PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Alex Portillo ("Plaintiff") and defendant ACT Fulfillment, Inc. ("Defendant") (hereinafter, Plaintiff and Defendant are collectively referred to as the "Parties") in a lawsuit filed in San Bernardino County Superior Court, Case No. CIVSB2203773 (the "Action").

1. DEFINITIONS.

1.1. "Action" means the Plaintiff's PAGA lawsuit alleging wage and hour violations against Defendant captioned *Alex Portillo v. ACT Fulfillment, Inc.* initiated on February 25, 2022, and pending in Superior Court of the State of California, County of San Bernardino.

1.2. "Administrator" means Simpluris, Inc., the neutral entity the parties have agreed to appoint to administer the Settlement.

1.3. "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 approval of this Settlement.

1.4. "Aggrieved Employees" means all current and former non-exempt hourly employees of Defendant in the state of California at any time from February 19, 2021, until November 30, 2024 (the "PAGA Period").

1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Defendant's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. "Aggrieved Employee Address Search" means the Administrator's investigation and search for current Aggrieved Employee 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 Aggrieved Employees.

1.7. "Court" means the Superior Court of California, County of San Bernardino.

1.8. "Defense Counsel" means Spencer Waldron and Bret Martin of Fisher & Phillips LLP.

1.9. "Effective Date" the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

1.10. "Gross Settlement Amount" means $250,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Administration Expenses Payment, and Plaintiff's Individual Claims Payment.

1.11. "Individual PAGA Payment" means the Aggrieved Employee's share of 25% of the PAGA Penalties split pro rata among all Aggrieved Employees based on the number of PAGA Pay Periods worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court granting PAGA Settlement Approval.

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Plaintiff's Individual Claims Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means Moon Law Group, PC, the attorneys representing the Plaintiff in the Action.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.19. "PAGA Period" means the period from February 19, 2021, until November 30, 2024.

1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.21. "PAGA Notices" means Plaintiff's letters to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a).

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to the LWDA in settlement of PAGA claims.

1.23. "Plaintiff" means Alex Portillo, the named plaintiff in the Action.

1.24. "Plaintiff's Individual Claims" means Plaintiff's claims asserted against Defendant, including failure to pay minimum wages and overtime, failure to provide meal periods and rest breaks, failure to indemnify business expenses, failure to pay final wages, wage statement violations, and unlawful business practices.

1.25. "Plaintiff's Individual Claims Payment" means a payment of seven thousand five hundred dollars and zero cents ($7,500.00) to Plaintiff for resolution of Plaintiff's Individual Claims and Plaintiff's execution of a general release and comprehensive release of all known and unknown claims by Plaintiff, including a Section 1452 wavier.

1.26. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.27. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.28. "Released Parties" means: Defendant ACT Fulfillment, Inc. and each of its former and present directors, officers, shareholders, owners, members, employees, agents, trustees, principals, managers, representatives, attorneys, insurers, predecessors, successors, assigns, accountants, parent companies, subsidiaries, and affiliates , and all persons acting under, by, through, or in concert with any of them.

1.29. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.30. "Defendant" means named ACT Fulfillment, Inc.

2. RECITALS.

2.1. On February 19, 2022, Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice, pursuant to Labor Code section 2699.3, subd.(a).

2.2. On February 25, 2022, Plaintiff filed a class action complaint against Defendant, on behalf of all non-exempt employees of Defendant who worked in California from the date four years before the filing of the complaint to the date the Class Notice to be sent, alleging the following violations of the California Labor Code and Business and Professions Code ("Complaint"): Failure to Pay Minimum Wage [*Labor Code* §§ 204, 1194, 1194.2, and 1197;] Failure to Pay Overtime Compensation [*Labor Code* §§ 1194 and 1198]; Failure to Provide Meal Periods [*Labor Code* §§ 226.7 and 512]; Failure to authorize and Permit Rest Breaks [*Labor Code* § 226.7]; Failure to Indemnify Necessary Business Expenses [*Labor Code* §§ 2802]; Failure to Timely Pay Final Wages at Termination [*Labor Code* §§ 201-203]; Failure to Provide Accurate Itemized Wage

Statements [*Labor Code* § 226]; and Unfair Business Practices [*Business & Professions Code* §§ 17200, *et seq.*].

2.3. On April 27, 2022, Plaintiff filed a First Amended Class Action and Representative Action Complaint ("FAC"), which alleged an additional cause of action for Civil Penalties under the Private Attorney General Act [*Labor Code* §§ 2699, *et seq.*].

2.4. On September 27, 2022, Plaintiff and Defendant filed a Joint Stipulation to dismiss Plaintiff's Class Claims and Stay PAGA and Individual Claims.

2.5. The Parties were scheduled to participate in a mediation with Marc Feder, Esq. on June 20, 2024. However, due to an unexpected personal emergency of Mr. Feder, the mediation could not go forward that day. However, in the following weeks the Parties engaged in extensive negotiations facilitated by Mr. Feder culminating in a mediator's proposal, which led to this Agreement to settle the Action.

2.6. Prior to the scheduled mediation, Plaintiff obtained key company documents and the Parties engaged in extensive meet and confer efforts to enable Plaintiff to prepare an analysis of liability and damages.

2.7. On October 30, 2024, Plaintiff provided an amended PAGA Notice to the LWDA and on November 6, 2024, the Parties filed a stipulation asking the Court to grant Plaintiff leave to file a Second Amended PAGA Representative Action Complaint ("SAC") to include allegations of Paid Sick Leave violations [*Labor Code* § 246]. Following the administrative exhaustion period, Plaintiff shall file the SAC which shall become the operative complaint in this Action ("Operative Complaint")..

2.8. The Parties, PAGA 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. <u>Gross Settlement Amount</u>. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay $250,000.00 and no more as the Gross Settlement Amount. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. <u>Payments from the Gross Settlement Amount</u>. 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. <u>To PAGA Counsel</u>: Attorney's fees of not more than 33.33% of the Gross Settlement Amount, currently estimated to be $83,333.33, and costs of not more than $18,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA 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 PAGA Counsel or any other plaintiff's counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed $4,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than the amount stated above, the Net Settlement shall increase by that amount.

3.2.3. To the Plaintiff: an amount of $7,500.00, which the Court will authorize to be paid to Plaintiff in recognition of the effort and risk in assisting with the prosecution of the Action, for resolution of Plaintiff's Individual Claims, and Plaintiff's execution of a general release and a comprehensive release of all known and unknown claims by Plaintiff, including a Section 1542 waiver. Plaintiff is responsible for Plaintiff's own attorney fees and costs. If the Court approves a Plaintiff's Individual Claims Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties to be paid from the Gross Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records as of the date of mediation, Defendant estimates the Aggrieved Employees worked a total 24,000 of PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 14 days of settlement approval, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment, and the Plaintiff's Individual Claims Payment.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 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. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees 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 Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, as requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and canceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

4.5. Allocation of Net Settlement. The Net Settlement shall be allocated 100% as penalties, and accordingly none of the Net Settlement is taxable.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1. Plaintiff's Release. Plaintiff and his former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to those arising under any federal, state, or local law, regulation or ordinance, contract, quasi-contract, the common law, public policy, or any constitution, such as, without limitation, the California Constitution; the California Labor Code, including Labor Code section 132a; Family and Medical Leave Act; California Family Rights Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the California Fair Employment and Housing Act; Americans with Disabilities Act; Older Workers Benefit Protection Act; Age Discrimination in Employment Act; Consolidated Omnibus Budget Reconciliation Act of 1985; Employee Retirement Income Security Act of 1974; Immigration Reform and Control Act; the Workers Adjustment and Retraining Notification Act; The Occupational Safety and Health Act; The Sarbanes-Oxley Act of 2002; The Fair Credit Reporting Act; the Equal Pay Act; The Genetic Information Nondiscrimination Act of 2008; Statutory Provision Regarding the Confidentiality of AIDS Information – Health & Safety Code section 120775; California Confidentiality of Medical Information Act; California Civil Code section 51 et seq.; Wage Orders of the California Industrial Welfare Commission; the

California Code of Regulations; the California Business and Professions Code; Fair Labor Standards Act; and claims of intentional infliction of emotional distress; defamation and/or libel, or any other damage to reputation claims; breach of implied contract; breach of the covenant of good faith and fair dealing, as well as any other express or implied covenant; or any other statute or common law principle of similar effect; arising from acts, events, or circumstances occurring on or before the date Plaintiff executes this Agreement. 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 he 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 agree, 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, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads.

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.

5.2. Released by Aggrieved Employees:
All Aggrieved Employees 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 any and all claims, known or unknown, for civil penalties under California Labor Code section 2698 et seq. (PAGA) that were asserted in any and/or all of the complaints in the Action and/or any of Plaintiff's letters to the LWDA (including any subsequently amended complaints or letters); and/or any and all claims, known or unknown, that could have been asserted based on the factual allegations in any and/or all of the complaints in the Action and/or any of Plaintiff's letters to the LWDA (including any subsequently amended complaints or letters). This release includes, but is not limited to, claims for PAGA civil penalties premised on: California Labor Code sections 201-204, 226, 226.7, 227.3, 246, 510, 512, 1174.5, 1194, 1194.2, 1197, 1198, and 2802, and the applicable Wage Orders. There will be no right of Employees to opt out of the Settlement.

5.3. Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for attorneys fees and costs incurred in connection with the Action, except for the PAGA Counsel Fee Payment to be paid out of the Gross Settlement Amount.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file a motion for approval of this Settlement.

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiffs, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2. Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the motion or stipulation for approval of this Settlement and, if necessary, obtaining a prompt hearing date for a motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's order approving the settlement to the Administrator.

6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. **SETTLEMENT ADMINISTRATION.**

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

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

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

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

8. **PAGA PAY PERIOD SIZE ESTIMATES AND ESCALATOR CLAUSE.**

8.1. Based on its records, Defendant estimates that, the number of PAGA Pay Periods is approximately 24,000. Should the number of pay periods in the PAGA Period increase by more than 10%, the payout will increase proportionally over the 10% grace (*i.e.* meaning if the pay periods increase by 11% the settlement will increase by 1%). However, if the escalator clause is triggered, Defendant may alternatively choose to end the PAGA Period on the date that the increase would otherwise be triggered.

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1. No Admission of Liability 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant'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).

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

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

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

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

10.6. No Tax Advice. Each Party to this Agreement (for purposes of this paragraph, only, referred to as the "Acknowledging Party"; and each Party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her, or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any Other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

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

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

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

10.10. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10.11. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement. Plaintiff and PAGA Counsel agree that they shall not report the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Aggrieved Employees or the Settlement on its/their website(s) or through social media, and shall not contact any reporters or media regarding the Settlement. Nothing in this paragraph restricts PAGA Counsel from discussing the Settlement with Plaintiff, the Aggrieved Employees, the LWDA, and in any filings with the Court.

10.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

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

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

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

To Plaintiff:

Kane Moon, Esq. (SBN 249834)
Allen Feghali, Esq. (SBN 301080)
Julie Sohyun Oh, Esq. (SBN 341157)
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
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E-mail: kmoon@moonlawgroup.com
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To Defendant:

Spencer Waldron, Esq.
Bret Martin, Esq.
FISHER & PHILLIPS LLP
2050 Main Street Suite 1000
Irvine, CA 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152
E-mail: swaldron@fisherphillips.com
E-mail: bmartin@fisherphillips.com

10.16. 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.

10.17. 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. The Parties further agree that upon the signing of this Agreement that pursuant to CCP 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.330 for the entire period of this settlement process.

Dated: 1/6/2025

By: DocuSigned by: ____________________
DA4F6DAE405444F...
Alex Portillo

Dated: Feb 12, 2025

By: ____________________
For ACT Fulfillment, Inc.

Dated: 1/7/2025

MOON LAW GROUP, PC

By: ____________________
Kane Moon
Allen Feghali
Julie Sohyun Oh
Attorneys for Plaintiff, Alex Portillo

Dated: February 12, 2025

FISHER & PHILLIPS LLP

By: ______________________

Spencer W. Waldron
Bret Martin
Attorneys for Defendant, ACT
Fulfillment, Inc.