and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint ventures.

of relief, that are based on the facts and legal theories asserted in the operative complaints of *Boone v. Amazon.com Services, LLC*, Case No. 1:21-cv-00241-ADA-BAM (E.D. Cal.), including member case *Barrera v. Amazon.com Services LLC*, Case No. 1:22-cv-00146-ADA-BAM (E.D. Cal.), and *Barrera v. Amazon.com Services LLC*, Case No. 30-2022-01242167-CU-OE-CXC (Orange Cnty. Super.), or which relate to the primary rights asserted in the operative complaints, including without limitation claims for (1) failure to pay all wages in violation of California Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1, 1198, (2) failure to pay overtime wages in violation of California Labor Code §§ 510, 558, and IWC Wage Order 42001, (3) failure to provide accurate itemized wage statements in violation of California Labor Code § 226, (4) failure to maintain accurate records in violation of California Labor Code §§ 226 and 1174, (5) failure to pay wages upon separation of employment in violation of California Labor Code §§ 201-203, 218, (6) engaging in unlawful, unfair and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200 *et seq.*, and (7) failure to pay overtime wages in violation of 29 U.S.C. § 207. Notwithstanding the above, the Released Class Claims shall only include claims related to or arising from COVID-19 screenings. The period of the Released Class Claims shall extend to the limits of the period from April 1, 2020 through July 17, 2021 for Class Members who did not work at the facility known as OAK4 in Tracy, California, and from April 1, 2020 through February 23, 2022 for Class Members who worked at the facility known as OAK4 in Tracy, California. The *res judicata* effect of the Judgment will be the same as that of the Release.

Additionally, each PAGA Settlement Member shall release all claims for civil penalties pursuant to PAGA based on the facts and legal theories asserted in the operative complaints of *Boone v. Amazon.com Services, LLC*, Case No. 1:21-cv-00241-ADA-BAM (E.D. Cal.), including member case *Barrera v. Amazon.com Services LLC*, Case No. 1:22-cv-00146-ADA-BAM (E.D. Cal.), and *Barrera v. Amazon.com Services LLC*, Case No. 30-2022-01242167-CU-OE-CXC (Orange Cnty. Super.), or which relate to the facts and legal theories asserted in the operative complaints, including without limitation PAGA claims for (1) failure to timely compensate for all hours worked, including minimum, regular, and /or overtime wages in violation of California Labor Code §§ 204, 210, 510, 558, 1194, 1197, 1197.1, and 1198, (2) failure to pay all wages due and owing upon separation of employment and/or the mandatory waiting time penalties in violation of California Labor Code §§ 201-203, and 210, and (3) failure to furnish accurate itemized wage statements in violation of California Labor Code §§ 226 and 226.3. Notwithstanding the above, the Released PAGA Claims shall only include claims related to or arising from COVID-19 screenings. The period of the Released PAGA Claims shall extend to the limits of the period from April 1, 2020 through July 17, 2021 for PAGA Settlement Members who did not work at the facility known as OAK4 in Tracy, California, and from April 1, 2020 through February 23, 2022 for PAGA Settlement Members who worked at the facility known as OAK4 in Tracy, California. The *res judicata* effect of the Judgment will be the same as that of the Release.

J. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Court will hold a Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the administrative costs, and the incentive awards to the Class Representatives on **[INSERT DATE AND TIME]** in Courtroom 8 of the United States District Court, located at 2500 Tulare Street, Fresno, CA 93721.

K. ADDITIONAL INFORMATION

This Notice only summarizes the Action, the Settlement, and other related matters. Please do not contact the Court or the Court Clerk about this notice. For additional information, you may access the publicly available information regarding this lawsuit. That information is available online at www.pacer.gov, or at the office of the clerk of the United States District Court, Eastern District of California, 2500 Tulare Street, Fresno, CA 93721. You may also contact the Settlement Administrator at:

CLASS ADMINISTRATOR
TOLL-FREE PHONE NUMBER
E-MAIL ADDRESS

An electronic version of this Notice and the attached materials are available at [INSERT WEBSITE].

***PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.
THIS NOTICE IS NOT A RECOMMENDATION BY THE COURT AS TO ANY ACTION
YOU SHOULD OR SHOULD NOT TAKE.***

******THIS IS NOT AN ADVERTISEMENT FROM A LAWYER******

Exhibit B



MATTHEW S. PARMET
Attorney at Law
Admitted in TX, LA, CO, and CA
matt@parmet.law

February 24, 2021

Labor and Workforce Development Agency
Department of Industrial Regulations
Attn: PAGA Administrator
1515 Clay St., Ste. 801
Oakland, CA 94612
via electronic submission

RECEIVED

MAR 01 2021

AMAZON.COM, INC.
LEGAL DEPARTMENT

Re: New PAGA Claim Notice, *Heather Boone, et al. v. Amazon.com Services, LLC*

Dear PAGA Administrator:

Please let this letter serve as notice pursuant to the California Private Attorney Generals Act that Heather Boone and Roxanne Rivera intend to file suit against Amazon.com Services, LLC for violations of the California Labor Code. Amazon.com Services, LLC ("Amazon") fails to pay its hourly, non-exempt employees for all hours that they worked. First, Amazon requires its employees to undergo a COVID-19 screening prior to each shift. This physical and medical examination constitutes compensable time that was worked but was not paid by Amazon. Amazon's conduct violates the state laws of California because Amazon failed to pay for all hours worked by its employees, failed to pay overtime wages, and failed to provide itemized wage statements as required by the California Labor Code and California Industrial Wage Commission Wage Orders. Second, Amazon requires its employees to complete a security screening without pay. Third, Amazon fails to correctly calculate the overtime pay of its employees. This letter shall serve as notice of our clients' allegations pursuant to the Private Attorney Generals Act of 2004 ("PAGA"). Lab. Code §§ 2699, 2699.3, and 2699.5. As "aggrieved employees," my clients will seek penalties under PAGA on behalf of themselves and other similarly aggrieved current and former employees in California.

FACTS

Following the outbreak of the Coronavirus, Amazon implemented a company-wide policy requiring each of its hourly, non-exempt employees to undergo a physical and medical examination to check for symptoms of the Coronavirus each shift. This examination was imposed by Amazon as a requirement to work each shift. The examination was conducted on the premises of Amazon, was required by Amazon, and was necessary for each employee to perform his/her work for Amazon. Unfortunately, Amazon refused to pay for this time. Amazon's conduct violates California law. This illegal conduct continues to this day.

Amazon operates fulfillment centers across California. The Amazon Fulfillment Centers are large warehouses that operate 24 hours per day. The fulfillment centers are the warehouses where Amazon stores the packages that are delivered to customers. Hundreds of Amazon employees work at each of these centers.

Plaintiff Boone worked for Amazon as an hourly, non-exempt employee at the Amazon facility in Fresno, California. She worked as a fulfillment center associate. Her hourly rate was approximately \$15.45 per hour. Her job duties included gathering packages from the Amazon warehouse, scanning them, placing them in boxes, and labelling the items. She started with Amazon in June 2018 and stopped working in July 2020. She normally worked five days per week and her normal shift was eight to ten hours on average. There were weeks when she was required to work mandatory overtime of over 40 hours per week. She worked with hundreds of other Amazon workers.

Plaintiff Rivera worked for Amazon as an hourly, non-exempt employee. She worked at the fulfillment centers for Amazon in Patterson, California and Tracy, California. Her hourly rate was approximately \$15.25 per hour and her job position was fulfillment center associate. Her job duties at the Tracy location included gathering items from the shelves in the warehouses and putting the items in carts. At the Patterson location, her job duties included gathering items and placing them in the right location in the warehouse. She worked for Amazon at the Patterson location from November 2018 to January 2019. She worked for Amazon at the Tracy location from May 2020 to October 2020. Her normal schedule was approximately 6 pm to 5 am and she worked a rotation that was four days straight followed by three days off. There were weeks when she was required to work mandatory overtime of over 40 hours per week. She worked with hundreds of other Amazon workers.

COVID-19 Screening

As hourly, non-exempt employees, Ms. Boone and Ms. Rivera were required to clock-in and clock-out each day. Unfortunately, Amazon did not pay for all hours that they worked. Prior to clocking in each day, Ms. Boone and Ms. Rivera were required to undergo a physical and medical examination to screen for COVID-19.

Amazon employed two processes to perform the physical and medical examination. For example, at the Tracy location, an Amazon employee will approach a security booth. At this checkpoint, the Amazon employee swipes his/her employee badge to confirm that he/she is an active employee of Amazon. The employee is then asked a series of questions such as (1) whether he/she has been exposed to others who have COVID-19, (2) whether he/she currently has symptoms of COVID-19, such as a runny nose or shortness of breath, and (3) whether he/she has a face mask to wear. If the employee does not have a face mask, the employee is provided a face mask at this time.

If the employee successfully clears this first examination, the employee then walks to a second checkpoint. At the second checkpoint, the employee is subject to a body temperature scan to determine whether the employee has a fever. If the employee passes this second medical examination, the employee is then allowed to walk to the time clock to clock-in for the day.

The second method that Amazon used did not involve the use of a body scanner. For example, at the Fresno location, the Amazon employees were required to form a line in the entrance to the facility. Then the Amazon employees were called one by one to a checkpoint where the COVID-19 screening took place. The screening process involves another employee of Amazon taking the temperature of each employee whose shift is about to start and asking

a series of questions related to their health condition, such as whether they had trouble breathing, were coughing, had a runny nose, chest pain, and other questions regarding their health. They were also asked questions such as (1) whether the employee has travelled recently, (2) whether the employee was exposed to someone with COVID-19, and (3) other similar questions. If the employee passes the examination, he/she is then given a mask to wear. After putting on the mask, the employee walks to the next station where the employee is allowed to clock-in for the day.

If an employee does not initially pass the physical and medical examination, that employee is moved to another section where a second examination occurs. The employee is then asked a series of follow-up questions to identify whether the worker currently has symptoms of COVID-19 and poses a potential health hazard to the store. If the employee passes the second examination, the employee is then given a face mask and is allowed to clock-in for the day. If not, the employee is not permitted to work that day.

The amount of time it takes to undergo the COVID-19 examination is approximately 10 minutes to 15 minutes on average. This amount of time could be longer depending upon the number of other Amazon employees in line for the COVID-19 screening.

This COVID-19 screening should have been paid by Amazon because it constitutes compensable time worked. During this time, Ms. Boone, Ms. Rivera and all other hourly employees in California were subject to the control of Amazon.

Ms. Boone, Ms. Rivera and all other hourly employees in California were required to follow Amazon's instructions while awaiting and during the COVID-19 screening. Amazon required every employee to complete the COVID-19 screening and it was not optional. Indeed, the COVID-19 screening was required by Amazon and its employees must comply under threat of discipline, including possible termination.

Additionally, Ms. Boone, Ms. Rivera and all other hourly employees in California were confined to the premises of Amazon when they waited for and during the examination. Moreover, Amazon compels its employees to perform specific tasks during the examination. They must answer questions, submit to have their temperature taken, and wear masks. In other words, Amazon directs, commands, and restrains its employees during the COVID-19 examination; prevents them from using that time effectively for their own purposes; and they remain subject to Amazon's control during the examination. Under California law, the time spent undergoing the COVID-19 screening is compensable time that should have been paid by Amazon. *See Frlekin v. Apple, Inc.*, 8 Cal. 5th 1038, 457 P.3d 526 (Cal. 2020).

The Department of Labor has also issued regulations stating that physical and health examinations, like the COVID-19 examination, constitutes time that should be paid for by employers. *See* 29 CFR § 785.43.

In an opinion letter, the Department of Labor has further stated as follows:

Time spent undergoing a physical examination is time during which the employee's freedom of movement is restricted for the purpose of serving the

employer and time during which the employee is subject to the employer's discretion and control. It is immaterial whether the time spent in undergoing the required physical examination is during the employee's normal working hours or during nonworking hours. The physical examination is an essential requirement of the job and thus primarily for the benefit of the employer. **Therefore, it is our opinion that the time so spent must be counted as hours worked under the FLSA.**

DOL Wage and Hour Opinion Letter, January 26, 1998 (emphasis added).

Thus, Amazon has violated the law by failing to pay for the time spent undergoing the COVID-19 examinations.

Security Screening

Additionally, Amazon requires its employees in California to undergo mandatory security screenings without pay following meal breaks. Given the nature of the business, Amazon's facilities are secured by locked doors and metal detectors. When Ms. Boone, Ms. Rivera and all other hourly employees in California arrive at the Amazon fulfillment centers, they are required to undergo a security screening. During the security screening, the employees emptied their pockets, emptied their bags, removed their shoes, removed their belts, removed their jackets, removed all metal objects, and submitted any personal items in their possession for inspection. They then walked through a metal detector and underwent a further search if any metal objects were detected. After clearing the metal detector, the employees were able to gather their belongings. They then put on their shoes, belts, and jackets.

When Ms. Boone, Ms. Rivera and all other hourly employees in California leave their work location for a lunch break, they are required to clock-out. When they return to their work location following their meal break, they have to undergo the security screening again. Given that they are not clocked in during this time, the security screening is conducted without pay.

This security screening lasts approximately five to 10 minutes per day and is uncompensated by Amazon. However, this time should have been compensated by Amazon. Ms. Boone, Ms. Rivera and all other hourly employees in California should have been compensated for the time they spent in the security screenings.

The security screenings were required by Amazon and its employees were told in advance the time they were required to be at the Amazon fulfillment centers. The security screenings were also undertaken on Amazon's premises, were controlled and required by Amazon, and undertaken primarily for the benefit of Amazon's business.

Specifically, during the security screenings, the employees were subject to the control of Amazon. The Amazon employees were required to follow Amazon's instructions while awaiting and during the security screening. Additionally, the employees were confined to the premises of Amazon when they waited for and during the screening.

Moreover, Amazon compels its employees to perform specific tasks during the examination. They must empty their pockets, submit their bags for a search, and walk through a metal detector. In other words, Amazon directs, commands, and restrains its employees during the security screening; prevents them from using that time effectively for their own purposes; and they remain subject to Amazon's control during the examination.

Under California law, the time spent undergoing the security screening is compensable time that should have been paid by Amazon. *See Frlekin v. Apple, Inc.*, 8 Cal. 5th 1038, 457 P.3d 526 (Cal. 2020).

Failure to Calculate Overtime Pay Correctly

Amazon also issued additional payments to Ms. Boone, Ms. Rivera and all other hourly employees in California that were not factored into their regular rates of pay for purposes of paying overtime. For example, Plaintiff Rivera was paid \$15.25 per hour. On May 22, 2020, she was paid an additional \$2 per hour for every hour she worked that week. However, when calculating overtime, Amazon used her base pay rate of \$15.25 per hour rather than her true rate of \$17.25 per hour to calculate overtime.

The additional payments issued to Ms. Boone, Ms. Rivera and all other hourly employees in California by Amazon should have been factored into their regular rates of pay for purposes of calculating overtime pay. Here, Amazon did not factor all payments into the regular rate of pay when calculated overtime and as a result, paid less than what the law requires.

The facts described above violate California law. Specifically, Amazon has committed the following violations:

Failure to Pay for All Hours Worked (Violation of Cal. Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1, 1198)

At all relevant times, Amazon was required to compensate its hourly, non-exempt employees for all hours worked pursuant to the Industrial Welfare Commission Orders and California Labor Code sections 204, 1194, 1194.2, 1197, 1197.1, 1198.

Specifically, California law requires employers to pay their employees a minimum wage for all hours worked, which is defined as the "time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." *See Frlekin v. Apple, Inc.*, 8 Cal. 5th 1038, 457 P.3d 526 (2020). Section 4 of the applicable Industrial Welfare Commission Order requires Amazon to pay non-exempt employees at least at the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

Amazon failed to compensate Ms. Boone, Ms. Rivera and all other hourly employees in California for all hours that they worked. As noted above, Ms. Boone, Ms. Rivera and all other hourly employees in California were not paid for the time they spent in the COVID-19 screenings and in all security screenings. Amazon also regularly, willfully, and repeatedly

failed and continues to fail to make, keep, and preserve accurate time records required by the California Labor Code §§ 226 and 1174, with respect to Ms. Boone, Ms. Rivera and all other hourly employees in California.

**Failure to Pay Overtime
(Wage Order No. 4-2001; California Labor Code §§ 510, 558, 1194)**

At all relevant times, Amazon was required to compensate its non-exempt employees for all hours worked. Amazon was also required to compensate all of its employees for all overtime worked, at one-and-a-half times their regular rates of pay for hours worked more than eight (8) hours per day or forty (40) hours per workweek, and double-time for hours worked more than twelve (12) hours per day. Amazon was also required to pay one-and-a-half times the regular rate for the first eight (8) hours worked on the seventh day of a workweek.

At all relevant times, Amazon operated under and continues to operate under a common policy and plan of willfully, regularly, and repeatedly failing and refusing to pay Ms. Boone, Ms. Rivera and all other hourly employees in California for overtime at the rates required by California Labor Code § 510 and Wage Order No. 4-2001. Further, Amazon failed to include all remuneration paid to its employees when calculating overtime wages

Amazon knew or clearly should have known that Ms. Boone, Ms. Rivera and all other hourly employees in California were entitled to compensation for the time they spent in the COVID-19 screenings and security screenings.

Amazon routinely required Ms. Boone, Ms. Rivera and all other hourly employees in California to work more than eight (8) hours per day or forty (40) hours per workweek. Despite the provisions of California's overtime law, Amazon has willfully failed and refused to pay Ms. Boone, Ms. Rivera and all other hourly employees in California overtime wages for all of the overtime hours they worked during the statutory period covered by this lawsuit. Amazon's conduct violates California Labor Code §§ 510 and 1194.

**Failure to Furnish Wage Statements
(California Labor Code §§ 226)**

Amazon knowingly and intentionally failed to furnish and continues to fail to furnish Ms. Boone, Ms. Rivera and all other hourly employees in California with timely, itemized wage statements that accurately reflect – among other things – the total number of hours worked, the correct overtime rate, and wages earned, as mandated by the California Labor Code § 226(a), which requires employers, semi-monthly or at the time of each payment of wages, to furnish each employee with a statement that accurately reflects the total number of hours worked, overtime rates, and wages due.

**Failure to Pay All Wages Upon Separation from Employment
(California Labor Code §§ 201, 202, 203, 218)**

California Labor Code § 201 provides that any discharged employee is entitled to all wages due at the time of discharge. Amazon knowingly and willfully violated California Labor

Code §§ 201 and 202 by failing to pay Ms. Boone, Ms. Rivera and other hourly employees in California who are no longer employed by Amazon all wages owed as alleged herein.

**Unlawful and/or Unfair Competition Law Violations
(California Business & Professions Code §§ 17200-17208)**

California Business & Professions Code § 17200 *et seq.* prohibits unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices. During all relevant times, Amazon committed unlawful, unfair, deceptive, and/or fraudulent acts as defined by California Business & Professions Code § 17200. Amazon's unlawful, unfair, deceptive, and/or fraudulent business practices include, without limitation, failing to pay for all hours worked, failing to pay all overtime wages, failing to provide itemized wage statements, and failing to pay all wages upon termination in violation of California law, as described throughout this Notice. As a result of this unlawful and/or unfair and/or fraudulent business practice, Amazon reaped unfair benefits and illegal profits at the expense of Ms. Boone, Ms. Rivera and all other hourly employees in California.

A copy of this letter is being sent to Amazon.

If I can be of any assistance, please do not hesitate to contact me. Thank you for your careful consideration of this matter.

Yours very truly,

/s/ Matthew S. Parmet

Matthew S. Parmet

cc: Amazon.com Services, LLC (c/o Corporation Services Company, 2710 Gateway Oaks Dr., Ste. 150N, Sacramento, CA 95833)
Amazon.com Services, LLC (410 Terry Ave. N, Seattle, WA 98109)



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Beverly Hills, California 90211

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November 11, 2021

**PAGA NOTICE AND FILING FEE
SUBMITTED ELECTRONICALLY**

Department of Industrial Relations
Attn: Accounting Unit
455 Golden Gate Avenue, 10 Floor
San Francisco, California 94102

Re: California Labor Code §2699 Notice Letter
On Behalf of Aggrieved Employee Cristian Barrera

Employer: Amazon.com Services LLC
410 Terry Avenue North
Seattle, Washington 98109

To whom it may concern:

This letter shall constitute Cristian Barrera's ("Mr. Barrera") notification under Labor Code §2699.3 (hereinafter, "PAGA Notice"). The \$75 filing fee was submitted electronically through the California Labor and Workforce Development Agency / Department of Industrial Relations' website for PAGA filings, along with a copy of this PAGA Notice.

The PAGA Notice concerns Mr. Barrera's allegations that his employer, Amazon.com Services LLC ("Amazon"), has a policy or practice of not compensating employees for all hours worked. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 9-2001 obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

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Mr. Barrera, who was employed as a warehouse associate, contends that Amazon would require him and other employees to wait in line for COVID-19 temperature checks prior to the start of their shift and employees would not get compensated for this time. The aforementioned practice would result in the non-payment of overtime wages if the employees worked more than 8 hours a day and/or a minimum wage violation in the event that the employees worked 8 hours or less, since they would not have been compensated at least the prevailing minimum wage for all time worked. Mr. Barrera and other employees must be paid for all “hours worked.” Hours worked is “the time during which an employees is subject to the control of an employer, and includes all the time an employee is suffered or permitted to work, whether or not required to do so.” See Wage Order 9-2001, Subd. 2(K); see also *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833. “[I]t is only necessary that the worker be subject to the control of the employer in order to be entitled to compensation.” *Morillion v. Royal Packing Co.* 22 Cal. 4th 575, 584 (2000). An employee is under the employer’s control and entitled to compensation when the employer “‘directs, commands or restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (citation omitted).

As held under *Morillion*, determining whether an employee’s activity is under the employer’s control entitling him or her to compensation depends on the level of control employers exert over employees during the activity: “The level of the employer’s control, *rather than the mere fact that the employer requires the employees’ activity is determinative.*” *Morillion*, 22 Cal.4th at 587 (emphasis added). In *Frlekin v. Apple Inc.* (2020) 8 Cal. 5th 1038, the holding in *Morillion* was reaffirmed. Specifically, in *Frlekin*, the California Supreme Court found that time employees spent undergoing bag searches at the end of their shift was compensable. The court in *Frlekin* reasoned its decision by analyzing factors in determining whether an employer has exerted compensable control over employees:

We also emphasize that whether an activity is required remained probative in determining whether an employee is subject to the employer’s control. But, at least with regard to cases involving onsite employer control activities, the mandatory nature of an activity is not the only factor to consider. We conclude that courts may and should consider additional relevant factors—including, but not limited to, the location of the activity, the degree of the employer’s control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures— when evaluating such employer-controlled conduct.

To be free of the employer’s control for purposed of “hours worked,” the employee must be free to use his or her time “effectively for his or her own purposes.” *Morillion*, 22 Cal.4th at 583. Here, Mr. Barrera and other employees were required to wait in line and undergo temperature checks for COVID-19 prior to the start of their shift. Mr. Barrera and other employees could not use this time for their own purposes. As such, Amazon exercised sufficient control over Mr. Barrera and other employees during these required temperature checks and owes them wages for this time.

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The California Department of Industrial Relations recently issued guidance that supports Mr. Barrera's claim that Amazon failed to pay him and other employees for all time worked, including the time spent for required COVID-19 temperature checks as indicated herein. See Cal. Dept. of Industrial Relations, Safe Reopening FAQs for Workers and Employers (July 8, 2021), available at https://www.dir.ca.gov/covid19/FAQs_COVID-19_Safe_Reopening.htm, which provides the following in regard to FAQ #10 (titled "Medical Checks, Testing, and Vaccinations"):

10. Q: Must my employer pay me for time spent at my employer's worksite completing certain medical checks (including temperature checks) before beginning a shift?

A. Yes. Employers must pay workers for all hours worked, including time that a worker is under the control of the employer. Employers that require their workers to complete a medical check in order to begin a shift, even if it is recommended under public health order, must compensate workers for that time worked.

The term "hours worked" means the time during which a worker is subject to the control of an employer, and includes all the time the worker is suffered or permitted to work, whether or not required to do so. Under this definition, one way to determine whether time a worker spends performing a task is compensable—that is, whether it is time "worked"—is whether the employer exercised control over the worker by requiring the worker to perform that task.

If an employer requires that all workers perform a medical check (such as a temperature check) onsite before beginning a shift, the time completing the medical check, including anytime waiting in line, would constitute time worked. This requirement applies even if such tasks were performed pursuant to a state or local public health guideline, because the check is done at the request and thus under the control of the employer.

The United States Department of Labor has also said that temperature checks are compensable if they are "necessary" to the employee's job. <https://www.dol.gov/agencies/whd/flsa/pandemic> The Department provided the following example:

For many employees, undergoing a temperature check before they begin work must be paid because it is necessary for their jobs. If a nurse who performs direct patient care services at a hospital is required to check her temperature upon arrival at the hospital before her shift, the time that she spends checking her temperature upon entry to the worksite is likely compensable because such task is necessary for her to safely and effectively perform her job during the pandemic.

Consequently, Amazon has violated California Labor Code §§200, 510, 1194 and 1197 based on its practice of not paying Mr. Barrera and other employees for all the work they performed under the control of Amazon. Amazon would also be liable for civil penalties pursuant to California Labor Code §§558 and 2698.

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Furthermore, Labor Code §1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Amazon failed to compensate Mr. Barrera and all Aggrieved Employees for all hours worked. Accordingly, through PAGA and to the extent permitted by law Mr. Barrera and other employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based upon these same factual allegations, Mr. Barrera and other employees are entitled to penalties under Labor Code § 1199.

Similarly, Labor Code §1194.2 authorizes employees to recover wages to recover liquidated damages for violations of Labor Code § 1194. When an employee, as Mr. Barrera and the other employees are not paid for all hours worked under Labor Code §1194, the employees may recover minimum wages for the time for which they received no compensation, as well as PAGA penalties for not having received pay for such time.

As a result of, including but not limited to, Amazon's failure to pay wages for all time worked, as described above, it also intentionally failed and continues to fail to furnish employees with itemized wage statements that accurately reflect all hours worked, net and gross wages earned, as required by California Labor Code §226(a). Mr. Barrera and other employees also suffered legal "injury" for purposes of Labor Code § 226(e) insofar as they were unable to readily and easily determine the information required to be set forth under Labor Code § 226(a). For example, Mr. Barrera and other employees were unable to determine the actual hours worked, gross wages earned, net wages earned, since the required COVID-19 temperature check was off the clock/pre-shift work. Please also see *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.5th 773, 788-[holding "a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."]]; *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 679 (2018)-[finding that the "requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a)"].

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." Amazon failed to provide Mr. Barrera and other employees with accurate itemized wage statements as indicated above. Consequently, since Amazon failed to comply with Labor Code §226(a), Mr. Barrera and other employees would be entitled to recover penalties under Labor Code §226.3 and 2698, in lieu of the normal penalties provided for in Section 226.

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Amazon also failed to timely pay wages to Mr. Barrera and other employees. Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." That is, as a result of Amazon's failure to pay wages for all hours worked, as indicated above, Amazon failed to timely pay Mr. Barrera and other employees all wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

Labor Code § 210, subdivision (a), provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

Accordingly, as a result of the policies and practices described in detail above and Amazon's failure to pay Mr. Barrera and other employees for all time worked, as described above, within seven (7) days of the close of the payroll period, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA. Please see *Amaral v. Cintas Corp.* (2008) Cal.App.4th 1157, 1209 - [affirming an award of Labor Code section 210 penalties under PAGA due to the employer's failure to timely pay wages at the proper rate in accordance with a local wage ordinance].

Amazon also failed and refused and continues to fail and refuse to timely pay compensation to Mr. Barrera and other terminated or resigned employees, including but not limited to, all wages owed as a result of Amazon's failure to pay wages for required COVID-19 temperature checks. Under Labor Code §§ 201-202, an employer must provide an employee wages at the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty..." for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492. In addition, Labor Code § 256 provides that the Labor Commissioner "shall impose a civil penalty in an amount not exceeding 30 days' pay as waiting time under the terms of Section 203. Consequently, Amazon is liable for waiting time penalties for having violated California Labor Code §§ 201, 202 and 203. Amazon would also be liable for civil penalties pursuant to Labor Code § 2698.

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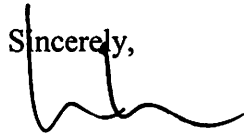
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Pursuant to Labor Code §2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the postmark date of this notice whether your office intends to investigate the violations alleged herein. Our office understands that if we do not receive a response from your office within sixty-five (65) calendar days of the postmark date of this notice, that Mr. Barrera may immediately thereafter pursue his interests and the interests of similarly situated aggrieved employees with a civil complaint against Amazon for its violations of the Labor Code.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Nourmand', with a stylized, wavy line extending from the end.

Michael Nourmand, Esq.

THE NOURMAND LAW FIRM, APC

cc: Amazon.com Services LLC (by U.S. Certified Mail)