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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

KEITH HAYNES, individually, and on behalf of all
 others similarly situated,

Plaintiff,

v.

CAPSULE CORPORATION, a Delaware
 corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 21STCV47285

*Assigned for all purposes to the Honorable Maren
 E. Nelson, Department 17*

COMPLEX ACTION

**AMENDED CLASS ACTION AND PAGA
 SETTLEMENT AGREEMENT AND CLASS
 NOTICE**

PAGA Notice Case No.

LWDA-CM-859547-21:

December 24, 2021

Action Filed:

December 28, 2021

FAC Filed:

June 7, 2022

Trial Date:

None Set

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AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Amended Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Keith Haynes (“Plaintiff”) and defendant Capsule Corporation (“Capsule”). The Agreement refers to Plaintiff and Capsule collectively as “Parties,” or individually as “Party

1. DEFINITIONS.

1.1. Action. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Capsule captioned *Keith Haynes v. Capsule Corporation* initiated on December 28, 2021 and pending in Superior Court of the State of California, County of Los Angeles, Case Number 21STCV47285.

1.2. Administrator. “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. Administration Expenses Payment. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. Aggrieved Employee. “Aggrieved Employee” means all individuals who worked for Capsule in the State of California as non-exempt, hourly-paid employees at any time during the period from December 28, 2020 to February 23, 2023.

1.5. Class. “Class” means all individuals who worked for Capsule in the State of California as non-exempt, hourly-paid employees at any time during the period from December 28, 2017 to February 23, 2023.

1.6. Class Counsel. “Class Counsel” means Kane Moon and Roy K. Suh of Moon & Yang, APC.

1.7. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8. Class Data. “Class Data” means Class Member identifying information in Capsule’s possession including the Class Member’s name, last-known mailing address, Social Security number, and

number of Class Period Workweeks and PAGA Pay Periods.

1.9. Class Member or Settlement Class Member. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. Class Member Address Search. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. Class Notice. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. Class Period. “Class Period” means the period from December 28, 2017 to February 23, 2023.

1.13. Class Representative. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. Class Representative Service Payment. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. Court. “Court” means the Superior Court of California, County of Los Angeles.

1.16. Capsule. “Capsule” means named Defendant Capsule Corporation.

1.17. Defense Counsel. “Defense Counsel” means Rebecca Aragon and James Becerra of Littler Mendelson, P.C.

1.18. Effective Date. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final and is no longer appealable. The Judgment is final and is no longer appealable as of the latest of the following occurrences: (i) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this settlement may be timely filed and

1 none is filed; (ii) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial or
2 otherwise, the day after the last date for filing a request for further review of the order and judgment
3 approving this settlement passes, and no further review is requested; or (iii) if an appeal is filed and there
4 is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review
5 of the order and judgment approving this settlement is requested, the day after the review is finally
6 dismissed or denied with prejudice and/or no further review of the judgment or order can be requested.

7 1.19. Final Approval. “Final Approval” means the Court’s order granting final approval of the
8 Settlement.

9 1.20. Final Approval Hearing. “Final Approval Hearing” means the Court’s hearing on the
10 Motion for Final Approval of the Settlement.

11 1.21. Final Judgment. “Final Judgment” means the Judgment Entered by the Court upon
12 Granting Final Approval of the Settlement.

13 1.22. Gross Settlement Amount. “Gross Settlement Amount” means \$162,500.00 which is the
14 total amount Capsule agrees to pay under the Settlement except as provided in Paragraphs 8 and 9 below.
15 The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA
16 Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class
17 Representative Service Payment and the Administrator’s Expenses.

18 1.23. Individual Class Payment. “Individual Class Payment” means the Participating Class
19 Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks
20 worked during the Class Period.

21 1.24. Individual PAGA Payment. “Individual PAGA Payment” means the Aggrieved
22 Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of
23 Workweeks worked during the PAGA Period.

24 1.25. Judgment. “Judgment” means the judgment entered by the Court based upon the Final
25 Approval.

26 1.26. LWDA. “LWDA” means the California Labor and Workforce Development Agency, the
27 agency entitled, under Labor Code section 2699, subd. (i).

28 1.27. LWDA PAGA Payment. “LWDA PAGA Payment” means the 75% of the PAGA Penalties

1 paid to the LWDA under Labor Code section 2699, subd. (i).

2 1.28. Net Settlement Amount. “Net Settlement Amount” means the Gross Settlement Amount,
3 less the following payments in the amounts approved by the Court: Individual PAGA Payments, the
4 LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class
5 Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
6 paid to Participating Class Members as Individual Class Payments.

7 1.29. Non-Participating Class Member. “Non-Participating Class Member” means any Class
8 Member who opts out of the Settlement by sending the Administrator a valid and timely Request for
9 Exclusion.

10 1.30. PAGA Pay Period. “PAGA Pay Period” means any Pay Period during which an Aggrieved
11 Employee actually worked for Capsule for at least one day during the PAGA Period. Leaves of absence
12 and vacation time shall not be considered as time actually worked.

13 1.31. PAGA Period. “PAGA Period” means the period from December 28, 2020 to February 23,
14 2023.

15 1.32. PAGA. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).

16 1.33. PAGA Notice. “PAGA Notice” means Plaintiff’s December 24, 2021 letter to Capsule and
17 the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

18 1.34. PAGA Penalties. “PAGA Penalties” means the total amount of PAGA civil penalties
19 (\$20,000.00) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees
20 (\$5,000.00) and the 75% to LWDA (\$15,000.00) in settlement of PAGA claims.

21 1.35. Participating Class Member. “Participating Class Member” means a Class Member who
22 does not submit a valid and timely Request for Exclusion from the Settlement.

23 1.36. Plaintiff. “Plaintiff” means Keith Haynes, the named plaintiff in the Action.

24 1.37. Preliminary Approval. “Preliminary Approval” means the Court’s Order Granting
25 Preliminary Approval of the Settlement.

26 1.38. Preliminary Approval Order. “Preliminary Approval Order” means the proposed Order
27 Granting Preliminary Approval and Approval of PAGA Settlement.

28 1.39. Released Class Claims. “Released Class Claims” means the claims being released as

described in Paragraph 5.2 below.

1.40. Released PAGA Claims. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.

1.41. Released Parties. “Released Parties” means: Capsule and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates, parents, charitable organizations, partners, trustees, agents, representatives, attorneys, and servants, past and present and each of them.

1.42. Request for Exclusion. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. Response Deadline. “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. Settlement. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.45. Workweek. “Workweek” means any week during which a Class Member actually worked for Capsule for at least one day, during the Class Period. Leaves of absence and vacation time are not considered time actually worked.

2. RECITALS.

2.1. Commencement of Action and the Operative First Amended Complaint. On December 28, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Capsule. On June 7, 2022, Plaintiff filed a First Amended Complaint] alleging causes of action against Capsule for (1) failure to pay minimum wages, (2) failure to pay overtime compensation, (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to indemnify necessary business expenditures, (6) failure to timely pay wages at termination, (7) failure to provide accurate itemized wage statements, (8) unfair business practices, and (9) civil penalties pursuant to PAGA. The First Amended Complaint is the

operative complaint in the Action (the “Operative Complaint.”) Capsule denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Plaintiff’s PAGA Notice to the LWDA and Defendant in LWDA Case No. 859547-21. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Capsule and the LWDA by sending the PAGA Notice.

2.3. Private Mediation Leading to this Agreement. On December 13, 2022, the Parties participated in an all-day mediation presided over by mediator Steve Mehta which led to the Parties’ March 27, 2023 agreement to settle the Action, which the Parties amended as set forth herein following the June 21, 2023 hearing on Plaintiff’s motion for preliminary approval.

2.4. Plaintiff’s Investigation, Including Informal Discovery in Advance of Mediation. Prior to mediation, Plaintiff obtained, through informal discovery: documents produced by Capsule including wage and hour policies relevant to Plaintiff’s claims, Capsule’s employee handbook, Plaintiff’s personnel file, and Plaintiff’s wage statements; and the complete time and payroll data for Capsule’s hourly-paid, non-exempt employees who worked in the State of California through approximately August 13, 2022. Plaintiff represents the investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor, Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5. This Court has not Certified a Class in this Action. The Court has not granted class certification.

2.6. This Settlement May Extinguish Claims in a Later Filed Case. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Capsule promises to pay \$162,500.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Capsule has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in

Paragraph 4.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Capsule.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff – Class Representative Service Payment. Class Representative Service Payment to the Class Representative of not more than \$7,500.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Capsule will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment. Failure of the Court to award a Class Representative Service Payment or in the amount requested by Plaintiff is not grounds to void this Agreement.

3.2.2. To Class Counsel – Class Counsel Fees Payment & Class Counsel Litigation Expenses Payment. A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount or \$54,166.67, whichever is greater, and a Class Counsel Litigation Expenses Payment of not more than \$20,000.00. Capsule will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses

1 Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses
2 Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for
3 taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and
4 holds Capsule harmless, and indemnifies Capsule, from any dispute or controversy regarding any division
5 or sharing of any of these Payments. Failure of the Court to award the Class Counsel Fees Payment or
6 Class Counsel Litigation Expenses Payment, including in the amount requested by Plaintiff, is not grounds
7 to void this Agreement.

8 3.2.3. To the Administrator – Administrator Expenses Payment. An Administrator
9 Expenses Payment not to exceed \$9,000.00 except for a showing of good cause and as approved by the
10 Court. To the extent the Administration Expenses are less or the Court approves payment less than
11 \$9,000.00 the Administrator will retain the remainder in the Net Settlement Amount.

12 3.2.4. To Each Participating Class Member – Individual Class Payment. An Individual
13 Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks
14 worked by all Participating Class Members during the Class Period and (b) multiplying the result by each
15 Participating Class Member's Workweeks.

16 3.2.4.1. Tax Allocation of Individual Class Payments. 33% of each Participating
17 Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage
18 Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form.
19 67% of each Participating Class Member's Individual Class Payment will be allocated to settlement of
20 claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to
21 wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full
22 responsibility and liability for any employee taxes owed on their Individual Class Payment.

23 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
24 Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The
25 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount
26 for distribution to Participating Class Members on a pro rata basis.

27 3.2.5. To the LWDA and Aggrieved Employees – PAGA Penalties. PAGA Penalties in
28 the amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated

1 to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.

2 3.2.5.1. To Aggrieved Employees – Individual PAGA Payments. The
3 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved
4 Employees' 25% share of PAGA Penalties \$5,000.00 by the total number of PAGA Period Pay Periods
5 worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each
6 Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and
7 liability for any taxes owed on their Individual PAGA Payment.

8 3.2.5.2. Effect of PAGA Penalties Approved Less than Amount Requested and Tax
9 Allocation of Individual PAGA Payments. If the Court approves PAGA Penalties of less than the amount
10 requested, then the Administrator will allocate the remainder to the Net Settlement Amount. The
11 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

12 **4. SETTLEMENT FUNDING AND PAYMENTS.**

13 4.1. Class Data. Not later than 21 business days after the Court grants Preliminary Approval of
14 the Settlement, Capsule will simultaneously deliver the Class Data to the Administrator, in the form of a
15 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain
16 the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other
17 purpose, and restrict access to the Class Data to Administrator employees who need access to the Class
18 Data to effect and perform under this Agreement. Capsule has a continuing duty to immediately notify
19 Class Counsel if it discovers that the Class Data omitted class member identifying information and to
20 provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
21 deadline by which Capsule must send the Class Data to the Administrator, the Parties and their counsel
22 will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to
23 missing or omitted Class Data.

24 4.2. Funding of Gross Settlement Amount. Capsule shall fully fund the Gross Settlement
25 Amount, and also fund the amounts necessary to fully pay Capsule's share of payroll taxes by transmitting
26 the funds to the Administrator no later than business 14 days after the Effective Date.

27 4.3. Payments from the Gross Settlement Amount. Within 14 days after Capsule funds the
28 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all

Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.3.1. Administrator's National Change of Address Search and Individual Class Payment and/or Individual PAGA Payment Mailings by First Class U.S. Mail. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.3.2. Administrator's Re-Mailing of Undelivered and Returned Individual Class Payment and/or Individual PAGA Payment Checks. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.3.3. Administrator's Transfer of Void Individual Class Payment and Individual PAGA

1 Payment Amounts to the Unclaimed Property Fund. For any Class Member whose Individual Class
2 Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the
3 Administrator shall transmit the funds represented by such checks to the California Controller's
4 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject
5 to the requirements of California Code of Civil Procedure Section 384, subd. (b).

6 4.3.4. No Employee Benefits Conferred as a Result of Individual Class Payments and/or
7 Individual PAGA Payments. The payment of Individual Class Payments and Individual PAGA Payments
8 shall not obligate Capsule to confer any additional benefits or make any additional payments to Class
9 Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

10 **5. RELEASES OF CLAIMS.** Effective on the date when Capsule fully funds the entire Gross
11 Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual
12 Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released
13 Parties as follows:

14 5.1. Plaintiff's Release. Through December 14, 2022, Plaintiff individually, on his own behalf,
15 releases the Released Parties from any and all charges, complaints, claims, causes of action, demands,
16 disputes, damages, business expenses, attorneys' fees, costs, losses and liabilities of any kind or nature
17 whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at any
18 time heretofore, had or claimed to have or Plaintiff may have, including but not limited to any and all
19 claims arising out of, relating to or resulting from his employment with and/or separation of employment
20 with Released Parties, including any claims arising under any federal, state or local law, statute, ordinance,
21 rule or regulation or Executive Order relating to employment, including, but in no way limited to, any
22 claim under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 1981; the
23 Americans with Disabilities Act ("ADA"); the Family and Medical Leave Act ("FMLA"); the Employee
24 Retirement Income Security Act ("ERISA"); the California Family Rights Act ("CFRA"); the California
25 Fair Employment and Housing Act ("FEHA"); all claims for wages or penalties under the Fair Labor
26 Standards Act ("FLSA"); all claims for wages or penalties under the California Labor Code; Business and
27 Professions Code sections 17200 et seq.; all laws relating to violation of public policy, retaliation, or
28 interference with legal rights; any and all other employment or discrimination laws; whistleblower claims;

any tort, fraud or constitutional claims; and any breach of contract claims or claims of promissory estoppel. It is agreed that this is a general release and is to be broadly construed as a release of all claims; provided that, notwithstanding the foregoing, this paragraph expressly does not include a release of any claims that cannot be released hereunder by law, including any claim for indemnification pursuant to California Labor Code section 2802. Plaintiff hereby warrants that Plaintiff is not aware of any business expenses incurred by Plaintiff during Plaintiff's employment with Defendant other than those which serve as the basis for Plaintiff's claims in the Action and for which Plaintiff will be compensated through the settlement. If a claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendant and Released Parties are parties. However, the Equal Employment Opportunity Commission ("EEOC") or other governmental agency cannot be barred from pursuing a claim on Plaintiff's behalf, although Plaintiff agrees that Plaintiff is releasing the right to any personal recovery from a claim brought by the EEOC or any other governmental agency. Plaintiff understands and expressly agrees that this Agreement extends to claims that Plaintiff has against Defendant, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before December 14, 2022 ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, any and all rights granted under any state or federal law or regulation limiting the effect of this release, including the provisions of section 1542 of the California Civil Code, are expressly waived. Section 1542 of the California Civil Code, reads as follows:

A general release does not extend to claims that the creditor or releasing party does

1 not know or suspect to exist in his or her favor at the time of executing the release,
2 and that if known by him or her would have materially affected his or her settlement
with the debtor or released party.

3 5.2. Release by Participating Class Members. All Participating Class Members, on behalf of
4 themselves and their respective former and present representatives, agents, attorneys, heirs,
5 administrators, successors, and assigns, release Released Parties from all claims, demands, rights,
6 liabilities, and/or causes of action, in law or in equity, that were alleged, or reasonably could have been
7 alleged, based on the facts and allegations stated in the Operative Complaint, and ascertained in the course
8 of the Action, for unpaid wages (including premiums) or other compensation allegedly owed, or for
9 damages, penalties (including without limitation waiting time penalties under Labor Code section 203),
10 restitution, interest, liquidated damages, attorneys' fees, or costs, or any other recovery based on or arising
11 out of the claims and allegations alleged in the Action, including under the California Labor Code and
12 corresponding provisions of Wage Orders, for: failure to pay wages including minimum or overtime
13 wages; failure to provide meal periods; failure to provide rest periods; failure to indemnify necessary
14 business expenditures; failure to timely pay final wages at termination; failure to provide accurate itemized
15 wage statements; unfair business practices; and any and all corresponding claims that could have been
16 brought under California or federal law including without limitation under the Fair Labor Standards Act
17 (FLSA), which Participating Class Members shall be deemed to have consented to in writing by
18 negotiating their Individual Class Payment checks, which shall include the following language, on the
19 face of each check and above the Participating Class Members' endorsement line on the back of the check:
20 "My signature on the endorsement line of this check and/or my action in cashing, depositing or otherwise
21 negotiating this check signifies my consent to join the Action for purposes of releasing all claims arising
22 under the FLSA" in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 899 F.3d 1106, 1110-11
23 (9th Cir. 2018) (holding opt-out release of California state law claims was *res judicata* against FLSA
24 claims "which were direct federal law counterparts to the state law claims settled"); *accord Richardson v.*
25 *Wells Fargo Bank, N.A.*, 839 F.3d 442, 451-52 (5th Cir. 2016) (plaintiff who became party to the opt-out
26 Rule 23 settlement was bound by all settlement terms, including release of FLSA claims), that might have
27 occurred during the Class Period, including claims for failure to pay wages (including overtime or
28 premium wages). It is the intent of the Parties that the judgment entered by the Court upon final approval

1 of the Settlement shall have res judicata effect and be final and binding upon Plaintiff and all Class
2 Members who have not expressly opted out of the settlement (including, e.g., “(a) any and all claims
3 involving any alleged failure to pay minimum wage; etc.). Participating Class Members do not release any
4 other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment
5 and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims
6 based on facts occurring outside the Class Period.

7 5.3. Release by Aggrieved Employees. All Aggrieved Employees, Plaintiff, and the State of
8 California are deemed to release, on behalf of themselves and their respective former and present
9 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from
10 all claims, demands, rights, liabilities, and/or causes of action of any nature and discretion whatsoever,
11 known or unknown, in law or in equity, whether concealed or hidden, for PAGA penalties under the
12 California Private Attorneys General Act, Labor Code section 2698, *et seq.*, that were alleged, or
13 reasonably could have been alleged, based on the PAGA Period facts or allegations stated in the Operative
14 Complaint and alleged in the PAGA Notice or ascertained in the course of the Action including for: failure
15 to pay wages including minimum or overtime wages; failure to provide meal periods; failure to provide
16 rest periods; failure to indemnify necessary business expenditures; failure to timely pay final wages at
17 termination; and failure to provide accurate itemized wage statements.

18 **6. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a
19 motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s
20 current checklist for Preliminary Approvals.

21 6.1. Capsule’s Declaration in Support of Preliminary Approval. Within 14 days of the full
22 execution of this Agreement, Capsule will prepare and deliver to Class Counsel a signed Declaration from
23 Capsule and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest
24 with the Administrator. In their Declarations, Defense Counsel and Capsule shall aver that they are not
25 aware of any other pending matter or action asserting claims that will be extinguished or adversely affected
26 by the Settlement.

27 6.2. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
28 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and

1 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the
2 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code
3 Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of
4 PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator
5 attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve;
6 competency; operative procedures for protecting the security of Class Data; amounts of insurance
7 coverage for any data breach, declaration of funds or other misfeasance; all facts relevant to any actual or
8 potential conflicts of interest with Class Members; and the nature and extent of any financial relationship
9 with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming
10 willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts
11 of interest with Class Members or the Administrator; (v) a signed declaration from each Class Counsel
12 firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of
13 all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
14 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
15 subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the
16 Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential
17 conflict of interest with Class Members or the Administrator. In their Declarations, Plaintiff and Class
18 Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting
19 claims that will be extinguished or adversely affected by the Settlement. Prior to or in conjunction with
20 filed a motion for Preliminary Approval, Plaintiff will submit this Agreement to the LWDA as required
21 by Labor Code section 2699(l)(2).

22 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for
23 cooperating in good faith to expeditiously finalizing and filing and having heard the Motion for
24 Preliminary Approval no later than 60 business days after the full execution of this Agreement; obtaining
25 a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in
26 favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s
27 Preliminary Approval to the Administrator.

28 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for

1 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense
2 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone,
3 and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or
4 conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense
5 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone,
6 and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7 **7. SETTLEMENT ADMINISTRATION.**

8 7.1. Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the
9 Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees to be bound by this
10 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment
11 of Administration Expenses. The Parties and their Counsel represent that they have no interest or
12 relationship, financial or otherwise, with the Administrator other than a professional relationship arising
13 out of prior experiences administering settlements.

14 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
15 Identification Number for purposes of calculating payroll tax withholdings and providing reports state and
16 federal tax authorities.

17 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
18 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

19 7.4. Notice to Class Members.

20 7.4.1. Administrator's Report of Class Data Receipt. No later than three (3) business days
21 after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received
22 and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

23 7.4.2. Administrator's National Change of Address Search and Prompt Mailing of Class
24 Notices by First Class U.S. Mail. Using best efforts to perform as soon as possible, and in no event later
25 than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
26 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially
27 in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently
28 estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable

1 to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to
2 calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member
3 addresses using the National Change of Address database.

4 7.4.3. Administrator's Re-Mailing of Undelivered and Returned Class Notices. Not later
5 than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as
6 undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by
7 the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class
8 Member Address Search, and re-mail the Class Notice to the most current address obtained. The
9 Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members
10 whose Class Notice is returned by the USPS a second time.

11 7.4.4. Class Member Response Deadline Extension for Re-Mailed Class Notices. The
12 deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and
13 Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in
14 the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class
15 Member of the extended deadline with the re-mailed Class Notice.

16 7.4.5. The Parties' Identification of Potential Class Members Not Included in the Class
17 Data. If the Administrator, Capsule or Class Counsel is contacted by or otherwise discovers any persons
18 who believe they should have been included in the Class Data and should have received Class Notice, the
19 Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to
20 agree on whether to include them as Class Members. If the Parties agree, such persons will be Class
21 Members entitled to the same rights as other Class Members, and the Administrator will send, via email
22 or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later
23 than [14] days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

24 7.5. Requests for Exclusion (Opt-Outs).

25 7.5.1. Class Member Opt-Out Request Requirements. Class Members who wish to
26 exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail,
27 a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class
28 Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for

1 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the
2 Class Member's election to be excluded from the Settlement and includes the Class Member's name,
3 address and email address or telephone number. To be valid, a Request for Exclusion must be timely
4 faxed, emailed, or postmarked by the Response Deadline.

5 7.5.2. Administrator's Determination of Opt-Out Request Validity. The Administrator
6 may not reject a Request for Exclusion as invalid because it fails to contain all the information specified
7 in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator
8 can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to
9 be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible
10 to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the
11 Administrator may demand additional proof of the Class Member's identity. The Administrator's
12 determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

13 7.5.3. Binding Nature of Released Claims on Class Members who do Not Timely Request
14 Exclusion. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed
15 to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms
16 and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs
17 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the
18 Class Notice or objects to the Settlement.

19 7.5.4. No Release of Released Claims by Class Members who Timely Request Exclusion.
20 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class
21 Member and shall not receive an Individual Class Payment or have the right to object to the class action
22 components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of
23 the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the
24 claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

25 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the
26 Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice
27 is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to
28 the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating

1 with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class
2 Member to submit supporting documentation. In the absence of any contrary documentation, the
3 Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long
4 as they are consistent with the Class Data. The Administrator's determination of each Class Member's
5 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to
6 challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks
7 and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the
8 challenges.

9 7.7. Objections to Settlement.

10 7.7.1. Participating Class Member Objections. Only Participating Class Members may
11 object to the class action components of the Settlement and/or this Agreement, including contesting the
12 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
13 Litigation Expenses Payment and/or Class Representative Service Payment.

14 7.7.2. Participating Class Member Objections Requirements. Participating Class
15 Members may send written objections to the Administrator, by fax, email, or mail. In the alternative,
16 Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal
17 objections at the Final Approval Hearing. A Participating Class Member who elects to send a written
18 objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the
19 Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

20 7.7.3. Non-Participating Class Members' Lack of Rights to Object to the Settlement. Non-
21 Participating Class Members have no right to object to any of the class action components of the
22 Settlement.

23 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
24 performed or observed by the Administrator contained in this Agreement or otherwise.

25 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
26 and maintain and use an internet website to post information of interest to Class Members including the
27 date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion
28 for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the

1 Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class
2 Representative Service Payment, the Final Approval and the Judgment. The Administrator will also
3 maintain and monitor an email address and a toll-free telephone number to receive Class Member calls,
4 faxes and emails.

5 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
6 promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days
7 after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a
8 list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of
9 Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names
10 and other identifying information of Class Members who have submitted invalid Requests for Exclusion;
11 (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

12 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
13 reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices
14 mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid)
15 received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and
16 checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The
17 Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for
18 Exclusion and attach copies of all Requests for Exclusion and objections received.

19 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
20 address and make final decisions consistent with the terms of this Agreement on all Class Member
21 challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be
22 final and not appealable or otherwise susceptible to challenge.

23 7.8.5. Administrator’s Declaration. Not later than 14 days before the date by which
24 Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide
25 to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due
26 diligence and compliance with all of its obligations under this Agreement, including, but not limited to,
27 its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices,
28 attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received

(both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. ESCALATOR CLAUSE. If the actual number of Workweeks for the Class Members during the Class Period increases by more than 15% beyond 3,035 Workweeks, the Gross Settlement Amount will be increased by the additional percentage difference in excess of 15% beyond 3,035 Workweeks. Capsule will have the sole option, at its discretion, to select a date marking the end of the Class Period that may prevent the triggering of this escalation clause.

9. RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Capsule may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Capsule withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Capsule will remain responsible for paying all Settlement Administration Expenses incurred to that point. Capsule must notify Class Counsel and the Court of its election to withdraw not later than 14 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven court days prior to filing the

1 Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in
2 person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final
3 Approval.

4 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by
5 a Participating Class Member, including the right to file responsive documents in Court no later than five
6 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

7 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval
8 on any material change to the Settlement (including, but not limited to, the scope of release to be granted
9 by Class Members), the Parties will expeditiously work together in good faith to address the Court's
10 concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award
11 less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees
12 Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not
13 constitute a material modification to the Agreement within the meaning of this paragraph.

14 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
15 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i)
16 enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii)
17 addressing such post-Judgment matters as are permitted by law.

18 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
19 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel
20 Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel,
21 and all Participating Class Members who did not object to the Settlement as provided in this Agreement,
22 waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate
23 proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and
24 appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or
25 appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement
26 will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except
27 as to matters that do not affect the amount of the Net Settlement Amount.

28 10.5. **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment**. If the

reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses Payment amounts reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Capsule that any of the allegations in the Operative Complaint have merit or that Capsule has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Capsule's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Capsule reserves the right to contest certification of any class for any reasons, and Capsule reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Capsule's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Capsule and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person

1 to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically
2 or generally, to any person, corporation, association, government agency, or other entity except: (1) to the
3 Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement
4 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate
5 taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena
6 issued by a state or federal government agency. Each Party agrees to immediately notify each other Party
7 of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
8 Capsule and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or
9 other communication, before the filing of the Motion for Preliminary Approval, any with third party
10 regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the
11 matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
12 communications with Class Members in accordance with Class Counsel's ethical obligations owed to
13 Class Members.

14 12.3. Publicity. Plaintiff and Class Counsel agree not to issue a press release or otherwise notify
15 the media about the terms of the Settlement or advertise or market any of the terms of the Settlement
16 through written, recorded or electronic communications. In addition, counsel for Plaintiff will not disclose
17 the settlement, its terms or the Parties on their website or otherwise. Plaintiff and Plaintiff's counsel further
18 agree that if contacted regarding this case, they will state only that the lawsuit exists and has been resolved.
19 This paragraph does not restrict Class Counsel's communications with Class Members in accordance with
20 Class Counsel's ethical obligations owed to Class Members or as otherwise provided in this Settlement.

21 12.4. No Solicitation. The Parties separately agree that they and their respective counsel and
22 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the
23 Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate
24 with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

25 12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
26 together with its attached exhibits shall constitute the entire agreement between the Parties relating to the
27 Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to
28 or by any Party.

1 12.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
2 represent that they are authorized by Plaintiff and Capsule, respectively, to take all appropriate action
3 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and
4 to execute any other documents reasonably required to effectuate the terms of this Agreement including
5 any amendments to this Agreement.

6 12.7. Cooperation. The Parties and their counsel will cooperate with each other and use their best
7 efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement
8 Agreement, submitting supplemental evidence and supplementing points and authorities as requested by
9 the Court. In the event the Parties are unable to agree upon the form or content of any document necessary
10 to implement the Settlement, or on any modification of the Agreement that may become necessary to
11 implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12 12.8. No Prior Assignments. The Parties separately represent and warrant that they have not
13 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
14 any person or entity and portion of any liability, claim, demand, action, cause of action, or right released
15 and discharged by the Party in this Settlement.

16 12.9. No Tax Advice. Neither Plaintiff, Class Counsel, Capsule nor Defense Counsel are
17 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as
18 such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended)
19 or otherwise.

20 12.10. Modification of Agreement. This Agreement, and all parts of it, may be amended,
21 modified, changed, or waived only by an express written instrument signed by all Parties or their
22 representatives, and approved by the Court.

23 12.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the
24 benefit of, the successors of each of the Parties.

25 12.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
26 governed by and interpreted according to the internal laws of the state of California, without regard to
27 conflict of law principles.

28 12.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of

1 this Agreement. This Agreement will not be construed against any Party on the basis that the Party was
2 the drafter or participated in the drafting.

3 12.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
4 during Action and in this Agreement relating to the confidentiality of information shall survive the
5 execution of this Agreement.

6 12.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.
7 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Capsule
8 in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may
9 be used only with respect to this Settlement, and no other purpose, and may not be used in any way that
10 violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date
11 when the Court discharges the Administrator's obligation to provide a Declaration confirming the final
12 pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data
13 received from Capsule unless, prior to the Court's discharge of the Administrator's obligation, Capsule
14 makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

15 12.16. Headings. The descriptive heading of any section or paragraph of this Agreement is
16 inserted for convenience of reference only and does not constitute a part of this Agreement.

17 12.17. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be
18 to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal
19 legal holiday, such date or deadline shall be on the first business day thereafter.

20 12.18. Notice. All notices, demands or other communications between the Parties in connection
21 with this Agreement will be in writing and deemed to have been duly given as of the third business day
22 after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

23 To Plaintiff:

24 Kane Moon (Cal. SBN 249834) (kmoon@moonlawgroup.com)
25 Roy K. Suh (Cal. SBN 283988) (rsuh@moonlawgroup.com)
26 **MOON LAW GROUP, PC**
1055 West Seventh Street, Suite 1880
Los Angeles, California 90017
27 Telephone: (213) 232-3128
Facsimile: (213) 232-3125

28 To Defendant:

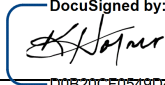
Rebecca Aragon (Cal. SBN 13449) (raragon@littler.com)
 James Becerra (Cal. SBN 308459) (jbecerra@littler.com)
LITTLER MENDELSON, P.C.
 633 West 5th Street, 63rd Floor
 Los Angeles, California 90071
 Telephone: (213) 443-4300
 Facsimile: (213) 443-4299

12.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement, and that Plaintiff will ask the applicable court to stay the Action. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

DATED: 7/14/2023

PLAINTIFF KEITH HAYNES

DocuSigned by:

 By: KEITH HAYNES

Plaintiff KEITH HAYNES

DATED: _____

DEFENDANT CAPSULE CORPORATION

By: ERIC KINARIWALA

Chief Executive Officer, CAPSULE
 CORPORATION

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Rebecca Aragon (Cal. SBN 13449) (raragon@littler.com)
 James Becerra (Cal. SBN 308459) (jbecerra@littler.com)
LITTLER MENDELSON, P.C.
 633 West 5th Street, 63rd Floor
 Los Angeles, California 90071
 Telephone: (213) 443-4300
 Facsimile: (213) 443-4299

12.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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DATED: _____

PLAINTIFF KEITH HAYNES

By: _____
 KEITH HAYNES

Plaintiff KEITH HAYNES

DATED: 13-Jul-23 | 3:34 PM EDT

DEFENDANT CAPSULE CORPORATION

DocuSigned by:
 By: Eric binariwala _____
 4BEA6935BD97461... JA

Chief Executive Officer, CAPSULE
 CORPORATION

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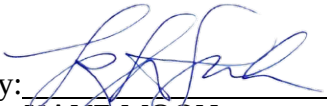
///

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1 **APPROVED AS TO FORM:**

2 DATED: July 14, 2023

MOON LAW GROUP, PC

3
4 By: 

KANE MOON

ROY K. SUH

Attorneys for Plaintiff KEITH HAYNES

5
6
7 DATED: _____

LITTLER MENDELSON, P.C.

8
9 By: _____

REBECCA ARAGON

Attorneys for Defendant CAPSULE
CORPORATION

1 **APPROVED AS TO FORM:**

2 DATED: _____

MOON LAW GROUP, PC

3
4 By: _____
5 KANE MOON
6 ROY K. SUH

Attorneys for Plaintiff KEITH HAYNES

7 DATED: July 13, 2023

LITTLER MENDELSON, P.C.

8
9 By:  _____
10 REBECCA ARAGON

Attorneys for Defendant CAPSULE
CORPORATION

EXHIBIT A

([PROPOSED] COURT APPROVED NOTICE OF AMENDED CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL)

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE
FOR FINAL COURT APPROVAL**

Keith Haynes v. Capsule Corporation, County of Los Angeles Case Number 21STCV47285

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

You may be eligible to receive money from an employee class action lawsuit ("Action") against Capsule Corporation ("Capsule" is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by former Capsule employee Keith Haynes ("Plaintiff") and seeks payment of (1) back wages, damages, penalties, interest, and other relief for a class of hourly, non-exempt employees ("Class Members") who worked for Capsule during the period December 28, 2017 to February 23, 2023 ("Class Period"); and (2) penalties under the California Private Attorney General Act ("PAGA") for all hourly, non-exempt employees who worked for Capsule ("Aggrieved Employees") during the period of December 28, 2020 to February 23, 2023 ("PAGA Period").

The proposed Settlement has two main parts: (1) a Class Settlement requiring Capsule to fund Individual Class Payments, and (2) a PAGA Settlement requiring Capsule to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Capsule's records, and the Parties' current assumptions, your **Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Capsule's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Capsule's records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

If you worked for Capsule during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Capsule.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Capsule, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Capsule will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Capsule that are covered by this Settlement ("Released Claims").
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [Response Deadline Date]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Capsule must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [Response Deadline Date]	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class Members. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [Final Approval Hearing Date] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [Final Approval Hearing Date and Time]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [Response Deadline Date]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Capsule's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [Response Deadline Date]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Capsule employee. The Action accuses Capsule of violating California labor laws by failing to pay minimum wages, pay overtime wages, authorize and permit meal periods, authorize and permit rest periods, indemnify necessary business expenditures, timely pay final wages at termination of employment, provide accurate itemized wage statements, and unfair competition. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under

the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Kane Moon and Roy Suh of Moon Law Group, PC (“Class Counsel.”) Capsule strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether Capsule or Plaintiff is correct on the merits.

In the meantime, Plaintiff and Capsule hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Capsule have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Capsule does not admit any violations or concede the merit of any claims.

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

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

1. Capsule Will Pay \$162,500.00 as the Gross Settlement Amount (“Gross Settlement”). Capsule has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency. Assuming the Court grants Final Approval, Capsule will fund the Gross Settlement not more than 14 court days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

- A. Up to \$54,166.67 (one-third of the Gross Settlement] to Class Counsel for attorneys’ fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$7,500.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$9,000.00 to the Administrator for services administering the Settlement.
- D. Up to \$20,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the

“Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

4. Taxes Owed on Payments to Class Members. Plaintiff and Capsule are asking the Court to approve an allocation of 33% of each Individual Class Payment to taxable wages (“Wage Portion”) and 67% to interest and penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Capsule will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

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

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

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [Response Deadline Date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [Response Deadline Date] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Capsule.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Capsule based on the PAGA Period facts alleged in the Action.

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

8. Administrator. The Court has appointed a neutral company, [Proposed Administrator Simpluris, Inc.] (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members’ Release. After the Judgment is final and Capsule has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by

validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Capsule or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims, demands, rights, liabilities, and/or causes of action, in law or in equity, that were alleged, or reasonably could have been alleged, based on the facts and allegations stated in the Operative Complaint, and ascertained in the course of the Action, for unpaid wages (including premiums) or other compensation allegedly owed, or for damages, penalties (including without limitation waiting time penalties under Labor Code section 203), restitution, interest, liquidated damages, attorneys' fees, or costs, or any other recovery based on or arising out of the claims and allegations alleged in the Action, including under the California Labor Code and corresponding provisions of Wage Orders, for: failure to pay wages including minimum or overtime wages; failure to provide meal periods; failure to provide rest periods; failure to indemnify necessary business expenditures; failure to timely pay final wages at termination; failure to provide accurate itemized wage statements; unfair business practices; and any and all corresponding claims that could have been brought under California or federal law including without limitation under the Fair Labor Standards Act (FLSA), which Participating Class Members shall be deemed to have consent to in writing by negotiating their Individual Class Payment checks, which, on the face of each check and above the Participating Class Members' endorsement line on the back of the check, shall include the following language: "My signature on the endorsement line of this check and/or my action in cashing, depositing or otherwise negotiating this check signifies my consent to join the Action for purposes of releasing all claims arising under the FLSA" in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 899 F.3d 1106, 1110-11 (9th Cir. 2018) (holding opt-out release of California state law claims was *res judicata* against FLSA claims "which were direct federal law counterparts to the state law claims settled"); *accord Richardson v. Wells Fargo Bank, N.A.*, 839 F.3d 442, 451-52 (5th Cir. 2016) (plaintiff who became party to the opt-out Rule 23 settlement was bound by all settlement terms, including release of FLSA claims), that might have occurred during the Class Period, including claims for failure to pay wages (including overtime or premium wages). It is the intent of the Parties that the judgment entered by the Court upon final approval of the Settlement shall have *res judicata* effect and be final and binding upon Plaintiff and all Class Members who have not expressly opted out of the settlement (including, e.g., "(a) any and all claims involving any alleged failure to pay minimum wage; etc.). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. **Aggrieved Employees' PAGA Release.** After the Court's judgment is final, and Capsule has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Capsule, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Capsule or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members

are as follows:

All Aggrieved Employees, Plaintiff, and the State of California are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, demands, rights, liabilities, and/or causes of action of any nature and discretion whatsoever, known or unknown, in law or in equity, whether concealed or hidden, for PAGA penalties under the California Private Attorneys General Act, Labor Code section 2698, *et seq.*, that were alleged, or reasonably could have been alleged, based on the PAGA Period facts or allegations stated in the Operative Complaint and alleged in the PAGA Notice or ascertained in the course of the Action including for: failure to pay wages including minimum or overtime wages; failure to provide meal periods; failure to provide rest periods; failure to indemnify necessary business expenditures; failure to timely pay final wages at termination; and failure to provide accurate itemized wage statements

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Capsule's records, are stated in the first page of this Notice. You have until **[Response Deadline Date]** to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Capsule's calculation of Workweeks and/or Pay Periods based on Capsule's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Capsule's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Haynes v. Capsule Corporation*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [Response Deadline Date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Capsule are asking the Court to approve. Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website [Proposed Administrator Simpluris, Inc. website url] or the Court's website <https://www.lacourt.org/casesummary/ui/>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [Response Deadline Date].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Keith Haynes v. Capsule Corporation* and include your name, current address, telephone number, and approximate dates of employment for Capsule and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [Final Approval Hearing Date] at [Final Approval Hearing Time] in Department 17 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [Proposed Administrator Simpluris, Inc. website url] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Capsule and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to [Proposed Administrator Simpluris, Inc.]'s website at [Proposed Administrator Simpluris, Inc. website url]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior

1 Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the
2 Case Number for the Action, Case No. 21STCV47285. You can also make an appointment to
3 personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling
4 (213) 830-0800.

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

Class Counsel:

5 Kane Moon (Cal. SBN 249834)
6 Roy K. Suh (Cal. SBN 283988)
MOON LAW GROUP, PC
7 1055 West Seventh Street, Suite 1880
8 Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Settlement Administrator:

9
10 [Proposed Administrator Simpluris, Inc. Name]
11 [Proposed Administrator Simpluris, Inc. Email Address]
12 [Proposed Administrator Simpluris, Inc. Mailing Address]
[Proposed Administrator Simpluris, Inc. Telephone]
[Proposed Administrator Simpluris, Inc. Facsimile Number]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

13 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
14 as long as you request a replacement before the void date on the face of the original check. If your
15 check is already void you should consult the Unclaimed Property Fund website at
https://www.sco.ca.gov/upd_msg.html for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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