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 INDUSTRY, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

KRISTINA REYES, on behalf of herself
 and all others similarly situated,

Plaintiff,

vs.

BACKPACK BOYZ LOS ANGELES,
 LLC; LOS ANGELES INDUSTRY, INC.;
 and DOES 1-100, inclusive,

Defendants

CASE NO. 22STCV05435

**CLASS AND REPRESENTATIVE
 ACTION**

**AMENDED JOINT STIPULATION OF
 CLASS ACTION SETTLEMENT AND
 RELEASE**

[Assigned To Honorable William Highberger
 Dept. 10]

Action Filed: February 14, 2022

This *Amended* Joint Stipulation of Class Action Settlement and Release (the
 “Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiff
 Kristina Reyes (“Plaintiff”), as an individual and on behalf of all others alleged to be similarly
 situated, and Defendants Backpack Boyz Los Angeles, LLC and Los Angeles Industry, Inc.
 (together “Backpack Boyz or “Defendants”) (Plaintiff and Defendants each a “Party” and

collectively the “Parties”). Except as otherwise specified, defined terms shall have the meanings set forth in the Recitals and Section 1 of this Agreement.

RECITALS

A. Plaintiff initiated the above-captioned lawsuit by filing a Class Action Complaint against Defendants on or about February 14, 2022, in the Superior Court for the County of Los Angeles (“Court”), Case No. 22STCV05435 (the “Action”). Plaintiff filed a First Amended Representative and Class Action Complaint against Defendants on or about May 24, 2022 (“First Amended Complaint”). The First Amended Complaint asserted causes of action for alleged (1) failure to pay overtime wages, citing California Labor Code sections 204, 510, 1194, 1198, 1199 and applicable Wage Orders; (2) failure to pay minimum wage, citing California Labor Code sections 1182.12, 1194, 1197, 1197.1 and applicable Wage Orders; (3) failure to provide meal breaks, citing California Labor Code sections 226.7 and 512 and applicable Wage Orders; (4) failure to provide rest breaks, citing California Labor Code section 226.7 and applicable Wage Orders; (5) failure to provide timely and accurate wage statements, citing California Labor Code sections 226 and 1174; (6) failure to pay all wages due at termination – waiting time penalties, citing California Labor Code sections 201, 202 and 203; (7) failure to reimburse necessary business expenses, citing California Labor Code section 2802; (8) unlawful and/or unfair business practices under California Business & Professions Code section 17200, et seq. (“UCL”); and (9) violation of the Private Attorney General Act (“PAGA”), California Labor Code section 2698, et seq. Plaintiff’s First Amended Complaint asserted these claims on behalf of an alleged class of independent contractor Cannabis Dispensary Employees working in California and sought alleged unpaid or underpaid compensation, including for regular and overtime hours, restitution, liquidated damages, statutory and civil penalties, attorneys’ fees, costs, and interest.

B. Thereafter, Plaintiff and Defendants engaged in formal and informal discovery, including the exchange of documents and data, including without limitation information regarding all shifts worked by, and amounts paid to, Class Members during the relevant period.

1 C. On July 25, 2022, the Parties participated in an all-day mediation before Hon.
2 Robert Dondero (Ret.), a well-respected mediator with significant experience mediating
3 employment wage-and-hour class actions. After a full day of mediation, the Parties agreed to
4 the material terms of this Agreement, which were documented in a signed Memorandum of
5 Understanding (“MOU”).

6 D. At all times, Defendants have denied and continue to deny any wrongdoing and
7 deny that they committed, threatened, or attempted to commit, any of the wrongful acts or
8 violations of law or duty alleged in the First Amended Complaint or the Action, and instead
9 contend that Defendants have acted properly and lawfully. Defendants also deny that Plaintiff or
10 any of the Class Members are entitled to any form of wages, damages, penalties, interests,
11 attorneys’ fees, costs, or any relief whatsoever (at law or at equity) based on the conduct alleged
12 in the First Amended Complaint or the Action. In addition, Defendants maintain that they have
13 meritorious defenses to the claims alleged in the First Amended Complaint and the Action, and
14 that they were prepared to vigorously defend the Action. Nonetheless, taking into account the
15 uncertainty and risks inherent in litigation, Defendants have concluded that defense of the claims
16 asserted in the First Amended Complaint and the Action would be burdensome and expensive,
17 and that it is desirable and beneficial to fully and finally settle and terminate the Action in the
18 manner and upon the terms and conditions set forth in this Agreement.

19 E. Plaintiff believes that the claims asserted in the Action have substantial merit.
20 Nonetheless, Plaintiff and her counsel, Matthew S. Da Vega and Matthew Fisher of Da Vega
21 Fisher Mechtenberg LLP (“Class Counsel”), recognize and acknowledge the expense and length
22 of continued prosecution of the Action against Defendants through trial and any subsequent
23 appeals. Plaintiff and Class Counsel have also taken into account the uncertain outcome and
24 risks of litigation, especially in complex actions, as well as the difficulties and delays inherent in
25 such litigation. Based on their evaluation, Class Counsel have concluded that the terms and
26 conditions of this Settlement Agreement are fair, reasonable, and adequate to the Class, and that
27 it is in the best interests of the Class to settle the claims alleged in the First Amended Complaint
28 and the Action pursuant to the terms and provisions of this Settlement Agreement.

G. This Agreement is made and entered into by and between Plaintiff, individually and on behalf of all others alleged to be similarly situated, and Defendants, and is subject to the terms and conditions hereof and the Court's approval. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed complex claims and that nothing herein is an admission of liability or wrongdoing by Defendants. The Agreement's provisions, and all related drafts, communications and discussions, cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law by any person or entity and cannot be offered or received into evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. If for any reason the Agreement is not approved by the Court, the Agreement and the MOU will be of no force or effect.

22 | 1. **DEFINITIONS.**

25 **1.1** “Class” shall refer to the following group of individuals: “All current and former
26 non-exempt employees who worked for Defendants in the State of California from February 14,
27 2018, through the date the Court grants preliminary approval of the Settlement, including but not
28 limited to individuals holding the job titles of Budtenders, Cashiers, Inventory Managers, Joint

1 Rollers, Managers, Floor Lead, Floater, and Receptionist.” “Class Member(s)” refers to a
2 member(s) of the Class.

3 **1.2** “Settlement Administrator” means CPT Group, Inc., the third-party class action
4 settlement administrator mutually agreed to by the Parties for the purposes of administering this
5 Settlement. The Parties will each ensure and represent that they do not have any financial interest
6 in the Settlement Administrator or otherwise have a relationship with the Settlement
7 Administrator that could create a conflict of interest.

8 **1.3** “Settlement Administration Costs” means the costs payable to the Settlement
9 Administrator for all fees and expenses reasonably and necessarily incurred as a result of
10 administering this Settlement, including, but not limited to, the cost of providing notice of the
11 proposed settlement to the Class, the cost of administering the settlement and any settlement
12 fund created as a result of this Agreement. The Settlement Administration Costs are estimated to
13 **not exceed Ten Thousand Dollars (\$10,000)** and shall be payable from, and not in addition to,
14 the Gross Settlement Amount.

15 **1.4** “Class Counsel” means Matthew S. Da Vega and Matthew Fisher of Da Vega
16 Fisher Mechtenberg LLP.

17 **1.5** “Class Counsel Award” means the amount awarded by the Court pursuant to this
18 Agreement to Class Counsel for reasonable attorneys’ fees and reimbursement of litigation costs
19 and expenses incurred in connection with the litigation and resolution of this Action, including,
20 but not limited to, costs associated with documenting the Agreement, securing the Court’s
21 approval of the Agreement, administering the Agreement, obtaining entry of the judgment in the
22 Action, and expenses for any experts or consultants. The Class Counsel Award shall be paid
23 from, and not in addition to, the Gross Settlement Amount.

24 **1.6** “Class List” means a list of the Class Members formatted in Microsoft Office
25 Excel and shall include each Class Member’s full name; mailing address and telephone number
26 last known to Defendants; Social Security number; and estimated number of shifts worked
27 during the Class Period. The Settlement Administrator will treat the Class List as confidential,
28

1 and the Class List shall not be used for any purpose other than as set forth herein. The Settlement
2 Administrator shall not disclose the Class List to Class Counsel or any other person or entity.

3 **1.7** “Class Period” refers to the period of time from February 14, 2018 through the
4 date the Court grants preliminary approval of the Settlement”. As a practical matter, there were
5 no shifts worked by any Class Member prior to March 10, 2021.

6 **1.8** “Class Representative Enhancement Payment” means the amount to be awarded
7 by the Court pursuant to this Agreement to be paid to Plaintiff in recognition of her effort and
8 work in prosecuting the Action on behalf of the Class Members and others similarly situated, and
9 the associated risks of acting as a class representative. The Class Representative Enhancement
10 Payment shall be reported on an IRS Form 1099 and shall be payable from, and not in addition
11 to, the Gross Settlement Amount.

12 **1.9** “Class Settlement” means the settlement and resolution of the Released Claims,
13 except the PAGA Release.

14 **1.10** “Complaint” means the original complaint filed on or about February 14, 2022,
15 the First Amended Complaint filed by Plaintiff on or about May 24, 2022, and the Second
16 Amended Complaint to filed pursuant to Section 3.1 of this Agreement to amend the class
17 definition to the one stated in Section 1.1, above (similar in form to the draft attached hereto as
18 **Exhibit A - Second Amended Complaint**); and to be filed at the same time as the Motion for
19 Preliminary Approval of the Class and PAGA settlement.

20 **1.11** “Defendants’ Counsel” shall mean Lewitt, Hackman, Shapiro, Marshall &
21 Harlan, ALC.

22 **1.12** “Effective Date” means 60 days after the date of the entry of the Final Approval
23 Order and Judgment if there are no valid objections to the Settlement. However, if a valid
24 objection is made and an appeal or other effort to obtain reconsideration or review has been
25 initiated, the “Effective Date” shall instead mean two (2) court days after the date that such
26 appeal is withdrawn, or such appeal or other reconsideration or review has been finally
27 concluded in favor of the Final Approval Order and Judgment and the Final Approval Order and
28

Judgment is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise.

1.13 “Estimated Net Settlement Fund” means the Gross Settlement Amount less the current estimated amounts for a Class Counsel Award (i.e., **\$115,500 in attorneys’ fees and \$25,000 in attorney costs**), the Settlement Administration Costs (i.e., **\$10,000**), the Class Representative Enhancement Payment (i.e., **\$10,000**), and the LWDA Payment (i.e., **\$26,250 [75%]** of the PAGA Penalty Award of \$35,000). The actual Net Settlement Fund will be determined pursuant to Section 1.21.

1.14 “Fairness Hearing” means the hearing at which the Court decides whether to enter the Final Approval Order and Judgment.

1.15 “Final Approval Order and Judgment” means an order finally approving the Settlement as being fair, reasonable and adequate and certifying the Class (substantially similar in form to draft attached hereto as **Exhibit D - Final Approval Order and Judgment**).

1.16 “Gross Settlement Amount” means a non-reversionary common fund in the amount of **Three Hundred and Fifty Thousand Dollars (\$350,000)**, which includes the Class Counsel Award to Class Counsel, all Settlement Administration Costs, the LWDA Payment, all settlement payments to Settlement Class Members, and the Class Representative Enhancement Payment.

1.17 INTENTIONALLY LEFT BLANK

1.18 “Individual Settlement Amount” means the amount paid in settlement hereunder to each Settlement Class Member as determined pursuant to the terms set forth in Section 7.1.

1.19 “LWDA” means the California Labor and Workforce Development Agency

1.20 “LWDA Payment” means seventy-five percent (75%) of the PAGA Penalty Amount or **Twenty Six Thousand Two Hundred and Fifty Dollars (\$26,250)**, to be paid to the LWDA.

1.21 “Net Settlement Fund” means the Gross Settlement Amount less the Class Counsel Award to Class Counsel, all Settlement Administration Costs, the Class Representative Enhancement Payment, the LWDA Payment, and the PAGA Group Amount. To the extent the

1 Court does not approve the full requested Class Counsel Award to Class Counsel, the Class
2 Representative Enhancement Payment, or Settlement Administration Costs, the Net Settlement
3 Fund will increase. Settlement payments to Settlement Class Members will come out of the Net
4 Settlement Fund.

5 **1.22** “Notice” or “Class Notice” means the notice of the proposed Settlement terms, as
6 approved by Class Counsel, Defendants’ Counsel and the Court, to be provided to Class
7 Members. The Class Notice must be substantially similar to the form attached as **Exhibit C -**
8 **Class Notice**, and contain: (a) information regarding the nature of the Action, (b) a summary of
9 the terms of the Agreement, (c) the definition of the Class, (d) the formula for calculating the Net
10 Settlement Fund (including the amounts sought for the Class Counsel Award, Class
11 Representative Enhancement Payment, Settlement Administration Costs and the LWDA
12 Payment) and Individual Settlement Amounts, (e) the individual Class Member’s estimated
13 number of shifts worked during the Class Period and Gross Allocated Amount (as defined in
14 Section 7.1), (f) the dates which comprise the Class Period, (g) instructions on how to submit a
15 Shift Dispute, Request for Exclusion (“Opt Out”), or Objection, and (h) the deadlines by which
16 Shift Disputes, Requests for Exclusion, or Objections to the Agreement must be submitted to the
17 Settlement Administrator.

18 **1.23** “Class Member(s)” means all current and former non-exempt employees who
19 worked for Defendants in the State of California from February 14, 2018 through the date the
20 Court grants preliminary approval of the Settlement, including but not limited to individuals
21 holding the job titles of Budtenders, Cashiers, Inventory Managers, Joint Rollers, Managers,
22 Floor Lead, Floater, and Receptionist. All Class Members will be credited with at least one (1)
23 Shift.

24 **1.24** “Objection” means a Class Member’s valid and timely written objection to the
25 Settlement Agreement. For the Objection to be valid, it must: (a) state the case name and number
26 of the Action, (b) contain the Class Member’s name, current mailing address, most current
27 telephone number, and last four digits of his or her Social Security number, (c) state the basis for
28 the objection, (d) be signed by the Class Member, (e) be submitted to the Settlement

1 Administrator at the address specified in the Class Notice; and (f) be submitted with proof of the
2 submission date (such as a U.S. Postal Service postmark or another delivery service date stamp)
3 on or before the Response Deadline. If the Class Member wishes to speak at the Fairness
4 Hearing, he or she should (although they are not required to) file a notice of intention to appear
5 with the Court and provide a copy of this notice and their Objection to counsel for both Parties.

6 **1.25** “PAGA Group” shall mean all Class Members.

7 **1.26** “PAGA Group Amount” means twenty-five percent (25%) of the PAGA Penalty
8 Amount (\$35,000), or **Eight Thousand Seven Hundred and Fifty Dollars (\$8,750)**, to be
9 distributed pro rata and paid to the PAGA Group by the Settlement Administrator pursuant to
10 Sections 7.2 and 7.3.

11 **1.27** “PAGA Penalty Amount” means **Thirty Five Thousand Dollars (\$35,000)** to be
12 paid to settle any and all claims for which penalties under PAGA may be sought or are otherwise
13 available, as set forth in Section 2.5 of this Agreement.

14 **1.28** “Preliminary Approval Order” means the Court order granting preliminary
15 approval of the Settlement Agreement. The proposed Preliminary Approval Order submitted to
16 the Court for its approval shall be substantially similar to the draft attached to this Settlement
17 Agreement as **Exhibit B - Preliminary Approval Order**.

18 **1.29** “QSF” means the “Qualified Settlement Fund” which is an interest-bearing
19 account designated and controlled by the Settlement Administrator as described in Section 2.1.

20 **1.30** “Released Claims” means any manner of action, cause of action, claim, demand,
21 right, suit, obligation, debt, contract, agreement, promise, liability, or remedy of any nature
22 whatsoever (including without limitation any damages, charges, penalties, interest, losses, costs,
23 expenses, and attorneys’ fees), whether in law or in equity, under contract, tort or any other
24 subject area, or under any statute, rule, regulation, order, or law, whether federal, state, or local,
25 on any grounds whatsoever, including without limitation any and all alleged violations of the
26 California Labor Code, the California Code of Regulations, the Industrial Welfare Commission
27 Wage Orders, the California Business & Professions Code, and the Fair Labor Standards Act,
28 that were pled or that could have been pled, and claims sought or that could have been sought,

1 based on or arising out of the factual allegations in the Complaint, whether foreseen or
2 unforeseen, fixed or contingent.

3 **1.31** “Released Parties” means Backpack Boyz and any of their current and former
4 directors, officers, members, administrators, agents, insurers, beneficiaries, trustees, employee
5 benefit plans, representatives, partners, accountants, servants, employees, attorneys, parents,
6 subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors, successors,
7 joint venturers, predecessors, related entities, and assigns, and all other individuals and entities
8 acting by, through, under and/or on behalf of Backpack Boyz.

9 **1.32** “Releasing Parties” means Plaintiff and all Class Members who do not timely
10 submit a valid Request for Exclusion (aka “Opt Out”), and each of their successors, assigns,
11 legatees, heirs, and personal representatives.

12 **1.33** “Request for Exclusion” (aka “Opt Out”) means a timely and valid written request
13 submitted by a Class Member indicating that they request to be excluded from the Class
14 Settlement. The Request for Exclusion must: (a) state the case name and number of the Action,
15 (b) set forth the name, address, and telephone number of the Class Member requesting exclusion;
16 (c) be signed by the Class Member; (d) be addressed to the Settlement Administrator; and (e) be
17 postmarked on or before the Response Deadline.

18 **1.34** “Response Deadline” means the deadline by which Class Members must submit
19 to the Settlement Administrator valid Shift Disputes, Requests for Exclusion, or Objections to
20 the Agreement. Shift Disputes, Requests for Exclusion and Objections to the Agreement must be
21 submitted with proof of the submission date (such as a U.S. Postal Service postmark or another
22 delivery service date stamp) on or before the Response Deadline. The Response Deadline shall
23 be forty-five (45) calendar days from the initial mailing of the Class Notice to Class Members
24 pursuant to Section 4. In the event of a re-mailed Class Notice, the Response Deadline will be
25 extended an additional fifteen (15) calendar days for that individual Class Member.

26 **1.35** “Settlement Class Member(s)” means a Class Member who has not “opted out” of
27 the Class Settlement by submitting a valid and timely Request for Exclusion.
28

1 **1.36** “Shift Dispute” means the written letter that a Class Member must submit to the
 2 Settlement Administrator with proof of the submission date (such as a U.S. Postal Service
 3 postmark or another delivery service date stamp) on or before the Response Deadline, if they
 4 wish to dispute the number of Shifts credited to them. The Shift Dispute must: (a) state the case
 5 name and number of the Action, (b) set forth the Class Member’s name, address, and telephone
 6 number; (c) be signed by the Class Member; (d) include any documentary evidence showing that
 7 the Shift information is inaccurate, and (e) be postmarked or submitted to the Settlement
 8 Administrator on or before the Response Deadline.

9 **1.37** “Total Shifts” is the total number of Shifts worked by all Settlement Class
 10 Members during the Class Period.

11 **2. Settlement Relief and Releases.**

12 **2.1 Gross Settlement Amount.**

13 **(a)** Defendants shall pay the Gross Settlement Amount (\$350,000),
 14 into the QSF within five (5) business days after the Effective Date.

15 **(b)** The Parties agree that the QSF is intended to be a “Qualified
 16 Settlement Fund” under Section 468B of the Code and Treas. Reg. §1.468B-1, 26 CFR §
 17 1.468B-1, et seq., and will be administered by the Settlement Administrator as such. Among
 18 other duties of the Settlement Administrator provided by this Settlement, the Settlement
 19 Administrator shall open and administer a settlement account in such a manner as to qualify, and
 20 maintain the qualification of, the account as a “Qualified Settlement Fund” under Section 468B
 21 of the Code and Treas. Reg. §1.468B-1 and satisfy all federal, state and local income and other
 22 tax reporting, return, and filing requirements with respect to the QSF. The Parties and the
 23 Settlement Administrator shall treat the account as coming into existence as a Qualified
 24 Settlement Fund on the earliest date permitted as set forth in 26 CFR §1.468B-1(j)(2)(i), and
 25 such election statement shall be attached to the appropriate returns as required by 26 CFR
 26 §1.468B-1(j)(2)(ii). The Parties agree to cooperate with the Settlement Administrator and one
 27 another to the extent reasonably necessary to carry out the provisions of this section.
 28

(c) The Gross Settlement Amount shall be used to pay all amounts contemplated or required by this Agreement, including the Class Representative Enhancement Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, the Class Counsel Award to Class Counsel, the PAGA Penalty Amount, and as described in Section 7.1, to cover all payments to Settlement Class Members.

(d) The Settlement Administrator will calculate the amounts to be paid to Settlement Class Members in accordance with the terms and provisions of this Agreement and in accordance with applicable state and federal law (including tax regulations).

(e) No person or entity shall have any claim against Backpack Boyz, Defendants' Counsel, any of the Released Parties, Plaintiff, Class Members, Class Counsel or any Settlement Administrator based on distributions and payments made in accordance with this Agreement.

2.2 Class Counsel Award. Subject to Court approval, Defendants agree not to object to Class Counsel's request for **attorneys' fees of up to thirty-three percent (33%)** of the Gross Settlement Amount (\$350,000) **or One Hundred and Fifteen Thousand Five Hundred Dollars (\$115,500)** to cover all attorneys' fees. Plaintiff and Class Counsel agree to not seek an award of greater than thirty-three percent (33%) of the Gross Settlement Amount (i.e., \$350,000) for fees and that Defendants will not be obligated to pay any award in excess of thirty-three percent (33%) of the Gross Settlement Amount. Subject to Court approval, Defendants agree not to object to Class Counsel's request for **reasonable litigation costs of up to Twenty-Five Thousand Dollars (\$25,000)**. Class Counsel will file any papers supporting the request for the Class Counsel Award with the Court sixteen (16) court days before the Fairness Hearing. Class Counsel shall provide the Settlement Administrator their current and valid Form W-9 within five (5) business days of the Effective Date. If the Court approves the Settlement of this Action and a payment of a Class Counsel Award, and so long as Class Counsel has timely provided the Settlement Administrator with their current and valid Form W-9, Class Counsel shall be paid the Class Counsel Award approved by the Court out of the QSF within ten (10) business days after the Effective Date.

1 **2.3 Class Representative Enhancement Payment.** Plaintiff agrees not to petition the
2 Court for more than **Ten Thousand Dollars (\$10,000) for a Class Representative**
3 **Enhancement Payment.** While Defendants do not object to a reasonable Class Representative
4 Enhancement Payment, it takes no position on the propriety of the amount sought by Plaintiff.
5 Plaintiff will file any papers supporting the request for a Class Representative Enhancement
6 Payment with the Court at least sixteen (16) court days prior to the Fairness Hearing. Plaintiff
7 shall provide the Settlement Administrator a current and valid Form W-9 within five (5) business
8 days of the Effective Date. If the Court approves the Settlement of this Action and a Class
9 Representative Enhancement Payment, so long as Plaintiff has timely provided the Settlement
10 Administrator a current and valid Form W-9, the Settlement Administrator shall pay the Class
11 Representative Enhancement Payment awarded by the Court to Plaintiff from the QSF within ten
12 (10) business days after the Effective Date. Plaintiff acknowledges that she has obtained no tax
13 advice from Backpack Boyz or Defendants' Counsel, and that Backpack Boyz and Defendants'
14 Counsel have not made any representation concerning the tax consequences, if any, of the Class
15 Representative Enhancement Payment. Plaintiff agrees that she is solely responsible for the tax
16 consequences of the Class Representative Enhancement Payment.

17 **2.4 Reduction in Class Representative Enhancement Payment or the Class Counsel**
18 **Award.** In the event that the Court (or any appellate court) awards less than the amount requested
19 for the Class Counsel Award or the Class Representative Enhancement Payment, only the
20 awarded amounts shall be paid and shall constitute satisfaction of those obligations and full
21 payment thereunder, and any remaining or un-awarded portion of the requested Class Counsel
22 Award and/or the Class Representative Enhancement Payment shall be allocated to the
23 Settlement Class Members pursuant to the terms of Section 7. To the extent the Court does not
24 approve any or all of the amount of the Class Counsel Award and/or the Class Representative
25 Enhancement Payment, the Settlement shall remain binding, and this will not be a justification
26 for Plaintiff to withdraw from the Settlement. Plaintiff shall not have the right to revoke the
27 Settlement Agreement if the Court reduces or does not approve the requested Class Counsel
28 Award or Class Representative Enhancement Payment, although Plaintiff shall retain the right to

1 appeal any reduction of the Class Counsel Award. Any reduction of the amount of the Class
2 Counsel Award and/or the Class Representative Enhancement Payment by the Court or by an
3 appellate court shall not affect any of the Parties' other rights and obligations under this
4 Agreement.

5 **2.5 Payment and Allocation of the PAGA Penalty Amount. Thirty Five Thousand**
6 **Dollars (\$35,000)** (the PAGA Penalty Amount), representing 10% of the Gross Settlement
7 Amount (\$350,000), will be paid from the Gross Settlement Amount for the settlement, release
8 and discharge of any and all claims for which penalties under PAGA may be sought or could
9 otherwise be available to any member of the PAGA Group as stated in Section 2.8. Pursuant to
10 the express requirements of California Labor Code section 2699(i), the PAGA Penalty Amount
11 shall be allocated as follows: (i) **Twenty Six Thousand Two Hundred and Fifty Dollars**
12 **(\$26,250)** (75%) to be paid to the LWDA (the "LWDA Payment"); and (ii) **Eight Thousand**
13 **Seven Hundred and Fifty Dollars (\$8,750)** (25%) (the "PAGA Group Amount") for
14 distribution to the PAGA Group. The LWDA Payment and the PAGA Group Amount shall be
15 paid out of the QSF by the Settlement Administrator within ten (10) business days after the
16 Effective Date.

17 **2.6 Release of Claims by Plaintiff.** Upon the Effective Date, Plaintiff and each of her
18 successors, assigns, legatees, heirs, and personal representatives waive, release, forever
19 discharge, and will not pursue any manner of action, cause of action, claim, demand, right, suit,
20 obligation, debt, contract, agreement, promise, liability, or remedy of any nature whatsoever
21 (including without limitation any damages, charges, penalties, interest, losses, costs, expenses,
22 and attorneys' fees), whether in law or in equity, under contract, tort or any other subject area, or
23 under any statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds
24 whatsoever, arising out of or relating to any acts, facts, omissions or obligations, whether known
25 or unknown, whether foreseen or unforeseen, fixed or contingent, against any or all of the
26 Released Parties. This release shall not apply to claims for workers' compensation benefits,
27 unemployment insurance benefits, pension or retirement benefits, or any other claim or right that
28 cannot be waived or released as a matter of law. In addition, Plaintiff, and each of Plaintiff's

1 successors, assigns, legatees, heirs, and personal representatives, expressly waive and relinquish,
2 to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
3 California Civil Code, or any other similar provision under federal or state law, which provides:

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

11 Plaintiff agrees that this waiver is an essential and material term of this release and the
12 settlement that underlies it and that without such waiver the settlement would not have been
13 accepted.

14 **2.7 Release of Claims by Class Members.** Upon the Effective Date, all Releasing
15 Parties shall waive and forfeit, and be deemed to have fully, finally and forever released and
16 discharged all Released Claims against all Released Parties.

17 **2.8 PAGA Release.** Upon the Effective Date, Plaintiff, the PAGA Group and the
18 LWDA shall waive, release, and forever discharge the Released Parties from any and all
19 liabilities, claims or actions for civil penalties under PAGA (the California Private Attorneys
20 General Act, California Labor Code section 2698, *et seq.*), including related attorneys fees, costs,
21 and interest, for conduct or omissions during the Class Period based on or arising out of the
22 factual allegations of the Complaint, including without limitation any and all claims under
23 California Labor Code sections 201, 202, 203, 204, 204.2, 206, 206.5, 207, 208, 210, 212, 218.5,
24 218.6, 221, 223, 224, 226, 226.7, 226.8, 227, 227.3, 230, 230.1, 233, 246, 432.5, 510, 511, 512,
25 513, 551, 552, 558, 976, 1025, 1102.5, 1174, 1182.12, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198,
26 1198.3, 1199, 1696.5, 2570.3, 2698, 2699, 2699.3, 2699.5, 2753, 2800, 2802, 2806, 6311, and
27 6399.7.

28 **3. PRELIMINARY APPROVAL PROCESS.**

3.1 Amended Complaint. On or about February 14, 2022, Plaintiff submitted a PAGA
letter and draft complaint to the LWDA. The Parties agree that Plaintiff shall file a Second

1 Amended Complaint in the Action on behalf of herself and the Class and PAGA Group (as
2 defined in Sections 1.1 and 1.26), for purposes of this Settlement only (redefining the class per
3 Section 1.1), and that is substantially similar to the form attached hereto as **Exhibit A - Second**
4 **Amended Complaint** (the “Second Amended Complaint”). Plaintiff shall provide Defendants
5 with a copy of the draft Joint Stipulation for Leave to File a Second Amended Complaint and the
6 Second Amended Complaint at least five (5) court days prior to filing.

7 **3.2 Preliminary Approval Hearing.** As soon as practicable after this Agreement is
8 fully executed Plaintiff shall file a motion for preliminary approval (along with the Joint
9 Stipulation re Leave to File the Second Amended Complaint and Second Amended Complaint)
10 seeking an order from the Court for: (i) conditional certification of the Class for settlement
11 purposes only; (ii) preliminary approval of this Settlement Agreement; (iii) setting a date for the
12 Fairness Hearing; (iv) appointing Plaintiff as class representative for settlement purposes only;
13 and (v) appointing the law firm of Da Vega Fisher Mechtenberg LLP as Class Counsel for
14 settlement purposes only. Defendants will not oppose Plaintiff seeking conditional certification
15 of the Class for settlement purposes only. Plaintiff shall provide a copy of the Agreement to the
16 LWDA, pursuant to California Labor Code section 2699(1)(2), at the same time that it is
17 submitted to the Court.

18 **3.3 Preliminary Approval of Notice.** In conjunction with the motion for entry of the
19 Preliminary Approval Order, Plaintiff shall submit for Court approval the proposed Class Notice.
20 The Preliminary Approval Order shall also provide for the Class Notice to be sent to all Class
21 Members by the Settlement Administrator.

22 **3.4 Preliminary Approval Briefing.** Class Counsel shall draft the motion for
23 preliminary approval of the Settlement and provide Defendants with a copy of the draft
24 preliminary approval papers at least five (5) court days prior to filing so that Defendants may
25 provide any comments to the drafts. Defendants shall be permitted, but not required, to file its
26 own brief in support of the Preliminary Approval Order.

27 **4. NOTICE TO THE CLASS, OBJECTIONS, AND REQUESTS FOR**
28 **EXCLUSION.**

1 **4.1 Delivery of the Class List.** Within ten (10) calendar days after entry of the
2 Preliminary Approval Order, Defendants shall provide the Class List to the Settlement
3 Administrator.

4 **4.2 Notice by First-Class U.S. Mail.** Within thirty (30) calendar days after entry of the
5 Preliminary Approval Order, the Settlement Administrator shall mail the Class Notice via First-
6 Class U.S. Mail to all Class Members for whom it has a valid U.S. Postal address. Each Class
7 Member's Class Notice shall include the number of Shifts with which the Class Member has
8 been credited.

9 **4.3 Updating of Contact Information in the Class List.** After receiving the Class List
10 and prior to mailing the Class Notice, the Settlement Administrator shall perform a search based
11 on the National Change of Address Database for information to update and correct for any
12 known or identifiable address changes. If the Settlement Administrator determines that a Class
13 Member has more than one address and it cannot reasonably determine which address is the
14 most current, the Settlement Administrator shall mail the Class Notice to all such addresses.

15 **4.4 Re-Mailing of Notice.** Any Class Notice returned to the Settlement Administrator
16 as non-deliverable on or before the Response Deadline shall be sent promptly via First-Class
17 U.S. Mail to the forwarding address affixed thereto. With respect to Class Notices returned to the
18 Settlement Administrator without a forwarding address, the Settlement Administrator shall make
19 an attempt to locate an address by way of skip-trace and promptly re-mail the returned Class
20 Notice via First-Class U.S. Mail.

21 **4.5 Shift Dispute Procedure.** To dispute the number of Shifts with which they have
22 been credited, a Class Member must timely submit a Shift Dispute to the Settlement
23 Administrator by the Response Deadline. The Shift Dispute may be submitted by U.S. Mail or
24 other delivery service. The submission date is deemed to be, in the case of submission by U.S.
25 Mail or other delivery service, the date the Shift Dispute is sent, as evidenced by the postmark or
26 other delivery service date stamp. Class Members who timely submit Shift Disputes may
27 produce evidence to the Settlement Administrator showing that the Shift information is
28 inaccurate. The Settlement Administrator shall decide the dispute. Defendants' records will be

1 presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the
2 Class Member and will make the final decision as to the merits of the dispute. The Settlement
3 Administrator may ask Defendants to produce additional information regarding the Class
4 Member disputing their credited Shifts for the purpose of resolving the dispute. Defendants shall
5 strive to provide such information within five (5) business days of the Settlement
6 Administrator's request. It is understood and agreed that any decision by the Settlement
7 Administrator shall not operate to increase the Gross Settlement Amount.

8 **4.6** Request for Exclusion Procedures. Any Class Member wishing to opt out of the
9 Class Settlement must submit by U.S. Mail or other delivery service a written and signed
10 Request for Exclusion to the Settlement Administrator (at the address set forth in the Class
11 Notice) containing all the information required by Section 1.33 of this Agreement, on or before
12 the Response Deadline. The date the Request for Exclusion is sent, as evidenced by the postmark
13 or other delivery service date stamp, shall be the exclusive means to determine whether a
14 Request for Exclusion has been timely submitted. Class Members who submit a timely and valid
15 Request for Exclusion will not be bound by the Class Settlement and will have no standing to
16 object to the Settlement; however, they will be bound by the PAGA Release. As described in
17 Sections 7.2 and 7.3, all Class Members will be entitled to a pro rata share of the PAGA Group
18 Amount regardless of whether they opt out under this Section 4.6. If more than 10% of Class
19 Members timely and validly opt out of the Settlement, Defendants may elect to terminate the
20 Agreement. If Defendants terminate the Agreement under this provision, Defendants will bear
21 any of the already incurred costs of the third party settlement administration.

22 **4.7** Objection Procedures. To object to the Class Settlement or the Agreement, a
23 Settlement Class Member must submit a valid Objection, by U.S. Mail or other delivery service,
24 to the Settlement Administrator (at the address set forth in the Class Notice) on or before the
25 Response Deadline. The Objection must be signed by the Settlement Class Member and contain
26 all information required by Section 1.24 of this Agreement. The date the Objection is sent, as
27 evidenced by the postmark or other delivery service date stamp, shall be the exclusive means to
28 determine whether an Objection has been timely submitted. If a Class Member wishes to speak

1 at the Fairness Hearing, they should (but are not required to) file a notice of intention to appear
2 with the Court and provide a copy of the notice and their Objection to counsel for both Parties.
3 All Settlement Class Members will be permitted to appear and speak at the Fairness Hearing in
4 order to have an Objection heard by the Court. Class Members who fail to object in the manner
5 specified in this Agreement shall be deemed to have waived all objections to the Agreement and
6 shall be foreclosed from making any objections (whether by appeal or otherwise) to the
7 Settlement.

8 **4.8 Settlement Administration Reports.** The Settlement Administrator shall provide
9 Defendants' Counsel and Class Counsel a weekly report which certifies the number of Class
10 Members who have submitted (i) Shift Disputes, (ii) Requests for Exclusion (including the
11 name(s) of Class Member(s) who submitted a request for exclusion), and (iii) Objections.
12 Additionally, within five (5) calendar days of the Response Deadline, the Settlement
13 Administrator will provide to Defendants' Counsel and Class Counsel a report containing the
14 above-mentioned information ("Final Response Report"). The Settlement Administrator will also
15 provide to counsel for both Parties any updated reports regarding the administration of the
16 Agreement as needed or requested by either Party individually, or by the Parties jointly, subject
17 to the terms of this Agreement.

18 **4.9 Notice Sufficient.** The Parties agree not to engage in any other form of non-
19 Court-sanctioned notification or publicity relating to this Settlement or the Action.

20 **4.10 No Solicitation of Settlement Objections or Exclusions.** The Parties agree that at
21 no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
22 Members to submit Objections or Requests for Exclusion, or to appeal from the Court's Final
23 Approval Order and Judgment.

24 **4.11 Certification of Completion.** The Settlement Administrator shall provide a written
25 declaration under oath certifying the completion of its notice-related tasks no later than twenty-
26 one (21) calendar days after the Response Deadline.

27 **5. FAIRNESS HEARING; JUDGMENT.**
28

1 **5.1 Fairness Hearing and Entry of the Final Approval Order and Judgment.** Upon
2 expiration of the deadlines to submit Shift Disputes, Requests for Exclusion, or Objections to the
3 Agreement as described above, a Fairness Hearing shall be conducted to determine whether the
4 Court should enter a Final Approval Order and Judgment, providing for, among other things,
5 payment of Individual Settlement Amounts to Settlement Class Members and the amounts
6 properly payable for (i) the Class Counsel Award; (ii) the Class Representative Enhancement
7 Payment; (iii) the PAGA Penalty Amount; and (iv) all Settlement Administration Costs. Plaintiff
8 shall request that the Fairness Hearing be held within one hundred twenty (120) calendar days
9 after entry of the Preliminary Approval Order, subject to the Court's availability.

10 **5.2 Judgment and Continued Jurisdiction.** Pursuant to California Rules of Court, Rule
11 3.769(h), upon final approval of this Agreement by the Court, the Parties shall present the
12 judgment to the Court for its approval. After entry of the judgment, the Court shall have
13 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
14 of the terms of the Agreement, (ii) Agreement administration matters, and (iii) such post-
15 judgment matters as may be appropriate under court rules or applicable law, or as set forth in this
16 Agreement.

17 **5.3 Settlement Terms Bind All Class Members Who Do Not Opt-Out.** Any Class
18 Member who does not affirmatively opt-out of the Class Settlement by submitting a timely and
19 valid Request for Exclusion shall be bound by all of the terms of the Agreement, including those
20 pertaining to the Released Claims, as well as any order that may be entered by the Court if it
21 grants final approval of this Agreement. Notwithstanding the submission of any timely and valid
22 Request for Exclusion, all Class Members (including the PAGA Group) will be bound by the
23 PAGA Release under the Final Approval Order and Judgment pursuant to *Arias v. Superior*
24 *Court*, 46 Cal. 4th 969 (2009).

25 **6. Nullification or modification of Agreement.**

26 **6.1 Defendants' Right to Revoke.** Defendants may terminate and withdraw from this
27 Agreement at any time prior to the date the Court's approval of the Agreement becomes "final"
28 (i.e., not subject to appeal or reconsideration) if: (a) the Agreement is construed in such a fashion

1 that Defendants are required to pay more than the Gross Settlement Amount (except as provided
2 in Section 6.2); (b) the Court makes an order inconsistent with any of the terms of this
3 Agreement including, but not limited to, certifying for settlement purposes a class or
4 representative action that is different from the Class defined in Section 1.1 or PAGA Group
5 defined in Section 1.26, or any modification relating to the release of all claims (except for an
6 order reducing the Class Counsel Award or the Class Representative Enhancement Payment); (c)
7 following the signing of this Agreement, any court certifies, whether on a conditional basis or
8 not, a class, collective, or representative action involving a claim covered by this Agreement; (d)
9 any government department or agency raises objections to the terms in the Agreement or
10 otherwise indicates that it intends to pursue remedies beyond those contemplated by the
11 Agreement; or (e) more than 10% of Class Members timely and validly opt out of the Class. If
12 Defendants terminate and withdraw under this provision, Defendants will bear any of the already
13 incurred Settlement Administration Costs. In the event that the basis for withdrawal is a Court
14 order as described in items (a) and (b) above, Defendants must provide written notice to Plaintiff
15 of its intent to terminate and withdraw within one (1) week of the date on which the clerk
16 provides notice of the filed offending order. Failure to provide timely notice will serve as a
17 waiver of the right to revoke under the circumstances described in item (a) or (b) above.

18 **6.2** Modification Based on Increase in Number of Class Members. Defendants have
19 represented that there were approximately **93 Class Members as of July 25, 2022**. If the number
20 of Class Members increases by more than 10% (i.e., more than 9 class members) through the
21 date of the Preliminary Approval Order, then the Gross Settlement Amount shall be increased by
22 the same number of percentage points above 10% by which the actual number of Class Members
23 exceeds 93. For example, and for purposes of illustration only, if the number of Class Members
24 increases by 11% (1% over the 10% “grace”), the Gross Settlement Amount will increase by 1%.

25 **6.3** Action Status if Settlement Not Approved. This Agreement is being entered into
26 for Settlement purposes only. In the event that [1] Defendants invokes its rights under Sections
27 4.6 or 6.1 of this Agreement, [2] the Court conditions its approval of either the Preliminary
28 Approval Order or the Final Approval Order and Judgment on any modifications of this

1 Agreement that are not acceptable to all Parties (including, but not limited to, any modification
2 of the Class or the claims and penalties being released) except for any reduction of the Class
3 Counsel Award or the Class Representative Enhancement Payment, [3] the Court does not
4 approve the Settlement Agreement or enter the Final Approval Order and Judgment, or [4] the
5 Court's approval of this Agreement does not become "final" for any reason, then this Agreement
6 will be deemed null and void *ab initio*. In that event, (a) the Preliminary Approval Order, and/or
7 Final Approval Order and Judgment, and all of its or their provisions will be vacated by its or
8 their own terms, including, but not limited to, vacating conditional certification of the Class,
9 conditional appointment of Plaintiff as a class representative and conditional appointment of Da
10 Vega Fisher Mechtenberg LLP as Class Counsel, (b) the Action will revert to the status that
11 existed before the execution date of the Memorandum of Understanding, and (c) no term or draft
12 of the Memorandum of Understanding or this Agreement contemplated by it, or any part of the
13 Parties' settlement discussions, negotiations or documentation will have any effect or be
14 admissible into evidence for any purpose in the Action or any other proceeding. If the Court does
15 not approve this Agreement or enter the Final Approval Order and Judgment for any reason, or if
16 the Court's approval of this Agreement does not become "final" for any reason, Defendants shall
17 retain all their rights to object to the maintenance of the Action as a class and/or representative
18 action, and nothing in the Memorandum of Understanding or this Agreement contemplated by it
19 or other papers or proceedings related to the Memorandum of Understanding or this Agreement
20 contemplated by it shall be used as evidence or argument by any Party concerning whether the
21 Action may properly be maintained as a class and/or representative action.

22 **7. DISTRIBUTION.**

23 **7.1 Individual Settlement Amounts Calculations.** The Individual Settlement Amount
24 is based upon the approximate number of Shifts each Settlement Class Member worked as a
25 Class Member during the Class Period. Individual Settlement Amounts shall be calculated and
26 apportioned by the Settlement Administrator as follows:
27
28

1 **(a)** The Settlement Administrator shall determine the number of Shifts during the
2 Class Period for each Settlement Class Member and the Total Shifts based on the Class List
3 provided by Defendants.

4 **(b)** The Settlement Administrator shall divide the Net Settlement Fund by the number
5 of Total Shifts to derive the “Shift Point Value.”

6 **(c)** For each Settlement Class Member, the Settlement Administrator shall multiply
7 the determined number of Shifts they worked during the Class Period by the Shift Point Value.
8 The resulting figure shall be the “Individual Settlement Amount” for each such Settlement Class
9 Member. The Individual Settlement Amount(s) will be allocated for tax purposes as follows:
10 Thirty-Three percent (33%) will be designated as wages; Thirty-Three percent (33%) will be
11 designated as interest, and; Thirty-four percent (34%) will be designated as penalties. The
12 portion allocated to wages will be reported on an IRS Form W-2 and employment taxes and other
13 legally required withholdings will be withheld from payments to Class Members by the Class
14 Administrator. Defendant will bear the cost of all employer payroll taxes (which shall not be paid
15 from the Individual Settlement Amount). The portions allocated to non-wages (interest and
16 penalties) will be reported on an IRS Form 1099 by the Settlement Administrator. Defendants
17 will take reasonable efforts to provide the Settlement Administrator information regarding
18 Settlement Class Members’ W4 and/or social security numbers for withholding purposes. For
19 those Settlement Class Members whose W4 information or social security numbers are
20 unavailable, the Individual Settlement Amount(s) will be paid and shall be reported entirely on
21 an IRS Form 1099. Plaintiff and Class Members shall assume full responsibility and liability for
22 the payment of taxes due on all 1099 payments.

23 **7.2** Distribution of the PAGA Group Amount. The Settlement Administrator shall
24 divide the PAGA Group Amount by the total number of PAGA Group members (i.e., the total
25 number of Class Members). The resulting figure shall be each Class Member’s pro rata share of
26 the PAGA Group Amount, and these share amounts shall be reported on an IRS Form 1099.

27 **7.3** Distribution Timing of Individual Settlement Amounts and the PAGA Group
28 Amount. Individual Settlement Amounts shall be paid by check and mailed to Settlement Class

Members within ten (10) business days following the Effective Date. Class Member pro rata shares of the PAGA Group Amount shall be paid by check and mailed to Class Members within ten (10) business days following the Effective Date. If administratively feasible, the Settlement Administrator will combine into one check a Settlement Class Member's Individual Settlement Amount and their pro rata share of the PAGA Group Amount.

7.4 Uncashed Settlement Checks. If any checks mailed to Settlement Class Members remain uncashed after the expiration of 180 days, or an envelope mailed to a Settlement Class Member is returned and no forwarding address can be located for the Settlement Class Member after reasonable efforts have been made (including, but not limited to, skip tracing), then any such funds shall be transmitted to the Settlement Administrator and distributed in accordance with California Code of Civil Procedure section 384 in that within two hundred (200) calendar days after the checks are mailed, pay the amount of the uncashed Individual Settlement Checks to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law. Settlement Class Member who fails to timely cash or deposit their check(s) shall remain subject to the terms of the Settlement, including without limitation all releases contained herein, and the Final Approval Order and Judgment from the Court,

7.5 Effect of Cashing or Depositing Checks. The Complaint does not allege claims under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA") and is thus not an FLSA "action" under 29 U.S.C. § 216(b). The Parties agree this is an "opt-out" action under the California Code of Civil Procedure that does not require an "opt-in" procedure to bind Class Members to the terms of the Settlement, which includes the release of Released Claims as defined in Sections 1.30 and 2.6. Nevertheless, and without prejudice to this position and without changing the nature of this action, the Parties agree that Settlement Class Members who cash or deposit an Individual Settlement Amount check are deemed to "opt-in" to the Settlement. Each Individual Settlement Amount check to Settlement Class Members shall be affixed with the following language as further notice: "By cashing or depositing this check, I confirm my consent to the Settlement, which includes releasing claims under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA")."

1 **8. MISCELLANEOUS PROVISIONS.**

2 **8.1 Cooperation.** The Parties shall cooperate fully with one another in seeking
3 approval of the Court of this Settlement and to use their respective best efforts to consummate
4 the Settlement and cause the Preliminary Approval Order and Final Approval Order and
5 Judgment to be entered and to become final. The Parties therefore agree to cooperate in good
6 faith to promptly prepare, execute and finalize all Settlement-related documents, seek all
7 necessary Court approvals, and do all other things necessary to consummate the Settlement. No
8 Party to this Agreement shall seek to evade his, her, or its good faith obligations to seek approval
9 and implementation of this Settlement by virtue of any ruling, order, governmental report or
10 other development, whether in the Action, in any other litigation or otherwise that hereafter
11 might occur and might be deemed to alter the relative strengths of the Parties with respect to any
12 claims or defenses or their relative bargaining power with respect to negotiating.

13 **8.2 Further Assurances.** The Parties must execute and deliver any additional papers,
14 documents and other assurances, and must do any other acts reasonably necessary, to perform
15 their obligations under this Settlement Agreement and to carry out its expressed intent. The
16 Parties and their counsel will cooperate with each other and use their best efforts to effect the
17 implementation of this Agreement. If the Parties are unable to reach agreement on the form or
18 content of any document needed to implement this Agreement, or on any supplemental
19 provisions that may become necessary to effectuate the terms of this Agreement, the Parties may
20 seek the assistance of the Court to resolve such disagreement.

21 **8.3 Extension of Postmark Deadlines Falling on a Sunday or Federal Holiday.** If the
22 last day for a Class Member to submit any document under this Agreement falls on a Sunday or
23 Federal holiday, the deadline will be extended to the next day on which the U.S. Postal Service is
24 open.

25 **8.4 Exhibits Incorporated by Reference.** The terms of this Agreement include the
26 terms set forth in any attached Exhibit, which are incorporated by this reference as though fully
27 set forth herein. Any Exhibit to this Agreement is an integral part of the Settlement.
28

1 **8.5 Confidentiality.** Plaintiff and Class Counsel will keep the Settlement Agreement
2 and related documents, and their settlement negotiations (including, but not limited to, the
3 negotiations in the course of mediation), confidential and will not disclose that information to
4 any third party until such time as Plaintiff files the motion seeking entry of the Preliminary
5 Approval Order. Plaintiff and Class Counsel will make no comments of any kind regarding the
6 Settlement Agreement to the press/media, or for purposes of advertising. Plaintiff and Class
7 Counsel agree that they will not issue any press releases or post any statements regarding the
8 Settlement Agreement on any websites or initiate any contact with the media. If Plaintiff and/or
9 Class Counsel are contacted by the media, or any other third party, regarding the Settlement
10 Agreement, they may only advise that the Action has been amicably resolved and refer them to
11 the public filings in the Action. Plaintiff and Class Counsel agree that they will not disclose the
12 terms of the Settlement Agreement on any websites or in any other materials not necessary for
13 the facilitation of the Settlement Agreement. Plaintiff and Class Counsel shall retain the right to
14 discuss the Settlement Agreement with the Parties and the Class. Plaintiff and Class Counsel
15 agree to maintain the confidentiality of any non-public information exchanged pursuant to the
16 Parties' stipulated protective order and that they will not disclose any settlement or mediation
17 privileged communications. Plaintiff and Class Counsel also agree and acknowledge that any
18 breach of this Section 8.5 may cause irreparable harm or damage to Defendants that is difficult
19 to ascertain, and thus Plaintiff and Class Counsel agree that any breach of this Section 8.5 shall
20 give Defendants the right to obtain injunctive or other applicable equitable relief, in addition to
21 any other remedies available in law or equity.

22 **8.6 Non-Disparagement.** Plaintiff further agrees that she shall not commit any act or
23 make any statement that is, or could reasonably be interpreted as, detrimental to the business,
24 reputation, or good will of Defendants, including making any negative or disparaging statements
25 about its business, or its officers, directors, agents, and/or other personnel (past and present), its
26 employment policies and practices, operations, products, or services, either as fact or opinion.
27 Plaintiff acknowledges the terms of this Agreement shall not preclude her from providing
28 truthful testimony if mandated by subpoena or court order to do so, or pursuant to any request

1 from a government agency. Further, Plaintiff acknowledges the terms of this Settlement
2 Agreement shall not preclude her from advocating in favor of Court approval of the Settlement.

3 **8.7 Grammar.** The neuter form of a pronoun shall be considered to include within its
4 meaning the masculine and feminine forms of the pronoun, and vice versa.

5 **8.8 No Conflict Intended.** Any inconsistency between this Settlement Agreement and
6 the attached exhibits will be resolved in favor of this Settlement Agreement.

7 **8.9 Headings and Formatting of Definitions.** The various headings used in this
8 Settlement Agreement are solely for the Parties' convenience and may not be used to interpret
9 this Settlement Agreement. The headings and the formatting of the text in the definitions do not
10 define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

11 **8.10 Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of
12 the Action, except such proceedings necessary to implement and obtain entry of the Final
13 Approval Order and Judgment. The Parties shall jointly seek to stay all dates and deadlines in the
14 Action pending final approval of this Stipulation. The Parties further agree that the mutual,
15 voluntary cessation of litigation shall terminate if the motion for entry of the Preliminary
16 Approval Order or the Final Approval Order and Judgment are denied by the Court.

17 **8.11 No Injunctive Relief Against Defendants.** As part of this Settlement Agreement,
18 Defendants shall not be required to enter any consent decree, nor shall Defendants be required to
19 agree to any provision of injunctive relief.

20 **8.12 Waiver of Appeal.** Plaintiff and Class Counsel agree to waive appeals of an order
21 granting final approval of this Settlement Agreement or entering judgment in this Action so long
22 as such order is consistent with the material terms of this Agreement.

23 **8.13 Class List.** Within seven (7) months after the Effective Date and completion of
24 the administration, or in the event the Settlement is terminated pursuant to Section 4.6 or 6.1, all
25 originals, copies, documents, transcriptions, iterations, or drafts of the Class List or any portion
26 thereof, including any updated Class Member contact information obtained via, e.g., the National
27 Change of Address database, shall be returned to Defendants by the Settlement Administrator.

1 **8.14 Entire Agreement.** This Agreement and any attached Exhibit constitutes the
2 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
3 agreements may be deemed binding on the Parties.

4 **8.15 Amendment or Modification.** This Agreement may be amended or modified only
5 by a written instrument signed by counsel for all Parties or their successors-in-interest and if
6 after entry of the Preliminary Approval Order, as approved by the Court.

7 **8.16 Real Party in Interest.** In executing this Settlement Agreement, the Parties warrant
8 and represent that they, including Plaintiff in her representative capacity on behalf of the Class,
9 PAGA Group and all others alleged to be similarly situated, are the only persons having any
10 interest in the claims asserted in the Action. Neither these claims, nor any part of these claims,
11 have been assigned, granted, or transferred in any way to any other persons.

12 **8.17 Authorization to Enter Into Agreement.** Counsel for all Parties warrant and
13 represent they are expressly authorized by the Party whom they represent to negotiate this
14 Agreement and to take all appropriate action required or permitted to be taken by such Parties
15 pursuant to this Agreement to effectuate its terms, and to execute any other documents required
16 to effectuate the terms of this Agreement.

17 **8.18 Voluntary Agreement.** The Parties have negotiated the settlement at arms-length
18 and in good faith, with assistance from Judge Robert Dondero (Ret.) of JAMS, a respected
19 mediator, and have executed this Settlement Agreement knowingly, voluntarily, and without
20 duress or undue influence.

21 **8.19 Dispute Resolution.** The Parties agree to cooperate in good faith to mutually
22 select a mediator with wage and hour class action experience to resolve any and all disputes that
23 may arise in connection with interpreting the terms of this Settlement Agreement. Defendants
24 and Class Counsel shall split equally and pay for any mediator fees and costs associated with
25 seeking mediator assistance pursuant to this Section 8.19. Under no circumstances shall any
26 mediator fees or costs incurred pursuant to this Section 8.19 be taken out of the Gross Settlement
27 Amount.

1 **8.20 Cooperation and Drafting.** The Parties have cooperated in the drafting and
2 preparation of this Agreement. Hence, in any construction made to this Agreement, the same
3 shall not be construed against any of the Parties.

4 **8.21 Change of Time Periods.** All time periods and dates described in this Settlement
5 Agreement are subject to the Court's approval. These time periods and dates may be changed by
6 the Court or by the Parties' written agreement without notice to the Class.

7 **8.22 Binding on Successors and Assigns.** This Agreement shall be binding upon and
8 inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators,
9 successors and/or assigns.

10 **8.23 California Law Governs.** All terms of this Agreement and Exhibits hereto shall be
11 governed by and interpreted according to the laws of the State of California.

12 **8.24 Execution and Counterparts.** This Agreement may be executed in counterparts
13 which shall be deemed to be part of one original, and facsimile and electronic image copies of
14 signatures (including by PDF, DocuSign, or any electronic signature complying with the U.S.
15 federal ESIGN Act of 2000) or other transition method shall be equivalent to original signatures.

16 **8.25 Enforceability.** The Parties intend this to be a binding, enforceable and admissible
17 settlement agreement under California Code of Civil Procedure section 664.6 and California
18 Evidence Code section 1123(b).

19 **8.26 Inadmissibility.** This Settlement Agreement, whether approved or not approved,
20 revoked, or made ineffective for any reason, and any proceedings related to this settlement and
21 any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing
22 whatsoever and shall not be offered as evidence of any liability or wrongdoing in any Court or
23 other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further,
24 neither this Settlement Agreement, nor any proceedings taken pursuant to it, shall be construed,
25 offered or received in evidence as an admission, concession or presumption that class
26 certification is appropriate, except to the extent necessary for the consummation of this
27 Agreement.
28

1 **8.27** Agreement Constitutes a Complete Defense. To the extent permitted by law, this
2 Settlement Agreement may be pled as a full and complete defense to any action, suit, or other
3 proceedings that may be instituted, prosecuted or attempted against the Released Parties contrary
4 to any releases contained herein, including the release of the Released Claims and the PAGA
5 Release.

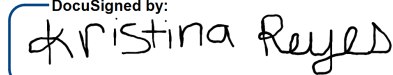
6 **8.28** Defendants' Position. Defendants state that it has acted lawfully at all times and
7 its policies and practices have been lawful, fair and consistent with all relevant laws, rules, and
8 regulations. Defendants deny all claims as to liability, damages, penalties, interest, fees,
9 restitution, costs, injunctive relief and all other forms of relief as well as the class allegations
10 asserted in the Action. To the extent this Agreement is deemed void, Defendants do not waive,
11 but rather expressly reserves, all rights to challenge all such claims and allegations in the Action
12 upon all procedural and factual grounds, including without limitation the ability to challenge
13 class, collective, and representative action treatment on any grounds, as well as asserting any and
14 all other potential defenses or privileges. Plaintiff and her counsel agree that Defendants retain
15 and reserve these rights. Specifically, Plaintiff and her counsel agree not to argue or present any
16 argument that, in the event this Agreement is not approved in full, Defendants could not oppose
17 any class or collective certification motion, file a later motion for de-certification, contest any
18 class action or collective certification on any grounds, or assert any and all other potential
19 defenses and privileges if any or all of the Action were to proceed. Plaintiff and her counsel
20 hereby waive such arguments and agree they will not take a position contrary to this provision.

21 **8.29** No Admission of Liability. Nothing in the Memorandum of Understanding or the
22 Settlement Agreement may be construed as an admission or concession on any point of fact or
23 law by or against any Party.

SIGNATURES - READ CAREFULLY BEFORE SIGNING

PLAINTIFF KRISTINA REYES

Dated: 2/8/2023

DocuSigned by:

CDEE9307C63340A...

Kristina Reyes

**BACKPACK BOYZ/LOS ANGELES
INDUSTRY**

Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM:

LEWITT | HACKMAN

Dated: _____

By: _____
Tal Burnovski Yeyni

Attorneys for Defendants
BACKPACK BOYZ/LOS ANGELES
INDUSTRY

DA VEGA FISHER MECHTENBERG LLP

Dated: 2/8/2023 _____

By:  _____
Matthew S. Da Vega

Attorneys for Plaintiff
KRISTINA REYES

SIGNATURES - READ CAREFULLY BEFORE SIGNING

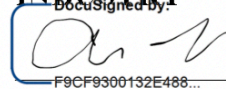
PLAINTIFF KRISTINA REYES

Dated: _____

Kristina Reyes

**BACKPACK BOYZ/LOS ANGELES
INDUSTRY**

Dated: 2/9/2023 _____


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Please Print Name of Authorized Signatory

APPROVED AS TO FORM:

LEWITT | HACKMAN

Dated: 2/9/2023

By: Tal Geyni
Tal Burnovski Yeyni

Attorneys for Defendants
BACKPACK BOYZ/LOS ANGELES
INDUSTRY

DA VEGA FISHER MECHTENBERG LLP

Dated: _____

By: _____
Matthew S. Da Vega

Attorneys for Plaintiff
KRISTINA REYES