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Attorneys for Plaintiff, on a representative basis, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ASTRID OROZCO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DELPHON INDUSTRIES, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: 22CV006597
*[Assigned to Hon. Evelio Grillo, Dept. 21, for
all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing
Date: September 15, 2023
Time: 9:00 a.m.
Dept: 21

Complaint filed: February 4, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment law department and am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 22 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest PAGA-only case in
17 California’s history - a \$12.5 million-dollar court approved settlement, which followed extensive
18 litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
19 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies over
21 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
22 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
23 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
24 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
25 the PAGA case was reversed and remanded.

26 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
27 the May 2023 issue of Consumer Attorneys of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **ADEQUACY OF SETTLEMENT**

4 7. The Class, as conditionally certified by this Court, consists of all current and
5 former non-exempt employees of Delphon Industries, LLC, who worked in California at any
6 time during the Class Period of February 4, 2018, through February 13, 2023.

7 8. As set forth in the Declaration of Kevin Lee on behalf of the Settlement
8 Administrator, Phoenix Settlement Administrators, the Net Settlement Amount is \$412,334.01,
9 after the deductions set forth in the chart here:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 775,000.00
Attorneys’ Fees (1/3)	\$ 258,333.33
Litigation Costs	\$ 13,832.66
Administrator Costs	\$ 8,000.00
PAGA Penalties	\$ 75,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 412,334.01

15
16 9. The process of mailing the Notice Packets was very successful, as 97% of the
17 Notice Packets were successfully delivered by the Settlement Administrator.

18 10. The response by the Class Members to this settlement was overwhelmingly
19 positive, as 100% of the Class elected to participate in the Settlement.

20 11. As discussed at length in Plaintiff’s motion for preliminary approval, as well as in
21 the Motion for Final Approval, this Settlement is very favorable to the Class and the release is
22 narrowly limited to the claims alleged.

23 12. Sufficient information existed to allow Class Counsel to intelligently value this
24 case. Given the parties’ arms’ length bargaining facilitated by an experienced wage and hour
25 mediator, the extensive exchange of informal discovery, the experience of Class Counsel, the
26 fact that 100% of the Class elected to participate and no objections were submitted, the
27 presumption of fairness is justified.
28

1 13. I believe that the settlement is fair, reasonable, and adequate, and in the best
2 interests of the Class, given the litigation risks and delay inherent in further litigation and
3 possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations
4 submitted in support thereof, Defendants vigorously challenged Plaintiff's claims, and Plaintiff
5 faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter.
6 Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and
7 that it is desirable that the action be fully and finally settled in the manner and upon the terms
8 and conditions set forth in the Settlement Agreement in order to limit further expense,
9 inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit
10 the operation of Defendants' business without further expensive litigation and the distraction and
11 diversion of its personnel with respect to matters at issue. All parties considered the uncertainty
12 of risks inherent in any litigation, especially in complex cases such as this case. The parties
13 determined that it is desirable and beneficial to both the Class and Defendants that this case be
14 settled. Risks on both sides were considered in reaching the Settlement Agreement. The
15 recoveries contemplated by the Settlement represent a good result for the Class, fairly
16 proportioned to the likely risk-adjusted recovery in litigation.

17 **ADEQUACY OF COUNSEL**

18 **AND REASONABLENESS OF REQUESTED FEE AND COST AWARDS**

19 14. As set forth above, I have handled well over 250 class and representative actions.
20 I have been appointed as class counsel and have successfully resolved approximately half of
21 those cases (while many are ongoing and will successfully resolve in the future) while recovering
22 hundreds of millions of dollars for my clients and Class Members. This is substantially better
23 than average accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class
24 Actions, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which
25 found that only one-third of class actions are successful, compared to two-thirds that are defeated
26 and result in no payment to the class members.¹

27
28

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 15. When this case was taken on a contingency fee basis, with my firm agreeing to
2 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
3 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research
4 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

5 16. It has been my experience that the benchmark for attorney fee awards in
6 California state cases is one-third of a common settlement fund, which the CA Supreme Court
7 upheld in the Robert Half case. Here, in accordance with the Settlement Agreement, Class
8 Counsel is seeking a fee of \$258,333.33, which is one-third of the Settlement Amount.

9 17. There are several additional factors why I believe that the Court should award
10 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
11 resulted in a common fund settlement amount, whereby the ***Class Members will receive***
12 ***\$2,545.27 on average*** and up to a ***maximum of \$4,040.91*** for those Class Members who worked
13 the longest during the Class Period. This is a very good result in light of the disputed nature of
14 the claims alleged. This result was achieved by the work and success of my office, who
15 negotiated the settlement after extensive preparation, investigation, mediation, and substantial
16 work thereafter.

17 18. Second, Plaintiff faced significant risks going forward with the litigation. As
18 discussed in the motion for preliminary approval, Defendants raised various defenses throughout
19 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
20 Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
21 going forward with this litigation, and it would have taken several more years to realize any
22 recovery in this action along with the possibility of post-trial appeals.

23 19. Third, Class Counsel are experienced class action litigators. This experience and
24 expertise, combined with the high quality of work performed in this case, resulted in the
25 settlement achieved in this case.

26 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
27 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
28 substantial amount of time, money, and resources, and have done so since the inception of this

1 case without any payment or compensation. If Plaintiff had lost this case, we would have
2 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
3 my office, which is a small firm. Indeed, I feel that it is important that Class Counsel be
4 compensated for the hardships and risks we faced litigating this contingency case, so that we are
5 incentivized to take on similar cases in the future on behalf of workers. Indeed, not all
6 class/PAGA cases are successful. Many cases end with no fees or a greatly reduced fee that is
7 far less than lodestar, often due to no fault of counsel (i.e., bankruptcy, change in the law,
8 consolidation- coordination-preemption, being top filed, etc.). As noted in the Mayer Brown
9 LLP's study discussed above, only one-third of class actions are successful, compared to two-
10 thirds that are defeated and result in no payment to the class members.

11 21. Fifth, the request for attorney's fees in the amount of one-third of the common
12 fund falls well within the norms accepted by state courts in California in comparable wage and
13 hour actions actually handled by my office. Moreover, the award of a one-third fee recovery
14 under the common fund doctrine was approved by the California Supreme Court in *Laffitte*,
15 *supra*, 1 Cal.5th 480, 503.

16 22. Finally, a one-third fee recovery is only slightly more than our projected lodestar
17 through the conclusion of this case, resulting in a small 1.3 multiplier.

18 23. For all of the above reasons, a common fund fee award here in the amount of one-
19 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

20 24. At my office, this case was primarily handled by my senior associate attorney,
21 Peter Carlson, while I performed the role of the supervising attorney up through mediation, and
22 then largely took over the handling through the settlement and notice process. Mr. Carlson
23 works exclusively with me on employment law matters and has been in practice for 9 years. He
24 bills at the hourly rate of \$575/hour. I have been in practice for 22 years, with most of those
25 years handling complex litigation and for over the last 15 years, my practice has almost entirely
26 consisted of handling class action wage and hour matters. My billing rate is \$775/hour. I
27 believe these rates are consistent with Plaintiff and Defense attorneys who handle complex class
28 action litigation, if not somewhat lower.

1 25. The hourly rates above are comparable to those of other attorneys with equal or
2 similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com
3 indicates that the benchmark rates are: \$676/hour for an 8–10-year attorney, \$764/hour for a 11-
4 19 year attorney, and \$919/hour for a 20+ year attorney). Moreover, the Wolters Kluwer Real
5 Rate Report (“Real Rate Report”), provides directly applicable information in this regard. The
6 Real Rate Report is based on an enormous and statistically significant compilation of data. For
7 instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours
8 billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees
9 billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for
10 partners and associates in major metropolitan areas. In 2018, for the southern California area,
11 which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report
12 states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995
13 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is
14 \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information
15 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
16 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
17 fees billed by law firms.

18 26. The table below includes a summary of the hours worked, plus additional hours
19 that I will bill in finalizing and filing the motion, preparing for and attending the approval
20 hearing, and working with the administrator and defense counsel to issue checks, respond to
21 class members and finalize this matter. Our aggregated lodestar is approximately \$198,570,
22 resulting in a small 1.3 multiplier, as follows:

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Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner)	Trial Counsel	22	\$775	97²	\$75,175
Peter Carlson (Senior Associate)	Handling Attorney	9	\$575	214.6	\$123,395
Grand Total for All Attorneys					\$198,570

27. Mr. Carlson primarily handled the day-to-day matters through mediation, wherein I worked in a supervisory role. Thus, during the initial phases, I conferred with Mr. Carlson frequently to evaluate the claims and develop a direction for the case. Mr. Carlson prepared the majority of the documents and reviewed and further drafted the documents when necessary. Mr. Carlson and I jointly prepared for and attended mediation. Then after a settlement was reached, we typically transition the bulk of the workload to me so that Mr. Carlson can focus on cases in litigation and discovery (although Mr. Carlson did assist with the preparation of the long form and preliminary approval motion). During this time, I reviewed all settlement documents, prepared supplemental papers in support of preliminary approval, worked with the administrator and monitored the notice process, prepared the final approval papers. I will also handle the case through final approval and until the Court approves the final disbursement. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendants do not oppose this fee request.

28. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line

² Includes an estimated 35 hours of future work that will be expended, including 15 hours through the final approval hearing (inclusive of finalizing and filing the motion, appearing at the hearing, addressing the Court's questions/concerns, submitting revised documents, responding to class members who are anxious to receive their check, and so on) and 20 hours after the final approval hearing (which includes approximately 1 to 1.5 years of case management relating to ensuring timely payment from Defendant, reviewing the calculations, checks are timely mailed, responding to class members questions about the timing of checks/missing checks/lost checks and remailings, working with the administrator regarding uncashed checks and remailings, assisting with the Administrator's declarations regarding payments and uncashed checks, potentially filing an amended judgment, appearing at the final disbursement hearing and/or submitting paperwork related thereto).

1 Lexis research, messenger services, postage, fax transmission expenses, transportation,
2 mediation fees, and other incidental expenses directly related to this action. My firm's expenses
3 through the final approval hearing are estimated to be \$13,832.66, which includes filing this
4 motion, process/server costs, overnight service and travel/parking expenses to the hearing (see
5 the itemized statement of these costs attached hereto as **Exhibit B**). Since these actual costs are
6 lower than the \$20,000 allowed under the settlement, the savings will be placed in the Net
7 Settlement Amount for distribution to the Class Members. Defendant does not oppose this
8 request for costs.

9 **REASONABLENESS OF REQUESTED SERVICE AWARD**

10 29. I also believe that the service award of \$7,500 to the Class Representative is fair
11 and warranted. Ms. Orozco came forward and worked directly with my office in analyzing the
12 claims and documents, providing valuable information and insights that benefitted the class (see
13 her declaration for supporting information). Then, during the settlement process, she agreed to a
14 much broader release than any class member, as she released all claims and gave a 1542 waiver
15 while foregoing her right to bring individual claims against Defendant. Indeed, Plaintiff's
16 participation was an essential element of Defendant's desire to mediate and of the pre- and post-
17 mediation analysis that allowed my office to settle the case. Of course, Plaintiff also took on
18 various risks, including the risk that she could have been ordered to pay Defendant's costs if she
19 lost and the risk of retaliation and being black-balled in the industry. Defendant does not oppose
20 the requested service award.

21 **SUBMISSION TO THE LWDA**

22 30. The Motion for Final Approval and supporting declarations have concurrently
23 been submitted to the LWDA. (See **Exhibit C**).

24 **EXHIBITS AND CONCLUSION**

25 31. The Settlement Agreement is attached hereto as Exhibit A.

26 32. Attached hereto as Exhibit B is a true and correct copy of an itemized statement
27 of my firm's litigation costs.
28

33. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit C.

34. For the foregoing reasons, it is respectfully requested that the Court grant final approval of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested attorneys' fees, costs, and enhancements.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 23, 2023, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendant DELPHON INDUSTRIES, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ASTRID OROZCO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DELPHON INDUSTRIES, LLC, a Delaware
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 22CV006597
*[Assigned to Hon. Judge Evelio Grillo, Dept.
21, for all purposes]*

**AMENDED CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint filed: February 4, 2022

1 This Amended Class Action and PAGA Settlement Agreement and Release of Claims is
2 entered into by and between Plaintiff Astrid Orozco, individually and on behalf of all others
3 similarly situated, and Defendant Delphon Industries, LLC, and is approved by their respective
4 counsels of record, subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 As used herein, for the purposes of this Settlement Agreement only, the following terms
7 shall be defined as set forth below:

8 1. "Action" or "Lawsuit" mean and refer to the case entitled *Astrid Orozco v. Delphon*
9 *Industries, LLC*, Superior Court of California, County of Alameda, Case No. 22CV006597.

10 2. "Aggrieved Employees" means all current and former nonexempt employees
11 employed by Defendant in California at any time during the PAGA Period.

12 3. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby Mankin Lauby
13 LLP.

14 4. "Class Data" mean a complete list that Defendant will diligently and in good faith
15 compile from its records and provide to the Settlement Administrator on spreadsheets and shall
16 include the Settlement Class Members' full names; last known addresses; last known telephone
17 numbers (if available); Social Security Numbers; the total Pay Periods Worked during the PAGA
18 Period for each Aggrieved Employee; and the total Weeks Worked during the Class Period for
19 each Settlement Class Member.

20 5. "Class Period" is deemed to be any time during the period of February 4, 2018,
21 through the Preliminary Approval Date or February 13, 2023, whichever is earlier.

22 6. "Class Representative" or "Plaintiff" means and refers to Astrid Orozco.

23 7. "Complaint" refers to the operative first amended complaint in the Action, alleging
24 Class Claims and representative PAGA Claims.

25 8. "Court" or "Judge" means the Superior Court of California, County of Alameda.

26 9. "Defendant" refers to Delphon Industries, LLC.

27 10. "Defendant's Counsel" or "Defense Counsel" refers to Littler Mendelson, P.C.

28 11. "Effective Date" means the latest of the following dates: (i) sixty-one (61) calendar

1 days following the date the Court enters an order granting Final Approval, assuming no appeal is
2 filed; or (ii) if a Settlement Class Member timely and properly intervenes or files a motion to vacate
3 the judgment under Code of Civil Procedure § 663, and if a timely appeal is filed, the date of final
4 resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*),
5 resulting in final judicial approval of the Settlement.

6 12. “Final Approval” refers to the order of the Court granting final approval of this
7 Settlement Agreement and entering a judgment approving this Settlement Agreement on
8 substantially the terms provided herein or as the same may be modified by subsequent written
9 agreement of the Parties.

10 13. “Final Settlement Class” means, collectively, all Participating Class Members who
11 have not opted out of the Settlement Class by submitting timely, valid Requests for Exclusion.

12 14. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph
13 49(a) below.

14 15. “Individual Settlement Payment(s)” shall have the meaning ascribed to it in
15 Paragraph 49(c) below.

16 16. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)
17 below.

18 17. “Notice” means the notice of class action and PAGA settlement that will be sent to
19 the Settlement Class Members and Aggrieved Employees, substantially in the Form of Exhibit A.

20 18. “Notice Response Deadline” is sixty (60) calendar days from the date the Notice
21 is mailed to the Settlement Class Members and Aggrieved Employees.

22 19. “Objecting Settlement Class Member” means a Settlement Class Member, other
23 than Plaintiff, who submits a valid and timely objection to the terms of this Settlement Agreement
24 with respect to the Released Class Claims, pursuant to Paragraph 72(c) below.

25 20. “PAGA” means the California Private Attorneys General Act of 2004, California
26 Labor Code §§ 2698 *et seq.*

27 21. “PAGA Penalties” means the total amount of civil penalties that the Parties have
28 agreed will be paid from the Gross Settlement Amount to settle the PAGA Claims, allocated

seventy-five percent (75%) to the California Labor and Workforce Development Agency (“LWDA”) in accordance with PAGA, and twenty-five percent (25%) for the individual PAGA payments to Aggrieved Employees, as set forth further below in Paragraph 49(h).

22. “PAGA Period” is deemed to be any time during the period of February 4, 2021, through the Preliminary Approval Date or February 13, 2023, whichever is earlier.

23. “PAGA Released Claims” means the PAGA claims that Plaintiff alleged against the Released Parties, on behalf of herself and the State of California, based on the facts stated in the Complaint and in the relevant LWDA notice letter or that could have been asserted based on those facts, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay wages or minimum wages (including for off the clocking or rounding), (b) failure to pay overtime wages (including for off the clock, regular rate, invalid alternative work weeks, or rounding), (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the LWDA Notice and the Complaint.

24. “Participating Class Member” means any and all Settlement Class Members who are deemed to participate, who will receive an Individual Settlement Payment, and who do not opt-out by submitting a timely, valid Request for Exclusion.

25. “Parties” mean Plaintiff and Defendant, collectively.

26. “Pay Period(s) Worked” means all pay periods during the PAGA Period in which an Aggrieved Employee was employed by Defendant in California as a nonexempt employee and worked at least one shift during the pay period. For purposes of calculating Pay Periods Worked, there will no fractional calculations (*i.e.*, a situation where an individual worked only one shift during a pay period still counts as one Pay Period Worked).

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

28. “Preliminary Approval Order” means the judicial Order to be entered by the Court,

1 upon the application or motion of the Plaintiff, preliminarily approving this settlement and
2 providing for the issuance of the Notice to the Settlement Class and Aggrieved Employees, an
3 opportunity for Settlement Class Members to opt-out of the Settlement, an opportunity to submit
4 timely objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement,
5 including approval of attorneys' fees and costs.

6 29. "QSF" means the Qualified Settlement Fund set up by the Settlement Administrator
7 for the benefit of the Final Settlement Class and Aggrieved Employees, and from which the
8 settlement payments shall be made, and which is intended to be a fund that qualifies under Internal
9 Revenue Code Sec. 468.

10 30. "Released Class Claims" or "Class Claims" by the Participating Class Members
11 upon Final Approval of the settlement and Defendant's funding of the Gross Settlement Amount
12 will include the claims stated in the Complaint or those claims which could have been asserted in
13 the Complaint based upon the facts in the Complaint, including: (a) failure to pay wages or
14 minimum wages (including for off the clock claims and rounding claims), (b) failure to pay
15 overtime wages (including for off the clock, regular rate, invalid alternative work weeks, or
16 rounding claims), (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
17 to timely pay wages, including upon separation of employment, (f) failure to provide accurate
18 itemized wage statements, (g) unfair and unlawful competition, and (i) all other claims for statutory
19 penalties based on the above.

20 31. "Released Parties" means Defendant and its past and present officers, directors,
21 shareholders, members, partners, managers, employees, agents, principals, heirs, representatives,
22 accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations,
23 subsidiaries, divisions, affiliates, attorneys, predecessors, successors and assigns.

24 32. "Release" shall mean (1) the release and discharge of the Released Class Claims by
25 Plaintiff and all Participating Class Members, and (2) the release and discharge of the PAGA
26 Released Claims by Plaintiff, the State of California, and all of the Aggrieved Employees. The
27 *res judicata* effect of the judgment will be the same as that of the Release of the Released Class
28 Claims and PAGA Released Claims.

1 33. “Request for Exclusion” means and refers to a valid and timely request for
2 exclusion from the settlement of the Released Class Claims, which may be submitted by any
3 Settlement Class Member, other than Plaintiff, pursuant to Paragraph 72(a) below.

4 34. “Service Payment” means, as set forth further in Paragraph 49(e) below, the amount
5 approved by the Court to be paid from the Gross Settlement Amount to the Class Representative,
6 Astrid Orozco, in addition to Astrid Orozco’s Individual Settlement Payment as a Participating
7 Class Member and Aggrieved Employee.

8 35. “Settlement Administrator” means and refers to Phoenix Settlement
9 Administrators, the third-party class action settlement administrator agreed to by the Parties, that
10 will provide the Notice to the Settlement Class and Aggrieved Employees and distribute the
11 settlement amounts as described in this Settlement Agreement.

12 36. “Settlement Administration Costs” means the costs payable from the Gross
13 Settlement Amount to the Settlement Administrator for administering this settlement, including,
14 but not limited to, printing, distributing, and tracking documents for this settlement, tax reporting,
15 and deposit of the employee and employer share of payroll taxes, unclaimed property due
16 diligence, reporting and remittance obligations, distributing the Gross Settlement Amount, and
17 providing necessary reports and declarations, as requested by the Parties.

18 37. “Settlement Agreement” means this Amended Class Action and PAGA Settlement
19 Agreement and Release of Claims.

20 38. “Settlement Class” consists of all current and former nonexempt employees
21 employed by Defendant in California at any time during the Class Period. Defendant represents
22 that there were approximately two hundred and twenty-five (225) eligible Class Members as of
23 the date of mediation on November 15, 2022.

24 39. “Settlement Class Member(s)” or “Class Member(s)” refers to individual members
25 of the Settlement Class.

26 40. “Work Week(s)” or “Week(s) Worked” means all calendar weeks in which the
27 Settlement Class Member was employed by Defendant in California as a nonexempt employee
28 and worked at least one shift during a work week. For purposes of calculating Weeks Worked,

there will no fractional calculations (*i.e.*, a situation where an individual worked only one shift during a week does not equal 1/7th of a Work Week, it counts as one Work Week).

B. General Terms

41. Plaintiff filed a class action complaint with the Court on February 4, 2022. Then, on April 14, 2022 Plaintiff filed the operative First Amended Complaint against Defendant, alleging class and representative PAGA claims. Plaintiff's Complaint alleged the following class claims: (1) failure to pay minimum wages, (2) failure to pay overtime, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay final wages, (6) failure to provide accurate itemized wage statements, and (7) unfair and unlawful competition pursuant to California Business and Professions Code §§ 17200 *et seq.* Plaintiff's Complaint alleged the following claims under PAGA: (8) failure to pay minimum wages, (9) failure to pay overtime, (10) failure to provide meal periods, (11) failure to provide rest breaks, (12) failure to timely pay wages each period, (13) failure to timely pay final wages, and (14) failure to provide accurate itemized wage statements.

42. Pursuant to California Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending her LWDA notice letter on February 4, 2022 ("PAGA Notice") alleging Defendant violated Labor Code §§ 200, 201, 201.3, 201.5, 201.9, 202, 203, 204, 204.1, 205.5, 208, 210, 218.6, 221, 222, 223, 225.5, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and Industrial Welfare Commission Wage Order §§ 3, 4(B), 20, and Cal. Admin. Code, Title 8, § 11090. In Plaintiff's PAGA Notice, Plaintiff further alleged Plaintiff and Aggrieved Employees were not provided proper minimum and overtime wages, compensated for off-the-clock work, compensated at the proper regular rate of pay for overtime and sick time to incorporate any and all nondiscretionary compensation, provided compliant meal and rest periods, provided timely payment of wages each pay period, provided timely payment of final wages, and provided accurate itemized wage statements. A copy of Plaintiff's PAGA Notice is attached to this Settlement Agreement as Exhibit B.

43. Defendant denies Plaintiff's claims and allegations and contends that the Action is

1 not suitable for class certification or manageable as a class or representative action.

2 44. The Class Representative believes she can proceed with her representative and class
3 claims, that the Action is meritorious, and that class certification is appropriate.

4 45. The Parties have conducted a thorough investigation into the facts of the Action.
5 This includes conducting an extensive exchange of informal discovery, including Defendant's
6 written policies and practices and confirmation regarding the uniform payroll and timekeeping
7 practices for Settlement Class Members. Class Counsel is both knowledgeable about and has done
8 extensive research with respect to the applicable law and potential defenses to the claims of the
9 Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members'
10 claims against Defendant. Based on the foregoing data and on their own independent investigation
11 and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
12 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
13 adequate and is in the best interest of the Class Members in light of all known facts and
14 circumstances, including the risk of significant delay and uncertainty associated with litigation,
15 various defenses asserted by Defendant, and numerous potential appellate issues.

16 46. On November 15, 2022, Plaintiff and Defendant participated in mediation before
17 David Phillips, Esq. a well-respected wage and hour mediator. The Action resolved at mediation
18 and, thereafter, the Parties continued to negotiate the terms embodied in this Settlement
19 Agreement.

20 47. The Parties agree that neither the Parties' settlement, this Settlement Agreement,
21 nor the acts to be performed or judgments to be entered pursuant to the terms of the settlement and
22 this Settlement Agreement, shall be construed as an admission by Defendant of any wrongdoing
23 or violation of any statute or law or liability on the claims or allegations in the Action.

24 48. Stipulation to Class Certification and Representative Treatment. For settlement
25 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
26 do not submit a timely Request for Exclusion from the Settlement Class may be conditionally
27 certified as a settlement class and that the Aggrieved Employees are appropriate for representative
28 treatment. Defendant's stipulation to certification and representative treatment for settlement

1 purposes only is not an admission that class action certification and/or representative treatment is
2 proper, not admissible in this or any other action except for the sole purpose of enforcing this
3 Settlement Agreement, and not deemed as a waiver to any additional defenses against class or
4 representative action treatment. Should, for whatever reason, the Court fail to issue either
5 Preliminary Approval or Final Approval, the Parties' stipulation to class certification and
6 representative treatment as part of the settlement shall become null and void *ab initio* and shall
7 have no bearing on and shall not be admissible in connection with the issue of whether or not
8 certification and/or representative treatment would be appropriate in a non-settlement context.
9 Defendant expressly reserves its rights and declares that Defendant would continue to oppose class
10 certification, representative treatment, and the substantive merits of the case should the Court
11 decline to issue Final Approval. Plaintiff expressly reserves her rights and declares that she will
12 continue to pursue class certification, representative treatment, and a trial should the Court decline
13 to issue Final Approval.

14 **C. Terms of Settlement**

15 49. The financial terms of the Settlement are as follows:

16 (a) Gross Settlement Amount: The Parties agree to settle this Action for Seven
17 Hundred Seventy-Five Thousand Dollars and Zero Cents (\$775,000.00) ("the Gross Settlement
18 Amount"). The Gross Settlement Amount is the maximum amount that will be paid, and includes
19 Individual Settlement Payments, Attorneys' Fees and Costs Award, the Service Payment to the
20 Class Representative, all Settlement Administration Costs, PAGA Penalties, and interest.
21 Defendant shall separately pay the employer's share of applicable payroll tax obligations due on
22 the wage portions of the Individual Settlement Payments, which shall be reported through the
23 Settlement Administrator.

24 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
25 Gross Settlement Amount less the court-approved Attorneys' Fees and Costs Award, the court-
26 approved Service Payment to the Class Representative, the court-approved Settlement
27 Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs
28 Award, Service Payment to the Class Representative, and/or Settlement Administration Costs,

1 and/or either increases or decreases the amount allocated to the PAGA Penalties, the Net
2 Settlement Amount shall be increased or decreased accordingly.

3 (c) Individual Settlement Payments: Individual Settlement Payments for the
4 Settlement Class will be calculated and apportioned from the Net Settlement Amount based on the
5 number of Weeks Worked by a Settlement Class Member during the Class Period. Each specific
6 Individual Settlement Payment will be calculated by: (a) dividing the Net Settlement Amount by
7 the total number of Weeks Worked by all Participating Class Members during the Class Period,
8 and (b) multiplying the result by each Participating Class Members' Weeks Worked. The entire
9 Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid
10 and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the
11 Individual Settlement Payment for each Participating Class Member according to the number of
12 Weeks Worked, so that the amount actually distributed to Participating Class Members equals one
13 hundred percent (100%) of the Net Settlement Amount.

14 (d) Allocation of Individual Settlement Payments: The Individual Settlement
15 Payments will be allocated based on the allegations in the Action as follows: one-third (1/3) will
16 be allocated as wages subject to withholding of all applicable local, state and federal taxes; and
17 the remaining two-thirds (2/3) will be allocated between interest and penalties (pursuant to, *e.g.*,
18 California Labor Code §§ 203, 210, 226, 2699) from which no taxes will be withheld. The
19 Settlement Administrator will issue to each Participating Class Member an Internal Revenue
20 Service Form W-2 and comparable state forms with respect to the wage allocation and a Form
21 1099 with respect to the penalties and interest allocations.

22 (e) Service Payment to Class Representative: The amount, if any, awarded to
23 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
24 exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), in exchange for the
25 services Plaintiff performed on behalf of the Class (including taking steps to support the
26 settlement) and for entering into the general and expansive release discussed hereinafter.
27 Defendant agrees not to oppose this Service Payment request if Plaintiff does not request exclusion
28 from the Settlement Class and does not take any action, directly or indirectly, to undercut this

1 settlement. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount.
2 The Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff
3 shall be solely and legally responsible to pay any and all applicable taxes on this Service Payment.
4 The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the
5 requested amount shall not be a basis for Class Counsel to void this Settlement Agreement or to
6 appeal this aspect of the Court's ruling. Should the Court approve a lesser amount for the Service
7 Payment, the difference shall be added to the Net Settlement Amount to be distributed to
8 Participating Class Members.

9 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a request
10 by Class Counsel to the Court for an award of attorneys' fees of not more than one-third (1/3) of
11 the Gross Settlement Amount (Two Hundred Fifty-Eight Thousand Three Hundred Thirty-Three
12 Dollars and Thirty-Three Cents (\$258,333.33)), plus reasonable litigation costs not to exceed
13 Twenty Thousand Dollars and Zero Cents (\$20,000.00) ("Attorneys' Fees and Cost Award"),
14 subject to Court approval. The Attorneys' Fees and Cost Award shall be paid from the Gross
15 Settlement Amount, and Defendant shall have no further obligation to pay any attorneys' fees,
16 costs, or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought
17 by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to
18 Participating Class Members. The Parties agree that any amount awarded as attorneys' fees and
19 costs to Class Counsel less than the requested amount shall not be a basis for Class Counsel to
20 rescind or otherwise void this Settlement Agreement. The Settlement Administrator shall issue to
21 Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by
22 the Court. Ten percent (10%) of the attorney fees awarded by the Court to be kept in the Settlement
23 Administrator's account until the completion of the distribution process and Court approval of a
24 final accounting.

25 (g) Settlement Administration Costs: The fees and other charges of the
26 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed Eight
27 Thousand Dollars and Zero Cents (\$8,000.00) unless approved by all Parties and the Court.

28 (h) PAGA Penalties: The Parties agree that Seventy-Five Thousand Dollars

1 and Zero Cents (\$75,000.00) is allocated to PAGA Penalties and is to be paid from the Gross
2 Settlement Amount, subject to the Court's approval. Seventy-five percent (75%) of the PAGA
3 Penalties (Fifty-Six Thousand Two Hundred and Fifty Dollars and Zero Cents (\$56,250.00)) shall
4 be paid to the LWDA in satisfaction of civil penalties under the Private Attorney General Act of
5 2004 ("PAGA") and twenty-five percent (25%) of the PAGA Penalties (Eighteen Thousand Seven
6 Hundred and Fifty Dollars and Zero Cents (\$18,750.00)) will be paid to the Aggrieved Employees
7 based upon the number of Pay Periods Worked by each Aggrieved Employee during the PAGA
8 Period, which will be treated entirely as civil penalties and reported as required on an IRS Form
9 1099. Class Counsel shall give proper notice to the LWDA of the settlement.

10 (i) Tax Liability: Class Counsel, Defendant, and Defendant's counsel make no
11 representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder,
12 and Plaintiff, Settlement Class Members, and Aggrieved Employees are not relying on any
13 statement or representation by Class Counsel, Defendant, or Defendant's counsel in this regard.
14 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they
15 will be solely responsible for the payment of any taxes and penalties assessed on their respective
16 Settlement Amounts described herein. The amount of federal income tax withholding will be
17 based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg.
18 § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made
19 pursuant to applicable state and/or local withholding codes or regulations. Forms W-2 and/or
20 Forms 1099 will be distributed at the times and in the manner required by the Internal Revenue
21 Code of 1986 (the "Code") and consistent with this Settlement Agreement. If the Code, the
22 regulations promulgated thereunder, or other applicable tax law, are changed after the date of this
23 Settlement Agreement, the processes set forth in this Section of this Settlement Agreement may
24 be modified in a manner to bring Defendant into compliance with any such changes. Plaintiff,
25 Participating Class Members, and Aggrieved Employees understand and agree that they will be
26 solely responsible for the payment of any taxes and penalties assessed on their respective payments
27 described herein and will hold Defendant harmless from and against any claims resulting from
28 treatment of such payments as non-taxable damages.

(j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS SETTLEMENT 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 ADVISERS, 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 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT 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 SETTLEMENT AGREEMENT.

50. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, shall not be utilized to calculate any additional

benefits under any benefit plans to which any Participating Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this settlement will not affect any rights, contributions, or amounts to which any Participating Class Members may be entitled under any benefit plans. The Parties agree that the amounts paid pursuant to this settlement are not for days or hours worked, and shall not be included toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

51. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Gross Settlement Amount revert to Defendant. Participating Class Members will not have to make a claim in order to receive an Individual Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments, will be made directly to each Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as a result of a Participating Class Member or Aggrieved Employee not cashing an Individual Settlement Payment by the check cashing deadline, as set forth herein.

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

D. Release by Plaintiff and the Participating Class Members

53. Upon entry of the Final Approval Order and Defendant's funding of the entire Gross Settlement Amount, and except as to such rights or claims as may be created by this Settlement Agreement, the Participating Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period. It is the intent of the Parties that the Final Approval Order and judgment entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon Participating Class Members regarding the Released Class Claims.

1 54. Each Participating Class Member will be deemed to have made the foregoing
2 Release as if by manually signing it.

3 55. Upon entry of the Final Approval Order and Defendant's funding of the entire
4 Gross Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA, and
5 on behalf of the State of California, will forever completely release and discharge the Released
6 Parties from the PAGA Released Claims for the PAGA Period. Moreover, Plaintiff releases any
7 individual portion of the PAGA Claims for the PAGA Period. It is the intent of the Parties that
8 the Final Approval Order and judgment entered by the Court shall have full equitable and collateral
9 estoppel and *res judicata* effect and be final and binding upon the LWDA/State of California
10 regarding the PAGA Released Claims.

11 56. The LWDA/State of California will be deemed to have made the foregoing Release
12 as if by manually signing it.

13 57. Plaintiff and Defendant intend that the settlement described in this Settlement
14 Agreement will release and preclude any further claim, whether by lawsuit, administrative claim
15 or action, arbitration, demand, or other action of any kind, by each and all of the Participating
16 Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the
17 Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph
18 only applies to Participating Class Members and, thus, does not apply to any Class Member who
19 timely and validly submits a Request for Exclusion.

20 58. Plaintiff and Defendant also intend that the settlement described in this Settlement
21 Agreement will release and preclude any further PAGA claim, whether by lawsuit, administrative
22 claim or action, arbitration, demand, or other PAGA action of any kind, by each and all of the
23 Aggrieved Employees to obtain a recovery based on, arising out of, and/or related to any and all
24 of the PAGA Released Claims. The Aggrieved Employees shall be so notified in the Notice and
25 Class Counsel shall provide appropriate notice to the LWDA of this Settlement Agreement prior
26 to the filing of the Motion for Preliminary Approval. Aggrieved Employees shall receive their
27 portion of the PAGA Settlement and shall be deemed to have released the PAGA Claims even if
28 they opt out of the Class Settlement.

1 59. Class Representative, on behalf of herself and the Participating Class Members,
2 acknowledges and agrees that the claims, including claims for unpaid wages and untimely payment
3 of wages are disputed, and that the payments set forth herein constitute payment of all sums
4 allegedly due to them. Class Representative, on behalf of herself and the Participating Class
5 Members, acknowledges and agrees that California Labor Code § 206.5 is not applicable to the
6 Parties hereto. California Labor Code § 206.5 provides in pertinent part as follows:

7 An employer shall not require the execution of any release of any claim or
8 right on account of wages due, or to become due, or made as an advance on
9 wages to be earned, unless payment of those wages has been made.

10 **E. Release by Class Representative**

11 60. As a material inducement to Defendant to enter into this Settlement Agreement and
12 in consideration of the Service Payment, and in addition to the Class Representative's release of
13 the Released Class Claims and PAGA Released Claims (including any individual PAGA Claims),
14 Class Representative does hereby, for herself and for her respective spouses, domestic partners,
15 marital community, children, estates, attorneys, heirs, successors, beneficiaries, devisees, legatees,
16 executors, administrators, trustees, conservators, guardians, personal representatives, and assigns
17 forever and completely release and discharge and covenants not to sue the Released Parties with
18 respect to any and all claims, demands, liens, agreements, contracts, covenants, actions, suits,
19 causes of action, wages, obligations, debts, liquidated damages, penalties, interest, costs, expenses,
20 attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity
21 or otherwise, whether now known or unknown, suspected or unsuspected, concealed or hidden,
22 which Plaintiff now owns or holds or has at any time heretofore owned or held as against said
23 Released Parties, or any of them. Such released claims include specifically, but not exclusively
24 and without limiting the generality of the foregoing, any and all claims, demands, agreements,
25 obligations and causes of action, known or unknown, suspected or unsuspected, concealed or
26 hidden, including but not limited to all claims arising out of, based upon, or relating to Class
27 Representative's employment with Defendant or the remuneration for or termination of such
28 employment, as alleged in the operative Complaint, arising out of or in any way connected with

1 any transactions, occurrences, acts or omissions set forth, or facts alleged, in any and all charges,
2 complaints, claims or pleadings filed by Class Representative against any Released Party prior to
3 the date hereof with any city, county, state or federal agency, commission, office or tribunal
4 whatsoever; or arising out of or in any way connected with any transactions, occurrences, acts or
5 omissions occurring prior to the date hereof, including specifically without limiting the generality
6 of the foregoing any claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination
7 in Employment Act (29 U.S.C. Section 621 *et seq.*), the Americans with Disabilities Act, the
8 Employee Retirement Income Security Act, the National Labor Relations Act, the Fair Labor
9 Standards Act, the Family and Medical Leave Act, the California Constitution, the California
10 Labor Code, the California Civil Code, the California Government Code, the California Business
11 & Professions Code, the California Family Rights Act, the California Fair Employment and
12 Housing Act, the California Industrial Welfare Commission Wage Orders, or any other federal,
13 state, or local statute or regulation (collectively, the "Class Representative's Claims").

14 61. Class Representative agrees that there is a risk that any injury that she may have
15 suffered by reason of the Released Parties' relationship with her might not now be known, and
16 there is a further risk that said injuries, whether known or unknown at the date of this Settlement
17 Agreement, might possibly become progressively worse, and that as a result thereof further
18 damages may be sustained. Nevertheless, Class Representative agrees to forever and fully release
19 and discharge the Released Parties, and understands that by the execution of this Settlement
20 Agreement no further claims for any such injuries that existed at the time of the execution of this
21 Settlement Agreement may ever be asserted by Class Representative with respect to claims arising
22 in the time period from the beginning of time to the execution of this Settlement Agreement.

23 62. Class Representative expressly waives and relinquishes all rights and benefits
24 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
25 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
26 of the State of California states:
27
28

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

8 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
9 full and complete release and discharge of all parties, Class Representative and Class Counsel
10 expressly acknowledge that this Settlement Agreement is intended to include in its effect, without
11 limitation, all claims that Class Representative knew of, as well as all claims that she does not
12 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
13 period from the beginning of time to the execution of this Settlement Agreement, and that this
14 Settlement Agreement contemplates the extinguishment of any such Class Representative's
15 claims. Notwithstanding the above, the general release by Class Representative shall not extend
16 to claims for workers' compensation benefits (including but not limited to the pending claims
17 alleged by Plaintiff against Defendant and Liberty Mutual in Workers Comp Case No.
18 ADJ15748395), claims for unemployment benefits, or other claims that may not be released by
19 law.

20 63. Class Representative represents and warrants that, other than Workers Comp Case
21 No. ADJ15748395, she has not filed and will not file any other lawsuit, administrative claim or
22 action, arbitration, demand, or other action of any kind against Defendant or the Released Parties.
23 Class Representative represents and warrants that, other than Workers Comp Case No.
24 ADJ15748395, the only pending claims against Defendant or the Released Parties are included in
25 this Action. However, the Parties agree that nothing in this paragraph shall prevent or prohibit
26 Plaintiff from filing any other lawsuit, administrative claim or action, arbitration, demand, or other
27 action of any kind against Defendant or the Released Parties for workers' compensation benefits,
28 claims for unemployment benefits, or other claims that may not be released by law.

F. Interim Stay of Proceedings

64. Pending completion of all of the prerequisites necessary to effectuate this

1 Settlement, the Parties agree, subject to Court's approval, to a stay of all proceedings in the Action
2 except such as are necessary to effectuate this settlement.

3 **G. Notice Process**

4 65. Appointment of Settlement Administrator. The Parties have agreed to the
5 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
6 including mailing the Notice, using standard devices to obtain forwarding addresses,
7 independently reviewing and verifying documentation associated with any claims or opt-out
8 requests, resolving any disputes regarding the calculation or application of the formula for
9 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
10 Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms,
11 performing unclaimed funds due diligence, reporting and performing remittance obligations, and
12 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
13 orders.

14 66. Disputes Regarding Settlement Administration. Any and all disputes relating to
15 administration of this settlement by the Settlement Administrator (except for disputes regarding
16 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
17 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
18 the Court that all payments and obligations contemplated by this Settlement Agreement have been
19 fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in
20 good faith to resolve the dispute without the necessity of Court intervention. The Settlement
21 Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members,
22 Aggrieved Employees, and Class Counsel any W-2, 1099, or other tax forms as may be required
23 by law for all amounts paid pursuant to this Settlement Agreement. The Settlement Administrator
24 shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes
25 and penalties to the appropriate government authorities.

26 67. Class Data. Within fourteen (14) calendar days after entry of the Preliminary
27 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
28 Settlement Administrator will run a check of the Class Members' addresses against those on file

1 with the U.S. Postal Service's National Change of Address Database. The Class Data provided
2 to the Settlement Administrator will remain confidential, shall be used solely to administer the
3 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
4 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
5 order of the Court. Although Class Counsel will not be provided with the list of Class Data,
6 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
7 the Action and settlement.

8 68. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
9 Administrator to the Settlement Class Members, by first class mail, in English, within ten (10)
10 calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement
11 Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of
12 Settlement Class Members if any envelopes are returned.

13 69. Returned Notices of Settlement. The Settlement Administrator will take steps to
14 ensure that the Notice is received by all Settlement Class Members, including utilization of the
15 National Change of Address Database maintained by the United States Postal Service to review
16 the accuracy of and, if possible, update a mailing address. Notices of Settlement will be re-mailed
17 to any Settlement Class Member for whom an updated address is located within ten (10) calendar
18 days following both the Settlement Administrator learning of the failed mailing and its receipt of
19 the updated address. The re-mailed Notice shall be identical to the original Notice, except that it
20 shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be
21 returned by the later of the Notice Response Deadline or fifteen (15) calendar days after the
22 remailing of the Notice.

23 70. Disputes Regarding Information on Notices of Settlement. Class Members are
24 deemed to participate in the Settlement, unless they timely opt-out, and Aggrieved Employees may
25 not opt-out of the PAGA Released Claims. The Notice will inform Class Members of his/her
26 estimated Individual Settlement Payment and the number of Weeks Worked during the Class
27 Period and Pay Periods Worked during the PAGA Period. Class Members may dispute their
28 Weeks Worked and/or Pay Periods Worked if they feel they should be credited with more than

1 represented on the Notice by timely submitting evidence to the Settlement Administrator.
2 Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's
3 records, but the Settlement Administrator will evaluate the evidence submitted by the Class
4 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
5 meet and confer in good faith about the evidence to determine the Class Member's actual number
6 of Weeks Worked and estimated Individual Settlement Payment. If Class Counsel and Defense
7 Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to
8 render a final decision. Class Members will have until the Notice Response Deadline to dispute
9 Weeks Worked and/or Pay Periods Worked, object or opt-out, unless extended by the Court. In
10 the event that the Settlement Administrator increases the number of Weeks Worked and/or Pay
11 Periods Worked for any Settlement Class Member, then the Settlement Administrator will
12 recalculate the Participating Class Members' Individual Settlement Payments; accordingly, in no
13 event will Defendant be required to increase the Gross Settlement Amount.

14 71. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
15 for the Parties, at least twenty-five (25) calendar days prior to the Final Approval Hearing, a
16 declaration of due diligence and proof of mailing with regard to the mailing of the Notices of
17 Settlement.

18 72. Settlement Class Members' Rights. Each Settlement Class Member will be fully
19 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
20 Released Class Claims, and the ability to opt-out or request exclusion from the Settlement with
21 respect to the Released Class Claims. The Notice will inform the Settlement Class Members of
22 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
23 with respect to the Released Class Claims in accordance with the following guidelines:

24 (a) Requests for Exclusion from Participating in the Settlement Class. Any
25 Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement
26 Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or
27 before the Notice Response Deadline. The Request for Exclusion should state:
28

1 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT
2 CLASS IN THE DELPHON INDUSTRIES LAWSUIT. I
3 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
4 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
5 MONEY FROM THE CLASS ACTION PORTION OF THIS
6 LAWSUIT.”

7 To be valid, any Request for Exclusion must include the full name, address, telephone
8 number, last four digits of the social security number or date of birth, and signature of the
9 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
10 mail to the Settlement Administrator at the specified address set forth in the Notice. Any such
11 Request must be made in accordance with the terms set forth in the Notice. A Request for
12 Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties
13 otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in
14 compliance with these requirements: (i) will not have any rights under this Settlement Agreement
15 with respect to the Released Class Claims, including the right to object, appeal, or comment on the
16 Settlement; (ii) will not be entitled to receive any payments under this Settlement Agreement for
17 the Released Class Claims; and (iii) will not be bound by this Settlement Agreement, or the
18 judgment, with respect to the Released Class Claims. Any Aggrieved Employee who requests
19 timely exclusion will still be subject to the PAGA Released Claims to the fullest extent permitted
20 by law and shall be sent his or her share of PAGA Penalties.

21 (b) Binding Effect on Participating Class Members. Except for those
22 Settlement Class Members who exclude themselves in compliance with the procedures set forth
23 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
24 all purposes under this Settlement Agreement; (ii) will be bound by the terms and conditions of
25 this Settlement Agreement, the Judgment, and the releases set forth herein; and (iii) except as
26 otherwise provided herein, will be deemed to have waived all objections and oppositions to the
27 fairness, reasonableness, and adequacy of the Settlement.

28 (c) Objections to Settlement of the Released Class Claims. Any Settlement

1 Class Member, other than Plaintiff, may object to the terms of this Settlement Agreement, except
2 as to the PAGA Released Claims. To object, a Settlement Class Member shall inform the
3 Settlement Administrator, in writing, of his or her objection which must be postmarked by the
4 Notice Response Deadline at the address set forth in the Notice. Such objection shall include the
5 objecting Settlement Class Member's full name, address, telephone number, last four digits of the
6 social security number or date of birth, signature, and dates of employment with Defendant, in
7 addition to the case name and number, the basis for the objection, including any legal support and
8 each specific reason in support of the objection, as well as any documentation or evidence in
9 support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the
10 name and address of his or her counsel. The Settlement Administrator shall provide objections, if
11 any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the
12 Settlement Administrator shall attach the same to its declaration of due diligence and file with the
13 Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection
14 remains eligible to receive monetary compensation from the settlement. Plaintiff and Defendant
15 shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his
16 or her counsel related to any objections to the settlement. Submitting an objection does not
17 preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming
18 a party of record by timely and properly intervening or filing a motion to vacate the judgment
19 under California Code of Civil Procedure § 663. Settlement Class Members and Aggrieved
20 Employees may not object to or opt-out of the Settlement with respect to the PAGA Released
21 Claims.

22 (d) Failure to Object. Any Settlement Class Member who desires to object to
23 the Released Class Claims in the Settlement but fails to timely submit a written objection or in
24 person objection at the Final Approval Hearing waives any right to object and will be foreclosed
25 from making any objection to this Settlement. Any Settlement Class Member who does not timely
26 and properly become a party of record by intervening or filing a motion to vacate the judgment
27 waives any and all rights to appeal from the Judgment, including all rights to any post-judgment
28 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a

1 motion under California Code of Civil Procedure § 473, and extraordinary writs.

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

5 (f) Settlement Class Members will have until the Notice Response Deadline to
6 object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
7 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
8 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
9 request of Class Counsel or Defense Counsel.

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

20 73. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
21 the QSF of the Gross Settlement Amount, plus the employer's share of payroll taxes, no later than
22 fifteen (15) calendar days after the Effective Date. Once Defendant has complied with their
23 obligation set forth in this paragraph, it shall be deemed to have satisfied all of the terms and
24 conditions of this Settlement Agreement, shall be entitled to all the protections afforded it under
25 this Settlement Agreement, and shall have no further obligations under this Settlement Agreement,
26 regardless of what occurs with respect to the further administration of the Settlement. The
27 Settlement Administrator (and not Defendant) shall issue the applicable W-2s and IRS Form 1099
28 reflecting all payments to the Class Members.

1 74. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
2 payment into the QSF, the Settlement Administrator will mail the Individual Settlement Payments
3 to the Participating Class Members, the payment to Class Counsel for the Attorneys' Fees and
4 Costs Award, any Service Payment to the Class Representative, the payment to the LWDA for
5 PAGA Penalties, the payments to Aggrieved Employees for PAGA Penalties, and will pay itself
6 the Settlement Administration Costs.

7 75. Deadline for Cashing Settlement Checks. Participating Class Members and
8 Aggrieved Employees shall have one hundred eighty (180) calendar days after mailing by the
9 Settlement Administrator to cash each settlement check. If any Participating Class Member's or
10 Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-
11 payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the
12 following cy pres in accordance with CCP section 384: Public Justice (publicjustice.net). Neither
13 party nor their counsel have an interest or affiliation with this cy pres entity. The release will be
14 binding upon all Participating Class Members and Aggrieved Employees who do not cash their
15 checks within the one hundred eighty (180) calendar days period. In the event that any settlement
16 check is returned to the Settlement Administrator within one hundred eighty (180) calendar days
17 of mailing, the Settlement Administrator will, within five (5) business days of receipt of the
18 returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel
19 and Class Counsel of the results. If a new address is located by these means, the Administrator
20 will have ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class
21 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
22 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
23 settlement checks. Without limiting the foregoing, in the event a Participating Class Member or
24 Aggrieved Employee notifies the Settlement Administrator that he or she believes that a settlement
25 check has been lost or stolen, the Settlement Administrator shall immediately stop payment on
26 such check. If the check in question has not been negotiated prior to the stop payment order, the
27 Settlement Administrator will issue a replacement check.

28 76. No person shall have any claim against Defendant or the Released Parties,

1 Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings,
2 distributions, payments or reports made in accordance with or pursuant to this Settlement
3 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
4 Settlement Agreement.

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

10 **H. Duties of the Parties Prior to the Court's Approval**

11 78. Promptly after execution of this Settlement Agreement, Plaintiff will move the
12 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
13 accomplishing the following:

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

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

18 (c) Directing the mailing of the Notice by first class mail to the Settlement Class
19 Members and Aggrieved Employees;

20 (d) Preliminarily approving this Settlement; and

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

22 79. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
23 hearing, to approve this Settlement Agreement because the amount of the PAGA Penalties is not
24 adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds,
25 within this Settlement Agreement, in order to try to achieve Final Approval of this Settlement
26 Agreement upon any subsequent Court hearings.

27 **I. Duties of the Parties Following Court's Final Approval**

28 80. In connection with the Final Approval Hearing provided for in this Settlement

Agreement, Class Counsel shall submit a proposed Final Approval Order:

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

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

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

81. Final Judgment. The Settlement Administrator shall give the Participating Class Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter that will be included with the Individual Settlement Payments.

J. Voiding this Settlement Agreement

82. All Parties, signatories, and their counsel shall not encourage opt-outs or objections to this Settlement Agreement. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means.

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

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

K. Other Terms

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

86. Full and Complete Defense. This Settlement Agreement may be pleaded by any

Released Party as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released Class Claim or PAGA Released Claim.

87. Injunction Against Duplicative Claims. Upon Preliminary Approval of the Settlement Agreement, all Settlement Class Members who do not opt out of the Settlement Class shall be enjoined from filing, joining, or becoming a party, member or representative in any actions, claims, complaints, or proceedings in any state or federal court on an individual, representative, collective or class action basis, or with the California Department of Industrial Relations' Division of Labor Standards Enforcement ("DLSE") or the United States Department of Labor ("DOL"), or from initiating any other proceedings, regarding any of the Released Claims. Any related pending actions, claims, complaints, or proceedings in any state or federal court or with the DLSE or DOL, shall be stayed until the Settlement Class Members have had an opportunity to decide to participate, object or file a Request for Exclusion from this settlement. In addition, upon Preliminary Approval of the Settlement Agreement, all Settlement Class Members (regardless of whether they opt-out) shall be enjoined from filing, joining, or becoming a party, member or representative in any actions, claims, complaints, or proceedings in any state or federal court on an individual, representative, collective or class action basis, or with the California Department of Industrial Relations' Division of Labor Standards Enforcement ("DLSE") or the United States Department of Labor ("DOL"), or from initiating any other proceedings, regarding any of the Release defined hereinabove to the extent such actions, claims, complaints, or proceedings are based on the PAGA Released Claims released via this Settlement Agreement.

88. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof. The signatories hereto further represent that the Parties to this Settlement Agreement are represented by competent counsel, and they have had an opportunity to consult with counsel prior to authorizing its execution.

89. No Publicity. The Parties will not publicize the settlement or disclose it to third

1 parties, except as required or necessary to effectuate its terms and comply with law, including the
2 payment of taxes. Specifically, Plaintiff and Plaintiff's counsel shall not publicize the settlement
3 on their websites, in advertising/marketing materials or on social media. The Parties and their
4 counsel agree that they will not issue any press releases or initiate any contact with the media about
5 the fact, amount, or terms of the settlement. If counsel for any party receives an inquiry about the
6 settlement from the media, counsel may respond only after the motion for preliminary approval of
7 the settlement has been filed and only by confirming the accurate terms of the settlement. Nothing
8 in this provision shall prevent Defendant from making any required disclosure.

9 90. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
10 accomplish the terms of this Settlement Agreement, including but not limited to, execution of such
11 documents and to take such other action as may reasonably be necessary to implement the terms
12 of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts,
13 including all efforts contemplated by this Settlement Agreement and any other efforts that may
14 become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and
15 the terms set forth herein. As soon as practicable after execution of this Settlement Agreement,
16 Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel,
17 take all necessary steps to secure the Court's preliminary and final approval of the settlement, and
18 the final entry of judgment. Class Counsel shall provide Defendant's Counsel with copies of the
19 Preliminary Approval Motion and Final Approval Motion for review at least five (5) court days
20 prior to the filing deadline.

21 91. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
22 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
23 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
24 cause of action or rights released and discharged by this Settlement Agreement.

25 92. No Admission. Defendant denies any and all liability to Plaintiff, any Settlement
26 Class Member, and/or any Aggrieved Employee in this Action, as to any and all causes of action
27 that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes
28 to settle and compromise the matters at issue in the Complaint to avoid further substantial expense

1 and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has
2 taken into account the uncertainty and risks inherent in litigation, and without conceding any
3 infirmity in the defenses that they have asserted or could assert against Plaintiff, has determined
4 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms
5 and conditions set forth in this Settlement Agreement.

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

19 94. Notices. Unless otherwise specifically provided herein, all notices, demands, or
20 other communications pursuant to this Settlement Agreement shall be in writing and shall be
21 deemed to have been duly given as of the third business day after mailing by United States
22 registered or certified mail, return receipt requested, addressed:

23 To the Settlement Class Members and Aggrieved Employees:

24 Brian Mankin
25 *brian@LMLfirm.com*
26 Lauby Mankin Lauby LLP
27 5198 Arlington Avenue, PMB 513
28 Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

Gregory G. Iskander
giskander@littler.com
Daniel XuLi
dxuli@littler.com
Littler Mendelson, P.C.
Treat Towers
1255 Treat Boulevard, Suite 600
Walnut Creek, California 94597
Tel: 925.932.2468 | Fax: 925.946.9809

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

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

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

98. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this Settlement Agreement to resolve any dispute they are unable to resolve informally. During this

1 period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to
2 any legal action or other proceeding instituted by any person or entity other than Plaintiff or
3 Defendant.

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

9 100. Enforceability. Pursuant to California Evidence Code §§ 1123(a) and (b), the
10 Parties intend that this Settlement Agreement shall be enforceable, binding, and admissible in a
11 court of law.

12 101. Choice of Law. This Settlement Agreement shall be governed by and construed,
13 enforced and administered in accordance with the laws of the State of California.

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

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

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

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

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

Dated: March 29, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:


Astrid Orozco (Mar 29, 2023 18:15 PDT)

Astrid Orozco

Dated: March 30, 2023

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP


Brian J. Mankin
Attorneys for Plaintiff

Dated: March ___, 2023

DEFENDANT:
DELPHON INDUSTRIES, LLC

By: _____
Title: _____

Dated: March ___, 2023

DEFENDANT'S COUNSEL:
LITTLER MENDELSON, P.C.

Gregory G. Iskander
Attorneys for Defendant

END OF DOCUMENT

1 105. Invalidity of Any Provision. Before declaring any provision of this Settlement
2 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
3 extent possible consistent with applicable precedents so as to define all provisions of this
4 Settlement Agreement valid and enforceable.

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

10 Dated: March ___, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

11
12 _____
Astrid Orozco

13 Dated: March ___, 2023

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

14
15 _____
16 Brian J. Mankin
17 Attorneys for Plaintiff

18 Dated: March 29, 2023

DEFENDANT:
DELPHON INDUSTRIES, LLC

19
20
21 

22 By: John E. McClain
23 Title: Director, Human Resources

24 Dated: March 30, 2023

DEFENDANT'S COUNSEL:
LITTLER MENDELSON, P.C.

25
26 
27 _____
28 Gregory G. Iskander
Attorneys for Defendant

END OF DOCUMENT

EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00490 Orozco v Delphon
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Astrid Orozco</u>									
<u>14000-00490 Orozco v Delphon</u>									
02-04-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	75.00	0.00	1.00	75.00
LWDA Order Number: ORD-000151076 to submit PAGA letter Case Number: LWDA-CM-866523-22									
02-07-2022	Approved		Non-Billable	E101 Copying	Grossi, Tracie L.	0.20	0.00	28.00	5.60
28 copies @ \$0.20 for LWDA and letters to employer									
02-08-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	1,496.84	0.00	1.00	1,496.84
One Legal Order #17641544 to file complaint									
02-14-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	19.51	0.00	1.00	19.51
One Legal Order #17682384 to file POS									
02-14-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	161.85	0.00	1.00	161.85
Bosco Inv 6663576 Serve: Delphon Industries, LLC, a Delaware Limited Liability Company Summons; Complaint; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum; Notice of Case Management Conference; ADR Court: Alameda County Superior Court - Hall of Justice Hayward									
02-14-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	161.85	0.00	1.00	161.85
Bosco Inv 6663576 Serve: Delphon Industries, LLC, a Delaware Limited Liability Company Summons; Complaint; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum; Notice of Case Management Conference; ADR Court: Alameda County Superior Court - Hall of Justice Hayward									
03-11-2022	Approved		Non-Billable	E108 Postage	Aguilera, Monica A	8.66	0.00	1.00	8.66
February 2022 Postage									
04-14-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	20.02	0.00	1.00	20.02
OneLegal Order#18040875 - file FAC									
05-20-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	20.02	0.00	1.00	20.02
OneLegal Order# 18248072 - file CMS									
07-25-2022	Approved		Non-Billable	E125 Mediation fees	Chiarito, Tracie	7,450.00	0.00	1.00	7,450.00
Signature Resolution Inv #35652 for 11/15/22 mediation w David Phillips, Esq.									
08-01-2022	Approved		Non-Billable	E101 Copying	Chiarito, Tracie	0.20	0.00	4.00	0.80
4 copies @ .20 - Nltc of Change of Address									

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
 Group By Staff Member Group
 Client - Project = 14000-00490 Orozco v Delphon
 (Active Only)
 Activity Code = All
 Expense Code = All
 View = Original
 Approval Status = All
 Selected Expenses = All
 From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Astrid Orozco</u>									
<u>14000-00490 Orozco v Delphon</u>									
08-03-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	20.02	0.00	1.00	20.02
OneLegal Order #18672413 - File Ntc of Change of Address									
09-21-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	40.61	0.00	1.00	40.61
OneLegal Order #18957968 - File Stip and Order to Cont CMC									
12-01-2022	Approved		Non-Billable	E119 Experts	Chiarito, Tracie	3,975.00	0.00	1.00	3,975.00
Berger Consulting Group Inv #7129									
12-27-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	20.02	0.00	1.00	20.02
OneLegal Order #19532437 - file Notice of Settlement									
01-17-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	81.79	0.00	1.00	81.79
OneLegal Order #19645242 - file Motion for Preliminary Approval									
04-04-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	20.49	0.00	1.00	20.49
OneLegal Order #20145136 - file supplemental PA docs									
05-11-2023	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	1.00	0.00	1.00	1.00
Fee to reserve MFA date									
05-16-2023	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	3.00	0.00	1.00	3.00
Alameda Superior Court fees for copy of minute order re MPA									
05-22-2023	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	9.50	0.00	1.00	9.50
Receipt for Alameda Superior Court for copy of signed PA order									
06-01-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	41.08	0.00	1.00	41.08
OneLegal Order #20525798 - file Stip and Order to Amend PA Order									
08-23-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	200.00	0.00	1.00	200.00
Estimated costs to file MFA and supporting documents via OneLegal									
Project Total						13,832.66			
Client Total						13,832.66			
Grand Total						13,832.66			

EXHIBIT “C”