

This Class Action and PAGA Settlement Agreement is entered into by and between plaintiff Grant Diaz, individually and on behalf of all others similarly situated, and defendant Ardagh Metal Packaging USA Corp. (formerly known as “Ardagh Metal Beverage USA Inc.”), and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

1. “Action” means the case entitled *Grant Diaz v. Ardagh Metal Beverage USA, Inc.*, Solano County Superior Court Case No. FCS057518.
2. “Aggrieved Employees” means all current and former hourly paid or non-exempt employees who have worked for Defendant in Fairfield, California at any time from December 6, 2020 through April 26, 2023.
3. “Agreement,” “Settlement Agreement,” or “Settlement” mean this Class Action and PAGA Settlement Agreement, including Exhibit A.
4. “Class” or “Class Members” mean all current and former hourly paid or non-exempt employees who have worked for Defendant in Fairfield, California at any time from December 6, 2017 through April 26, 2023.
5. “Released Class Claims” means the claims being released as described in Paragraph 55, below.
6. “Class Counsel” means Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C.
7. “Class Data” means a complete list of Class Member identifying information in Defendant’s possession, including each Class Member’s full name, last known mailing address, telephone number, Social Security Number, and number of Workweeks Worked as non-exempt or hourly employees of Defendant during the Class Period and the PAGA Period for each Settlement Class Member.
8. “Class Period” shall mean December 6, 2017 through April 26, 2023.
9. “Class Representative” means the named Plaintiff in the Action, Grant Diaz, who is seeking Court approval to serve as a Class Representative.

1 10. “Complaint” means the operative First Amended Complaint filed in the Action on or
2 about May 8, 2023.

3 11. “Court” means the Superior Court of California, County of Solano.

4 12. “Defendant” means Ardagh Metal Packaging USA Corp. (formerly known as “Ardagh
5 Metal Beverage USA Inc.”).

6 13. “Defendant’s Counsel” or “Defense Counsel” means Sabrina L. Shadi, Nicholas D.
7 Poper, and Matthew J. Goodman of Baker & Hostetler LLP.

8 14. “Effective Date” means the latter of (a) The Court’s final approval of the settlement if
9 no objections by or on behalf of Class Members have been filed and not withdrawn; (b) the time for
10 appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c)
11 the final resolution of any appeal that has been filed. “Final” means that the Settlement has been
12 granted “Final Approval” by the Court and the “Effective Date” has occurred.

13 15. “Final Approval” means the Court’s order granting final approval of the Settlement
14 and entering judgment.

15 16. “Final Settlement Class” means, collectively, all Participating Class Members and all
16 Aggrieved Employees.

17 17. “Gross Settlement Amount” means the total amount that Defendant shall pay in
18 connection with this Settlement, in exchange of the release of claims described in Paragraph 5 of this
19 Agreement. The Gross Settlement Amount is the gross sum of Two Million and One Hundred
20 Thousand Dollars (\$2,100,000.00) (the “Gross Settlement Amount”). The Gross Settlement Amount
21 is the maximum amount that will be paid by Defendant under the terms of the Settlement and includes
22 Individual Settlement Amounts (including PAGA payments to the Aggrieved Employees), attorneys’
23 fees of Class Counsel, costs and expenses, the Service Payment to Class Representative, all
24 Settlement Administration Costs, and payment to the Labor Workforce Development Agency
25 (LWDA) for PAGA penalties. Defendant shall separately pay the employers’ share of applicable
26 payroll taxes.

27 18. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
28 50(b) below.

1 19. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 50(a)
2 below.

3 20. “Notice” means the Court approved Notice of Class Action and PAGA Settlement to
4 be mailed to Class Members in the form, without material variation, attached as **Exhibit A** to this
5 Agreement, and incorporated by reference into this Agreement.

6 21. “Notice Response Deadline” is forty-five (45) calendar days from the date the Notice
7 is mailed to the Settlement Class Members.

8 22. “Objecting Settlement Class Member” means a Settlement Class Member, other than
9 Plaintiff, who submits a valid and timely objection to the terms of this Agreement with respect to the
10 Class Claims pursuant to Paragraph 70(c) below.

11 23. “PAGA” shall refer to the California Private Attorneys General Act of 2004,
12 California Labor Code sections 2698–2699.5.

13 24. “Released PAGA Claims” shall mean the PAGA claims being released as described
14 in Paragraph 56, below.

15 25. “PAGA Notice” shall refer to the notices sent by Plaintiff, by and through counsel, to
16 the LWDA and to Defendant, alleging that Defendant engaged in violations of the California Labor
17 Code and California Wage Order(s).

18 26. “PAGA Penalties” means the total amount of \$25,000 in PAGA penalties to be
19 paid from the Gross Settlement Amount, 25% of which (\$6,250) shall be paid to the Aggrieved
20 Employees, and 75% of which (\$18,750) shall be paid to the LWDA in settlement of the Released
21 PAGA Claims.

22 27. “PAGA Period” shall mean December 6, 2020 through April 26, 2023.

23 28. “Participating Class Member” means a Class Member who does not opt-out of the
24 Settlement by submitting a valid and timely Request for Exclusion.

25 29. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the
26 Aggrieved Employees, and Defendant, collectively.

27 30. “Preliminary Approval Date” means the date the Court preliminarily approves the
28 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

1 31. “Preliminary Approval Order” means the judicial Order to be entered by the Court,
2 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing
3 for the issuance of the Notice to the Settlement Class Members, an opportunity to opt out of settlement
4 of the Class Claims, an opportunity to submit timely objections to the terms of this Settlement related
5 to the Class Claims, and setting a hearing on the fairness of the terms of Settlement, including
6 approval of attorneys’ fees and costs.

7 32. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator
8 for the benefit of the Final Settlement Class, and from which the settlement and individual PAGA
9 payments shall be made, and which is intended to be a fund that qualifies under US Treasury
10 Regulation Section 468B-1.

11 33. “Release” shall mean the release and discharge of the Class Claims by Plaintiff and
12 all of the Participating Class Members and the release and discharge of the PAGA Claims by Plaintiff
13 and all of the Aggrieved Employees.

14 34. “Released Parties” shall refer to Defendant, together with its current and former
15 officers, directors, members, managers, shareholders, agents, insurers, charitable organizations,
16 parents, subsidiaries, affiliated persons and entities, operators, partners, attorneys, successors, and
17 assignees.

18 35. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 71(a)
19 below.

20 36. “Service Payment” or “Service Award” means the amount approved by the Court to
21 be paid to Class Representative, not to exceed Ten Thousand Dollars (\$10,000), in addition to his
22 Individual Settlement Amount as a Participating Class Member.

23 37. “Settlement Administration Costs” means the costs payable from the Settlement
24 Amount to the Settlement Administrator for administering this Settlement, including, but not limited
25 to, printing, distributing, and tracking documents for this Settlement, tax reporting, due diligence,
26 reporting and remittance obligations, distributing the Settlement Amount, and providing necessary
27 reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be
28 paid from the Settlement Amount.

1 38. “Settlement Administrator” means and refers to ILYM Group, Inc., which the Parties
2 have mutually agreed will provide the Notice to the Class Members and distribute the settlement
3 amounts as described in this Agreement.

4 39. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning ascribed
5 to it in Paragraph 50(a) below.

6 40. “Settlement Class Member” refers to individual members of the Settlement Class.

7 41. “Settlement Class” and “Settlement Class Members” refers to all persons who are or
8 were previously employed by Defendant in California classified as a non-exempt employee during
9 the Class Period.

10 42. “Workweek” means any week during which a Class Member and/or Aggrieved
11 Employee worked at least one shift for Defendant during the Class Period and/or PAGA Period, as
12 applicable. Workweeks shall not include weeks where a Class Member and/or Aggrieved Employee
13 only had sick time, vacation time, was on leave, or otherwise did not perform any actual work for
14 Defendant. Workweeks will be calculated based on Defendant’s business records.

15 **B. GENERAL TERMS**

16 43. On or about December 6, 2021, Plaintiff filed the Complaint against Defendant,
17 including allegations of: (1) failure to pay all minimum wages, (2) failure to pay all overtime wages,
18 (3) failure to provide rest periods and pay missed rest period premiums, (4) failure to provide meal
19 periods and pay missed meal period premiums, (5) failure to pay wages timely during employment,
20 (6) failure to furnish accurate itemized wage statements, and (7) unfair competition. On or about May
21 8, 2023, Plaintiff filed a First Amended Complaint to add a PAGA claim for the underlying alleged
22 Labor Code violations.

23 44. Defendant denies Plaintiff’s claims and allegations and contends that the Action is not
24 suitable for class certification and/or representative treatment.

25 45. Class Representative believes he can proceed with his class and representative claims,
26 that the Action is meritorious, and that class certification is appropriate.

27 46. The Parties have conducted a thorough investigation into the facts of the Action. This
28 includes conducting extensive exchange of informal discovery, including Defendant’s written

1 policies and practices and the production of payroll and timekeeping records for Settlement Class
2 Members and Aggrieved Employees. Class Counsel is both knowledgeable about and has done
3 extensive research with respect to the applicable law and potential defenses to the claims of the
4 Settlement Class Members and Aggrieved Employees. Class Counsel has diligently pursued an
5 investigation of the Class Members' claims against Defendant. Based on the foregoing data and on
6 their own independent investigation and evaluation, Class Counsel is of the opinion that the
7 settlement with Defendant for the consideration and on the terms set forth in this Settlement
8 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class
9 Members and Aggrieved Employees in light of all known facts and circumstances, including the risk
10 of significant delay and uncertainty associated with litigation, various defenses asserted by
11 Defendant, and numerous potential appellate issues.

12 47. On January 26, 2023, the Parties participated in mediation before Steven Serratore,
13 Esq., a highly experienced class action mediator, and reached a settlement on that day.

14 48. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to
15 be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement, shall
16 be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or
17 liability on the claims or allegations in the Action.

18 49. Stipulation for Class Certification and Representative Treatment. For settlement
19 purposes only, Defendant will stipulate that the Settlement Class Members described herein who do
20 not Request Exclusion from the Settlement Class may be conditionally certified as a settlement class
21 and that the Aggrieved Employees are appropriate for representative treatment for purposes of
22 settlement. This stipulation to certification and representative treatment is in no way an admission
23 that class action certification and/or representative treatment is proper and shall not be admissible in
24 this or in any other action except for the sole purposes of enforcing this Agreement. Should, for
25 whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification
26 and representative treatment and Memorandum of Understanding that was executed as part of the
27 Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be
28 admissible in connection with the issue of whether or not class certification and/or representative

1 treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights
 2 and declares that it will continue to oppose class certification, representative treatment, and the
 3 substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly
 4 reserves his rights and declares that he will continue to pursue class certification and representative
 5 treatment and a trial should the Court fail to issue Final Approval.

6 **C. TERMS OF SETTLEMENT**

7 50. The financial terms of the Settlement are as follows: The Administrator will make
 8 and deduct the following payments from the Gross Settlement Amount, in the amounts specified
 9 by the Court in the Final Approval:

10 (a) Net Settlement Amount: The “Net Settlement Amount” is defined as the Gross
 11 Settlement Amount less the Attorneys’ Fees and Costs as approved and awarded by the Court, the
 12 Service Payment to Class Representative as approved and awarded by the Court, the Settlement
 13 Administration Costs, as approved and awarded by the Court, and Twenty-Five Thousand Dollars
 14 (\$25,000.00) allocated to payment for PAGA penalties as described in paragraph 50(b)(i) below. In
 15 the event that the Court reduces the attorneys’ fees and litigation costs or Service Awards, Settlement
 16 Administration Costs, or either increases or decreases the amount allocated to PAGA penalties, the
 17 Net Settlement Sum shall be increased or decreased accordingly.

18 (b) Individual Settlement Amounts for the Settlement Class: The Settlement
 19 Administrator will use the Class Data provided by Defendant to calculate each Participating Class
 20 Member’s and Aggrieved Employee’s Individual Settlement Amounts based on the following
 21 formulas:

22 i. PAGA Amount: \$25,000 of the Gross Settlement Amount has been
 23 designated to PAGA Penalties. Twenty-five percent (25%) or \$6,250, shall be paid out to Aggrieved
 24 Employees, while seventy-five percent (75%), or \$18,750, will be paid to the LWDA. Each
 25 Aggrieved Employee shall receive a portion of the \$6,250 proportionate to the number of Workweeks
 26 Worked by the Aggrieved Employees during the PAGA Period compared to the total number of
 27 Workweeks Worked by all Aggrieved Employees during the PAGA Period. Aggrieved Employees
 28 shall have their settlement amount for the Released PAGA claims paid one hundred percent (100%)

1 as civil penalties for which no taxes will be withheld and for which a Form 1099 will be issued by
2 the Settlement Administrator.

3 ii. Class Amount: The Net Settlement Amount shall be allocated to each
4 Participating Class Member based on his/her/their proportionate Workweeks Worked during the
5 Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the
6 numerator of which is the Participating Class Member's total Workweeks Worked during the Class
7 Period, and the denominator of which is the total Workweeks Worked by all Participating Class
8 Members during the Class Period. If there are any timely submitted Requests for Exclusion, the
9 Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each
10 Participating Class Member so that the amount actually distributed to Participating Class Members
11 equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

12 (c) Allocation of Individual Settlement Amounts: The Individual Settlement
13 Amounts will be allocated for tax purposes based on the allegations in the Action as follows: ten
14 percent (10%) will be paid as wages subject to withholding of all applicable local, state, and federal
15 taxes; and ninety percent (90%) will be paid as interest and as civil penalties (pursuant to, *e.g.*,
16 California Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement
17 Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2
18 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the
19 civil penalties and interest allocations.

20 (d) Service Payment to Class Representative: The amount awarded to Class
21 Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$10,000.
22 Defendant agrees not to oppose this request. The Service Payment to Class Representative will be
23 paid out of the Gross Settlement Amount. Class Representative will be issued IRS Form 1099 in
24 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
25 applicable taxes on this payment. The Parties agree that any amount awarded by the Court as the
26 Service Payment to Plaintiff less than the requested amount shall not be a basis for Plaintiff or Class
27 Counsel to void this Stipulation. Should the Court approve a lesser amount for the Service Payment,
28 the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class

1 Members. In the event of any appeal of the amount of the service awards (if any) approved by the
2 Court, if, after the exhaustion of any such appellate review, additional amounts not awarded to Class
3 Representative shall be added to the Net Settlement Amount to be distributed to the Participating
4 Class Members.

5 (e) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class
6 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Settlement Amount
7 (approximately \$700,000), plus reasonable litigation costs not to exceed \$20,000 ("Attorneys' Fees
8 and Cost Award"). For purposes of this Settlement, Defendant agrees not to oppose any contention
9 by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorneys'
10 Fee and Cost Award shall be paid from the Gross Settlement Amount, and except for this award,
11 Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class
12 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
13 difference shall be added to the Net Settlement Amount to be distributed to the Participating Class
14 Members. Any Court order awarding less than the amount sought by Class Counsel shall not be
15 grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of any
16 appeal of the amount of the awards of attorneys' fees and costs (if any) approved by the Court, final
17 funding and administration of the portion of the attorneys' fees and/or costs award in dispute will be
18 segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such
19 appellate review, additional amounts not awarded to as attorneys' fees and costs shall be added to the
20 Net Settlement Amount to be distributed to the Participating Class Members and/or Aggrieved
21 Employees. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting
22 the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any
23 allocation of fees and costs between or among Class Counsel and any other attorney representing or
24 claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

25 (f) Settlement Administration Costs: The fees and other charges of the Settlement
26 Administrator will be paid from the Gross Settlement Amount, not to exceed \$6,000 subject to Court
27 approval, unless approved by all Parties and the Court.

28 (g) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no

1 representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and
2 Plaintiff and the Settlement Class Members are not relying on any statement or representation by
3 Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Final Settlement Class
4 Members understand and agree that they will be solely responsible for the payment of any taxes and
5 penalties assessed on their respective Settlement Amounts described herein. Income tax withholding
6 will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations.
7 Forms W-2 and/or Forms 1099 will be distributed by the Settlement Administrator at times and in
8 the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this
9 Agreement.

10 51. No Credit Towards Benefit Plans. The Individual Settlement Payments and Individual
11 PAGA Payments made to Participating Class Members and/or Aggrieved Employees under this
12 Settlement, as well as any other payment or other consideration made pursuant to this Settlement,
13 will not be utilized to calculate any additional benefits under any benefit plans to which any Class
14 Members and/or Aggrieved Employees may be eligible, including but not limited to: profit-sharing
15 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans,
16 and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
17 affect the rights, contributions, or amounts to which any Class Member and/or Aggrieved Employees
18 may be entitled under benefit plans.

19 52. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no
20 circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement Class
21 Members will not have to make a claim to receive an Individual Settlement Amount. Distributions,
22 in the form of Individual Settlement Amounts, will be made directly to each Final Settlement Class
23 Member. The Settlement Administrator shall be responsible for accurately and timely reporting any
24 remittance obligations with respect to unclaimed funds as a result of a Final Settlement Class Member
25 not cashing an Individual Settlement Amount by the check cashing deadline, as set forth herein.

26 53. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
27 adequate, and will so represent same to the Court.

28 **D. RELEASE OF CLAIMS**

1 54. Upon the Effective Date of this Settlement, Plaintiff, each Participating Class
2 Member, and each Aggrieved Employee, shall have forever completely released and discharged all
3 Released Parties as follows:

4 55. Release By Participating Class Members. Each Participating Class Member, on behalf
5 of themselves, their respective spouses, domestic partners, marital community, children, estates,
6 trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators,
7 trustees, conservators, guardians, assigns, and representatives (whether current or former), shall be
8 deemed to have forever completely released and discharged the Released Parties from any and all
9 claims or causes of action have been asserted or that could have been asserted in Action based on the
10 facts alleged in the Complaint, including, but not limited to, any alleged failure to pay minimum
11 wages, failure to pay overtime wages and/or failure to pay such wages at the correct rate(s) of pay,
12 meal and rest break violations, failure to provide accurate itemized wage statements, failure to pay
13 all wages upon separation of employment, unfair and unlawful business practices, and any violation
14 or breach of the California Labor Code, California Wage Orders, or any other similar state or local
15 statute, rule, regulation, ordinance, or authority, or similar claims arising from or relating to the
16 conduct alleged (“Released Class Claims”).

17 Class Representative, on behalf of himself and the Participating Settlement Class Members,
18 acknowledges and agrees that the Released Class Claims are disputed in good faith and that the
19 payments set forth herein constitute payment of all sums allegedly due to him. Class Representative,
20 on behalf of himself and the Participating Settlement Class Members, acknowledges and agrees that
21 California Labor Code Section 206.5 is not applicable to the Parties hereto.

22 56. Release by Aggrieved Employees. Plaintiff, the LWDA, and each Aggrieved
23 Employee, on behalf of themselves and their respective spouses, domestic partners, marital
24 community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees,
25 executors, administrators, trustees, conservators, guardians, assigns, and representatives (whether
26 current or former), shall be deemed to have forever completely released and discharged the Released
27 Parties from any and all claims or causes of action for civil penalties pursuant to PAGA that have
28 been asserted or that could have been asserted in Action based on the facts alleged in the Complaint

1 and the PAGA Notice, including, but not limited to, claims for PAGA penalties predicated on any
2 alleged failure to pay minimum wages, failure to pay overtime wages and/or failure to pay such wages
3 at the correct rate(s) of pay, meal and rest break violations, failure to provide accurate itemized wage
4 statements, failure to pay all wages upon separation of employment, and unfair and unlawful business
5 practices.

6 57. Plaintiff and Defendant intend that the Settlement described in this Agreement will
7 release and preclude any further claim, whether by lawsuit (including any and all pending lawsuits),
8 administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the
9 Settlement Class Members, Aggrieved Employees and the LWDA to obtain a recovery based on,
10 arising out of, and/or related to any and all of the respective Released Class Claims and the Released
11 PAGA Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph does
12 not apply to any Settlement Class Member who timely and validly opts out of the Settlement for
13 purposes of Class Claims.

14 58. Release by Class Representative. In addition to Class Representative's release of the
15 Released Class Claims and Released PAGA Claims, as discussed in Paragraphs 51 through 57 above,
16 Class Representative does hereby, for himself and for his spouses, domestic partners, marital
17 community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees,
18 executors, administrators, trustees, conservators, guardians, assigns, and representatives (whether
19 current or former), forever completely release and discharge the Released Parties from any and all
20 charges, complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies,
21 damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses
22 (including for back wages, statutory penalties, civil penalties, liquidated damages, exemplary
23 damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time
24 through the execution of this Stipulation, whether known or unknown, suspected or unsuspected,
25 concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to
26 Class Representative's employment with Defendant or the remuneration for, or termination of such
27 employment (collectively, the "Class Representative's Claims").

28 59. Without limiting the generality of the foregoing, Class Representative also expressly

1 releases all claims or rights against Released Parties arising out of or relating to alleged violations of
2 any contracts, express or implied (including but not limited to any contract of employment); any
3 contract or covenant of good faith and fair dealing (express or implied); any tort, including but not
4 limited to, negligence, fraud, misrepresentation and violation of California Labor Code section 970,
5 negligent infliction of emotional distress, intentional infliction of emotional distress, defamation,
6 “retaliation” claims and claims for violation of public policy, any claim for improper or unauthorized
7 wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits,
8 penalties, liquidated damages, other damages, overtime, and alleged “off the clock” work under
9 federal and state law, including, but not limited to, California Labor Code Sections 204 and 558,
10 waiting time penalties pursuant to California Labor Section 203, damages, or penalties pursuant to
11 California Labor Code Section 226, meal period and rest break payments and penalties pursuant to
12 California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant
13 to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code
14 Sections 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, failure
15 to provide one day of rest in seven pursuant to California Labor Code Sections 551 and 552, unfair
16 competition and unfair business practices pursuant to Business and Professions Code Section 17200
17 *et seq.*, interest and costs pursuant to California Civil Code Section 3287 and California Labor Code
18 Section 218.6, statutory or common law rights to attorneys’ fees and costs, including those pursuant
19 to California Labor Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of
20 2004, Labor Code section 2699 *et seq.*, and the alleged violation or breach of any other state or federal
21 statute, rule, and or regulation; including all applicable Industrial Welfare Commission Wage Orders,
22 and all similar causes of action, including but not limited to, any claim for restitution, equitable relief,
23 interest, penalties, costs, or attorneys’ fees in connection with any of the foregoing, negligent
24 infliction of emotional distress, intentional infliction of emotional distress, and defamation; any
25 “wrongful discharge,” “constructive discharge,” and “retaliation” claims; any claims relating to any
26 breach of public policy; any legal restrictions on Defendant’s right to discharge employees; and any
27 federal, state, or other governmental statute, regulation, or ordinance, including, without limitation:
28 (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin

1 discrimination or harassment, including retaliation for reporting discrimination or harassment); (2)
 2 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California Labor
 3 Code § 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq. (disability
 4 discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. (family/medical leave);
 5 (6) California Fair Employment and Housing Act, Cal. Government Code § 12900 *et seq.*
 6 (discrimination or harassment in employment and/or housing, including but not limited to
 7 discrimination or harassment based on race, religious creed, color, national origin, ancestry,
 8 disability, marital status, sex (including pregnancy), or age, including retaliation for reporting
 9 discrimination or harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1
 10 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et seq., or any
 11 Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex,
 12 and national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination);
 13 (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair
 14 Labor Standards Act; (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.*
 15 (employee benefits); (14) the California Civil Code; (15) the California Labor Code; (16) the
 16 California Constitution; (17) the National Labor Relations Act; (18) the Age Discrimination in
 17 Employment Act; and (18) any other federal, state, or local statute or legislation.

18 60. Class Representative expressly waives and relinquishes all rights and benefits afforded
 19 by Section 1542 of the Civil Code of the State of California and does so understanding and
 20 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the
 21 State of California states:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
 23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
 24 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
 25 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
 26 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
 27 DEBTOR OR RELEASED PARTY.

28 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full

1 and complete release and discharge of all parties, Class Representative, and Class Counsel expressly
2 acknowledge that this Settlement Agreement is intended to include in its effect, without limitation,
3 all claims that Class Representative knew of, as well as all claims that he does not know or suspect
4 to exist in him favor against the Released Parties, or any of them, for the time period from the
5 beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement
6 contemplates the extinguishment of any such Class Representative's claims.

7 **F. Interim Stay of Proceedings**

8 61. Pending completion of all of the prerequisites necessary to effectuate this Settlement,
9 the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as
10 are necessary to effectuate the Settlement.

11 **G. Notice Process**

12 62. Appointment of Settlement Administrator. The Parties have agreed to the appointment
13 of the Settlement Administrator to perform the duties of a settlement administrator, including mailing
14 the Notice, using standard devices to obtain forwarding addresses, independently reviewing and
15 verifying documentation associated with any claims or opt-out requests, resolving any disputes
16 regarding the calculation or application of the formula for determining the Individual Settlement
17 Amounts, calculating employer-side taxes, drafting and mailing the settlement checks to Final
18 Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities, due
19 diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or
20 as the Parties mutually agree or that the Court orders.

21 63. Disputes Regarding Settlement Administration. Any and all disputes relating to
22 administration of the Settlement by the Settlement Administrator (except for disputes regarding Class
23 Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the
24 terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that
25 all payments and obligations contemplated by this Settlement Agreement have been fully carried out.
26 Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve
27 the dispute without the necessity of Court intervention. The Settlement Administrator shall also be
28 responsible for issuing to Plaintiff, Final Settlement Class Members, and Class Counsel any Forms

1 W-2, Forms 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to
2 this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary
3 tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

4 64. Class Data. Within fifteen (15) days after entry of the Preliminary Approval Order,
5 Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
6 Administrator will run a check of the Class Members' addresses against those on file with the U.S.
7 Postal Service's National Change of Address List. The Class Data provided to the Settlement
8 Administrator will not be provided to Class Counsel and it will remain confidential, it shall be used
9 solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required
10 by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the
11 Court.

12 65. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
13 Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within
14 seven (7) calendar days following the Settlement Administrator's receipt of the Class Data. The
15 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
16 addresses of Settlement Class Members if any envelopes are returned.

17 66. Returned Notices. The Settlement Administrator will take steps to ensure that the
18 Notice is received by all Settlement Class Members, including utilization of the National Change of
19 Address Database maintained by the United States Postal Service to review the accuracy of and, if
20 possible, update a mailing address. If no forwarding address is provided, the Settlement
21 Administrator will promptly attempt to determine the correct address using a skip-trace, or other
22 search using the name, address, and/or Social Security number of the Class Member involved, and
23 will then perform a single re-mailing. In the event the procedures in this Paragraph are followed and
24 the intended recipient of a Notice Packet still does not receive the Notice Packet, the Class Member
25 shall be bound by all terms of the Settlement and any Judgment entered by the Court if the Settlement
26 is approved by the Court. Notices will be re-mailed to any Settlement Class Member for whom an
27 updated address is located within ten (10) calendar days following both the Settlement Administrator
28 learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to

1 the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-
2 out) request or objection must be returned by the later of the Notice Response Deadline or fifteen
3 (15) days after the remailing of the Notice.

4 67. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if an
5 envelope has not been returned within thirty (30) days of the mailing that the Settlement Class
6 Member received the Notice.

7 68. Disputes Regarding Class Data. Settlement Class Members are deemed to participate
8 in the Settlement unless they opt-out. The Notice will inform Settlement Class Members of
9 his/her/their estimated Individual Settlement Amount and the number of Workweeks Worked during
10 the Class Period and during the PAGA Period. Settlement Class Members may dispute their
11 Workweeks Worked if they feel they were employed more workweeks in the Class Period in
12 California than Defendant's records show by timely submitting evidence to the Settlement
13 Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut
14 Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the
15 Settlement Class Member and provide the evidence submitted to Class Counsel and Defense Counsel
16 who agree to meet and confer in good faith about the evidence to determine the Class Member's
17 actual number of Workweeks Worked and estimated Individual Settlement Amount. If Class Counsel
18 and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement
19 Administrator to render a final decision. All disputes will be decided within ten (10) business days
20 of the Notice Response Deadline. Settlement Class Members will have until the Notice Response
21 Deadline to dispute Workweeks Worked, object, or opt out, unless extended by the Court. In the event
22 that the Settlement Administrator increases the number of Workweeks Worked for any Settlement
23 Class Member, then the Settlement Administrator will recalculate the Participating Class Members'
24 Individual Settlement Amounts; accordingly, in no event will Defendant be required to increase the
25 Gross Settlement Amount.

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

70. Settlement Class Members' Rights. The Notice shall fully advise each Settlement Class Member of the Settlement, the ability to object to the provisions in the Settlement related to the Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of the Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Class Claims provisions of the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Participating Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state in words substantially to this effect:

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE DIAZ
V. ARDAGH LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE
EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS
LAWSUIT.

Any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement with respect to the Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Class Claims, however, all such Class Members shall still be bound by the PAGA Claims release.

(b) Binding Effect on Final Settlement Class Members. Except for those

1 Settlement Class Members who timely exclude themselves in compliance with the procedures set
2 forth above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
3 for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
4 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided
5 herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness,
6 and adequacy of the Settlement.

7 (c) Objections to Settlement of Class Claims. Any Settlement Class Member,
8 other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims and
9 may appear at the Final Approval Hearing and object whether or not they have filed a written
10 objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement
11 Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice
12 Response Deadline at the address set forth in the Notice. Such objection shall include the full name,
13 address, telephone number, dates of employment with Defendant of the Objecting Settlement Class
14 Member, the case name and number, the basis for the objection, including any legal support and each
15 specific reason in support of the objection, as well as any documentation or evidence in support
16 thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and
17 address of his/her/their counsel. If any Objecting Settlement Class Member wishes to speak at the
18 Final Approval Hearing with respect to the Class Claims, that Objecting Settlement Class Member's
19 written submission should include a request to be heard, and the Court will determine whether
20 Objecting Settlement Class Members will be permitted to speak. The Settlement Administrator shall
21 provide objections, if any, to Class Counsel and Defense Counsel within three (3) days of receipt,
22 and the Settlement Administrator shall attach the same to its declaration of due diligence it files with
23 the Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection
24 remains eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant shall
25 not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his/her/their
26 counsel related to any objections to the Settlement. Submitting an objection does not preserve the
27 right to appeal a final judgment. Rather, the right to appeal is preserved only by becoming a party of
28 record by timely and properly intervening or filing a motion to vacate the judgment under Code of

1 Civil Procedure section 663. Settlement Class Members and Aggrieved Employees may not object to
2 or opt out of the Settlement with respect to the PAGA Claims. At no time will any of the Parties or
3 their counsel seek to solicit or otherwise encourage Class Members to submit written objections to
4 the Settlement or appeal from the Judgment. To the extent a timely Notice of Objection is withdrawn
5 before final approval, such an objection shall be treated as though no objection has been made.

6 (d) Failure to Object. Any Settlement Class Member who desires to object with
7 respect to the Class Claims but fails to timely submit a written objection waives any right to object
8 and will be foreclosed from making any objection to this Settlement. Any Settlement Class Member
9 who does not timely and properly become a party of record by intervening or filing a motion to vacate
10 the judgment waives any and all rights to appeal from the Judgment, including all rights to any post-
11 judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new
12 trial, a motion under California Code of Civil Procedure section 473, and extraordinary writs.

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

16 71. Settlement Class Members will have until the Notice Response Deadline to object or
17 submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
18 Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or
19 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
20 Counsel or Defense Counsel.

21 72. Funding of the Settlement Amount. Defendant shall make a one-time deposit into the
22 QSF of the Settlement Amount, as described in Paragraph 47(a) that is necessary to make all
23 payments required under this Settlement, within fifteen (15) days after the Effective Date, plus
24 Defendant shall separately pay its share of employer payroll taxes as calculated and directed by the
25 Settlement Administrator.

26 73. Distribution of Funds. No later than seven (7) calendar days after deposit of the
27 payment into the QSF, the Settlement Administrator will mail the payments to the Participating Class
28 Members, the payment for the attorneys' fees and costs to Class Counsel, any Service Payment to the

1 Class Representatives, the payment to the LWDA for PAGA penalties, and will pay itself the
2 Settlement Administration Costs. Notwithstanding the foregoing, the Settlement Administrator will
3 not release the amount designated for the Service Payment to the Class Representatives if Plaintiff
4 provides notice of revocation within the Revocation Period set forth in Paragraph 60 above. In the
5 event Plaintiff provides timely notice of revocation, the amount designated for the Service Payment
6 to the Class Representative shall be allocated to the payments to the Participating Class Members.

7 74. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall have
8 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If
9 any Final Settlement Class Member's check is not cashed within that period, the check will be void
10 and a stop-payment will be issued. All unclaimed funds shall be sent to the California Unclaimed
11 Property Fund in the name of the class member. The Release will be binding upon all Final Settlement
12 Class Members including those who do not cash their checks within the 180-day period. In the event
13 that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the
14 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
15 check, perform a skip trace to locate the individual. If a new address is located by these means, the
16 Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel
17 and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class
18 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement
19 checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks.
20 Without limiting the foregoing, in the event a Final Settlement Class Member notifies the Settlement
21 Administrator that he/she/they believe that a settlement check has been lost or stolen, the Settlement
22 Administrator shall immediately stop payment on such check. If the check in question has not been
23 negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement
24 check.

25 75. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff,
26 Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or reports
27 made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a
28 Party from seeking enforcement of this Agreement.

1 76. Without prejudice to any other remedies, the Settlement Administrator shall agree to
 2 be responsible for any breach of its obligations (whether committed by the Settlement Administrator
 3 or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all
 4 liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out
 5 of any breach committed by the Settlement Administrator or its agents.

6 **H. DUTIES OF THE PARTIES PRIOR TO THE COURT'S APPROVAL**

7 77. Within 30 days of execution of this Agreement, Plaintiff will move the Court for
 8 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing
 9 the following:

10 (a) Scheduling the Final Approval Hearing on the issue of whether this Settlement
 11 should be finally approved as fair, reasonable, and adequate as to the Class Members and a hearing
 12 on fees, costs, and the Service Payment;

13 (b) Approving as to form and content the proposed Notice;

14 (c) Directing the mailing of the Notice by first class mail to the Settlement Class
 15 Members;

16 (d) Preliminarily approving this Settlement; and

17 (e) Preliminarily certifying the class for purposes of this Settlement.

18 78. In conjunction with the Preliminary Approval Hearing, Plaintiff will submit this
 19 Settlement Agreement, and will include the proposed Notice Packet, which will include the Notice
 20 of Class Action Settlement document and proposed Mailing Envelope.

21 79. In accordance with section 2699(1)(2) of the California Labor Code, Plaintiff shall
 22 provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiff files his
 23 motion for Preliminary Approval of this Settlement with the Court.

24 80. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing,
 25 to approve this Agreement because the amount of the PAGA penalties is not adequate, then the Parties
 26 shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, to try
 27 to achieve Final Approval of the Agreement upon any subsequent Court hearings (with no further
 28 payment by Defendant being required).

I. DUTIES OF THE PARTIES FOLLOWING COURT'S FINAL APPROVAL

81. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement, thereby permanently barring all Participating Class Members from prosecuting any Released Class Claims against any of the Released Parties and permanently barring all Aggrieved Employees and the LWDA from prosecuting any Released PAGA Claims against any of the Released Parties.

J. VOIDING THE AGREEMENT

82. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

83. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

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

K. OTHER TERMS

85. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction and/or an affirmative defense against, any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released Claim.

1 86. Waiver. The waiver by one Party of any breach of this Agreement by another Party
2 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

3 87. Parties' Authority. The signatories hereto represent that they are fully authorized to
4 enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

5 88. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
6 accomplish the terms of this Settlement Agreement, including but not limited to, execution of such
7 documents and to take such other action as may reasonably be necessary to implement the terms of
8 this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts,
9 including all efforts contemplated by this Settlement Agreement and any other efforts that may
10 become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and
11 the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class
12 Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all
13 necessary steps to secure the Court's preliminary and final approval of the settlement and the final
14 entry of judgment.

15 89. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
16 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
17 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
18 or rights released and discharged by this Settlement Agreement. This is a material term of this
19 Agreement.

20 90. No Admission. Defendant denies any and all liability to Plaintiff and/or any Settlement
21 Class Member in this Action, as to any and all causes of action that were asserted or that might have
22 been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise to avoid further
23 substantial expense and the inconvenience and distraction of protracted litigation. Defendant has
24 considered the uncertainty and risks inherent in litigation, and without conceding any infirmity in the
25 defenses that Defendant has asserted or could assert against Plaintiff, determined that it is desirable
26 and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set
27 forth in this Agreement.

28 91. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval

1 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
 2 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
 3 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
 4 Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant
 5 inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with
 6 all related documents such as the notices, and motions for preliminary and final approval, shall,
 7 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
 8 inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement,
 9 and/or interpret or enforce this Settlement Agreement and the rights and benefits hereunder. The
 10 stipulation for class certification as part of this Settlement Agreement is for settlement purposes only
 11 and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

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

16 To the Settlement Class Members and Aggrieved Employees:

18 19 20	Mehrdad Bokhour <i>mehrdad@bokhourlaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (310) 975-1493; Fax: (310) 675-0861	Joshua Falakassa <i>josh@falakassalaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (818) 456-6168; Fax: (888) 505-0868
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21 To Defendant:

22 23 24 25 26 27	Sabrina L. Shadi <i>sshadi@bakerlaw.com</i> Nicholas D. Poper <i>npoper@bakerlaw.com</i> Matthew J. Goodman <i>mgoodman@bakerlaw.com</i> 11601 Wilshire Boulevard, Suite 1400 Los Angeles, CA 90025 Tel: (310) 820-8800; Fax: (310) 820-8859
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28 93. Construction. The Parties hereto agree that the terms and conditions of this Settlement

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

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

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

16 96. Defendant's Right to Withdraw. If the number of valid Requests for Exclusion exceeds
17 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from
18 the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio,
19 have no force or effect whatsoever, and that neither Party will have any further obligation to perform
20 under this Agreement; provided however, Defendant will remain responsible for paying the
21 reasonable Settlement Administration expenses incurred to that point. Defendant must notify Class
22 Counsel and the Court of its election to withdraw not later than 10 business days after the
23 Administrator sends the final Exclusion List to Defense Counsel.

24 97. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this
25 Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written
26 notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and
27 Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute
28 they are unable to resolve informally. During this period, the Parties shall bear their own attorneys'

1 fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any
2 person or entity other than Plaintiff or Defendant.

3 98. Press Release. Plaintiff and Class Counsel agree that they will not issue any press
4 release, social media post, internet or website announcement or otherwise initiate any contact with
5 the press regarding the existence or terms of this settlement, unless court ordered.

6 99. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
7 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure section
8 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties
9 to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this Agreement.

10 100. Enforceability. Pursuant to California Evidence Code section 1123(a) and (b), this
11 Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in a
12 court of law.

13 101. Choice of Law. This Settlement Agreement shall be governed by and construed,
14 enforced, and administered in accordance with the laws of the State of California, without regard to
15 its conflicts-of-law rules.

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

21 103. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
22 the benefit of the Parties hereto, the Released Parties, and their respective heirs, trustees, executors,
23 administrators, successors, and assigns.

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

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

6
7 **APPROVAL AND EXECUTION BY PARTIES:**

8 Dated: July ___, 2023

CLASS REPRESENTATIVE:

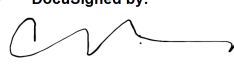
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GRANT DIAZ

12 7/1/2023 | 9:24 PM EDT

13 Dated: July ___, 2023

DEFENDANT:

14 **ARDAGH METAL PACKAGING USA CORP.**

15 DocuSigned by:
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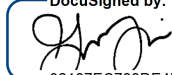
17 By Associate General Counsel
18 Its
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105. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

APPROVAL AND EXECUTION BY PARTIES:

Dated: June ___, 2023
6/22/2023

CLASS REPRESENTATIVE:

DocuSigned by:

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GRANT DIAZ

Dated: June ___, 2023

DEFENDANT:

ARDAGH METAL PACKAGING USA CORP.

By
Its

1 **APPROVED AS TO FORM:**

2 6/16/2023

3 Dated: June ___, 2023

CLASS COUNSEL

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

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Mehrdad Bokhour
Attorneys for Plaintiff

7 6/16/2023

8 Dated: June ___, 2023

FALAKASSA LAW, P.C.

DocuSigned by:

Joshua Falakassa

15A628B2C5A149C...

Joshua Falakassa
Attorneys for Plaintiff and the Putative Class

13 Dated: June ___, 2023

DEFENDANT'S COUNSEL:

BAKER & HOSTETLER LLP

Sabrina L. Shadi
Nicholas D. Poper
Matthew J. Goodman
Attorneys for Defendant,
Ardagh Metal Packaging USA Corp. (formerly known as
"Ardagh Metal Beverages USA Inc.")

1 **APPROVED AS TO FORM:**

2

CLASS COUNSEL

3 Dated: July ___, 2023

BOKHOUR LAW GROUP, P.C.

4

5

Mehrdad Bokhour
Attorneys for Plaintiff

6

7

8 Dated: July ___, 2023

FALAKASSA LAW, P.C.

9

10

11

Joshua Falakassa
Attorneys for Plaintiff and the Putative Class

12

13 Dated: July 3, 2023

DEFENDANT'S COUNSEL:

14

15

BAKER & HOSTETLER LLP

16



17

Sabrina L. Shadi
Nicholas D. Poper
Matthew J. Goodman
Attorneys for Defendant,
Ardagh Metal Packaging USA Corp. (formerly known as
"Ardagh Metal Beverages USA Inc.")

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