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Attorneys for Plaintiff JALEEN ROBERTS, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JALEEN ROBERTS, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff,

v.

ENCONTRO NORTH PARK, LLC, a California Limited Liability Company; and DOES 1-10, inclusive

Defendants

CASE NO. 37-2022-00030477-CU-OE-CTL

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF GOOD
FAITH DETERMINATION OF CLASS
ACTION SETTLEMENT**

Date: August 4, 2023
Time: 1:30 p.m.
Judge: Hon. Timothy Taylor
Dept.: C-67

1 I, Eric K. Yaeckel, hereby declare as follows:

2 1. I am an attorney licensed to practice law before this Court and am employed with the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for JALEEN ROBERTS, in a
4 Representative capacity only, and on behalf of other members of the general public similarly
5 situated in the above-captioned matter. I make this declaration in support of Plaintiff's Notice
6 of *Unopposed* Motion for Conditional Certification of Settlement Class and Preliminary
7 Approval of Good Faith Determination of Class Action Settlement.

8 2. I am personally familiar with the facts set forth in this declaration, and if called to testify as a
9 witness I could and would do so.

10 **Background and Investigation**

11 3. On August 2, 2022, Plaintiff Roberts filed the Complaint in this matter. The original Complaint
12 alleged class action claims, under the California Labor code involving, inter alia, (1) failure
13 to pay minimum wages; (2) failure to pay off-the-clock wages; (3) failure to pay proper
14 overtime compensation; (4) failure to provide meal breaks; (5) failure to provide rest breaks;
15 (6) failure to reimburse employees for necessary business expenses; (7) failure to provide
16 accurate itemized wage statements; and (8) failure to pay all wages to upon termination.

17 4. On August 25, 2022, Plaintiff propounded discovery requests on Defendant, including requests
18 for admission, special interrogatories, requests for production of documents, and general and
19 employment form interrogatories. Through these requests, Plaintiff sought, among other
20 information and documents, the identities of putative class members, Defendant's
21 compensation policies, meal and rest period policies, employee handbooks, wage statements,
22 payroll records, time records, job descriptions, and reimbursement policies.

23 5. Defendant provided discovery responses, documents, and objections to Plaintiff's requests.
24 After a lengthy meet and confer processes (including motions filed by both Parties), Defendant
25 produced, *inter alia*, Plaintiff's time and wage records, copies of the relevant employee
26 handbooks, copies of all other relevant employee policies, the contents of Plaintiff's employee
27 file, Plaintiff's time records, and itemized wage statements. Defendant also propounded several
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1 sets of written discovery on Plaintiff. In total it appears there were at least 7 sets of written
2 discovery exchanged between the parties.

3 6. Defendant through its counsel, reached out early during the course of the litigation to attempt
4 to explore early resolution of this matter. As part of the settlement discussions, Defendant
5 agreed to voluntarily produce and verify hundreds of pages of documents. The production
6 included all relevant policies and procedures. It also included large electronic sampling of other
7 class members' time and wage data.

8 7. Plaintiff also requested Defendant provide additional informal discovery so that the parties
9 could experience a meaningful mediation. Defendant provided informal discovery which
10 consisted of, *inter alia*, the number of current and former employees who worked for
11 Defendant during the limitations period, meal and rest period premiums paid, pay periods at
12 issue, a redacted sampling of employee time records and wage statements, as well as
13 confirmation that various policies and agreements were standard as to the class.

14 8. On May 10, 2023, the Parties attended a full day mediation before the experienced "wage and
15 hour" mediator, Michael Roberts. Prior to, and during, the mediation, counsel for both parties
16 agreed to the informal exchange of information pertinent to a class-wide settlement. Prior to
17 mediation both parties prepared and exchanged detailed mediation briefs. Plaintiff's brief
18 contained a breakdown of potential damages based on all of the information obtained.
19 Defendant's brief outlined its defenses to both class certification and liability. At the conclusion
20 of mediation, the parties agreed on the key terms of a settlement that would globally resolve
21 all class and representative wage and hour claims asserted in the operative Complaint in this
22 Action. As of June 14, 2023, the parties agreed on all final terms of the settlement which was
23 memorialized in the Agreement. A true and correct copy of the Joint Stipulation of Settlement
24 (the "Agreement") is attached as **Exhibit A**.

25 **Terms of the Agreement**

26 9. The parties agreed to use CAC Services, LLC, as the "Settlement Administrator" for purposes
27 of providing the Notice to Settlement Class Members, issuing payments pursuant to the
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Agreement, and to administer the claims. CAC's sole business has been the administration of class action settlements and class action notices, an area in which it has extensive experience.

10. Class Members will be entitled to an average share of approximately **\$116.25**. I calculated this number by taking the total settlement amount, subtracting all contingent costs as proposed on page one of the memorandum, and dividing by the estimate of 400 Class Members. The estimate of 400 Class Members is based on Defendant's employment records. The average share of the Settlement is an estimate only as the actual share will depend on the amount of pay periods they were employed during the limitations period.

11. A true and correct copy of the parties agreed upon Class Notice is attached as **Exhibit B**.

12. The class representative enhancement awards were decided pursuant to good faith negotiations and is intended to recognize that it was the class representatives who initiated the lawsuit, initiated the PAGA claims, provided critical documents and witnesses to her attorneys, and worked with her attorney to propound and prepare written discovery, all in an effort to obtain moneys allegedly owed not only to herself, but to hundreds of other employees.

Claims Analysis and Potential Recovery

13. Our office submits this settlement provides class members with a guaranteed recovery of a large portion of their "potential" damages as set forth below. As set forth above, the "average" recovery (before taxes) will be approximately **\$116.25** per class member.

14. Based on the damage calculations and relevant case law below, my office submits the likely "best case" recovery for an average class member would have been approximately \$796.83. A "worst case" scenario (in the event of a denial of class certification or a defense verdict) would have been a **zero dollar** recovery.

15. As part of our analysis I also have to consider the fact that Defendant was willing to stipulate to class certification on all claims as a result of the settlement, ensuring a monetary recovery to all participating class members. Accordingly, I believe that warrants a further reduction from any potential maximum recovery.

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1 **Damage Calculations**

- 2 16. The following estimated damage calculations were completed after review of the sampling of
3 class member time and wage records, and after interviews with Plaintiff, and other class
4 members. The breakdown of the damage and penalties calculation is as follows:

5 **Unpaid Compensation Violations: \$23.25** (average Overtime Rate) **x 30** (number of
6 employee positions) **x 4.0** (years at issue in limitations period) **x 17.5** (approximate unpaid
7 hours per year) = **\$48,825.00**

8 **Meal and Rest Period Policy Violations: \$15.50** (average Hourly Rate) **x 30** (number of
9 employee positions) **x 4.0** (years at issue in limitations period) **x 150** (approximate meal and
10 rest period violations per employee in a year) = **\$279,000.00**

11 **Labor Code §2802 Penalties: 400** (total number of employees) **x \$10** (estimated average
12 amount of reimbursement due per employee) = **\$40,000.00.**

13 **Labor Code § 226 Penalties: 3,300** (total number of pay periods within the Statute of
14 Limitations) **x \$50** (per violation) **x 60%** (approximate rate of violations per pay period) =
15 **\$99,000.00.**

16 **Labor Code § 203 Penalties: \$15.50** (average hourly rate) **x 6.0** (hours, per day) **x 30** (days,
17 per Labor Code section 203) **x 400** (number of former employees) = **\$1,116,000.00.**

18 **“PAGA” Violations: 6** (separate Labor Code violations based on the above claims) **x 30**
19 (number of employee positions) **x \$50** (per violation) **x 36** (pay periods in one year limitations
20 period) = **\$324,000.00.** The aggrieved employees are only entitled to s 25% share of this
21 amount, which is **\$81,000.00.**

- 22 17. Based on the above, a best case recovery (which would be admittedly highly unlikely, given
23 the factors set forth below) would be a total judgment of \$1,663,825.00.

24 **Relevant Case Law Supports a Further Reduction on any Recovery**

- 25 18. It is my opinion that it would be *highly* unlikely to ever be awarded any amount approaching
26 the maximum damages set forth above. To wit, the majority of the damages above are
27 “derivative” penalties under PAGA, Labor Code § 203 and Labor Code § 226.
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19. Please see the analysis of the relevant case law cited in the memorandum (pp. 10-11) which allows significant mitigation of PAGA penalties, which prohibits stacking of multiple penalties for the same underlying conduct and declines to automatically award §§ 203 and 226 penalties for meal and rest break violations without a further evidentiary showing.
20. Our office believes a mitigation of the damages and potential PAGA penalties would be warranted here. Defendant immediately stepped up to discuss early resolution. Defendant also committed to make changes to the challenged timekeeping and meal and rest period policies after receiving notice of this lawsuit. Also, as in the *Carrington* case (which was handled by this office), there is evidence that Defendant attempted to provide meal and rest periods *in practice*, even where the breaks were missed. Given this, it is likely that any violations by Defendant were not “willful.” Finally, given the defenses raised by Defendant to maintaining this matter as a class or representative action, there was a significant risk that many of the claims would not have even been able to survive to a trial.
21. As to the ex-employee claim pursuant to Labor Code § 203, the parties agree the failure to pay “ex-employees” claim is derivative of the other claims. As Defendant was able to assert a “good faith dispute” for withholding any unpaid wages, it would be difficult to establish any liability for a “willful” failure to pay wages owed.
22. Given my experience, I believe it would be likely that PAGA penalties would be reduced to approximately \$5 a violation, and the Court would decline to impose Labor Code § 2802 and Labor Code § 226 penalties.
23. If this happened, the realistic anticipated “best case” judgment following trial would be approximately \$368,905.00. Discounting 40% for contingent costs (fees and costs award, enhancement bonus, administration, etc.), the average class member’s share of this recovery would be **\$553.59** (\$221,343.00 divided by 400 class members). Given our office’s analysis, I submit this number is the most likely “best case” recovery per class member. Given all the risks on each claim the estimated \$116.25 average recovery secured via this settlement, is a reasonable compromise and is in the best interests of the class given all the risks of continued

litigation.

Analysis of Risk on Each Potential Claim

24. Each of the primary claims also had risks to obtaining both class certification and liability. If Defendant's asserted defenses were successful, the class would not receive anything.
25. Plaintiff's unpaid wages (and unpaid overtime) claims were based on the allegation that employees were performing unpaid work (1) due to ENCONTRO's failure to properly calculate employee's regular rate of pay in regards to the "Employee Discount Meal Policy"; (2) mandatory Covid-19 screenings prior to clocking in; and (3) transitional math errors. Plaintiff alleged this resulted in regular time and overtime pay being owed where Defendant was on notice of work being performed without pay. Defendant argued that rounding of total hours worked has been recognized under California law. Defendant also denied that any unpaid work occurred, and even if some did occur, ENCONTRO claimed it was not on notice of these alleged Labor Code violations and had a strict written prohibition against off-the-clock work and a mandate that all time worked must be accurately recorded. ENCONTRO asserted proof of these alleged violations would require individualized inquiries, which could preclude class certification and make any PAGA claims unmanageable.
26. As to meal and rest period claims, Plaintiff was able to identify hundreds of examples of missing or late meal periods without the provision of a meal period penalty payment. However, Defendant argued that these records do not conclusively show whether (1) ENCONTRO actually failed to provide the meal period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late even though they were provided. Additionally, in light of ENCONTRO's written meal period policy and the wide variations in alleged violations, Defendant contended there was no uniform policy or practice, requiring individualized inquiries that would preclude class certification and make any PAGA claims unmanageable.
27. Plaintiff also alleged ENCONTRO's written policies improperly restricted class members from leaving the premises during their rest breaks. Defendant pointed out that the policy contained

no such restriction and argued that witness testimony would demonstrate that in practice, no such "leave the premises" restriction was ever enforced. Defendant also contended individualized inquiries will abound as to why individual employees may have failed to take appropriate meal periods or rest breaks.

28. As to the wage statement claims, Plaintiff acknowledges that these claims are largely derivative, in that both the gross and net wages could be found to be inaccurate, due to the above-referenced claims. ENCONTRO argued that the failure to list gross and net wages are derivative of other claims that may ultimately fail and as a result there is no "knowing and intentional failure" to list information, which triggers liability under Labor Code §226(e). Defendant (as with the underlying meal and rest period claims) maintained individualized inquiries would abound as to why breaks were missed and whether meal period premiums should have been paid in the first place, requiring individualized inquiries that would preclude class certification and make any PAGA claims unmanageable.

29. Plaintiff contends that ENCONTRO violated Labor Code section 2802 by failing to reimburse its employees for certain costs, including cellular phone costs. ENCONTRO countered that it has a comprehensive written policy for expense reimbursements in its employee handbook. ENCONTRO further contended that Roberts's (and others') positions did not require the use of a cell phone.

30. Based on all of the above, my experience, and all the information within the moving papers, I submit that this proposed Settlement is fair, adequate and reasonable. I also submit it is well within the accepted range of recoveries for similar wage and hour class actions.

Certification of the Proposed Settlement Class is Appropriate

31. Here, Defendant's records show that approximately **400 class members** worked for the company during the limitations period.

32. Here, for purposes of the Settlement, the parties agree the claims of Class Members all involve the same questions of law and fact. Namely, all class members were subject to the same employment policies and practices of Defendant.

- 1 33. The proposed class representatives have no adverse interests to the class. Plaintiff is paid based
2 on the same formula as other class members and have claims substantially the same as all the
3 other Class Members.
- 4 34. Additionally, any Class Member who wishes to “opt out” of the Settlement may do so and
5 retain all of their individual rights. Therefore there is no conflict of interest between the Class
6 Representatives and the Class Members. Thus, at least for settlement purposes, we submit the
7 adequacy prong is met.
- 8 35. Given that there are 400 individuals, it would be preferable to resolve all of the Class
9 Members’ claims by means of a class-wide settlement than to require each Class Member to
10 litigate his or her individual claims.
- 11 36. When negotiating the settlement, both sides took into account the strengths and weaknesses
12 of their opponent’s positions as pointed out by Michael Roberts, the data available to evaluate
13 liability and damages, the lack of data or evidence on certain issues, and the substantial and
14 evolving law applicable to the merits of the claims. The Agreement was only agreed to after
15 extensive arms-length negotiations resulting in a unique compromise that permits all parties
16 to move forward and bring this action to close. In spite of a mutual desire to resolve this action,
17 the negotiations remained at all times adversarial.
- 18 37. I believe this settlement is in the best interest of the class as it provides (1) a guaranteed
19 favorable result; (2) guaranteed monetary recovery over a reasonably short period of time, as
20 opposed to possibly waiting additional years for a potentially worse result; and (3) significant
21 savings in attorneys’ fees and costs, which would have increased had the case progressed
22 through trial and possible appeals.
- 23 38. Without entering into the Agreement, there existed a significant chance that Defendant would
24 prevail on the merits of some or all claims and that Class Members would receive nothing.
25 Through the Agreement, participating Class Members receive guaranteed cash, and this action
26 has also been the catalyst for programmatic relief.
- 27 39. If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees
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1 and costs, expert witnesses fees would quickly accumulate. Given the numerous claims being
2 litigated, the parties may be required to hire multiple experts each (as many as 8 total). This
3 would result in not only the production of eight expert reports, but eight depositions as well.
4 And, based on previous discussions between counsel regarding the remaining claims (including
5 the PAGA claims), the parties anticipated at least one motion to compel, a motion for class
6 certification and two dueling motions for summary judgment / adjudication (one from each
7 side).

8 40. Importantly, even after engaging in all of the potential continued and protracted litigation set
9 forth above, the putative class would continue to have no guarantee of success on any of the
10 claims advanced in this case. Thus, the parties and our office believes in good faith that the
11 proposed resolution is a fair, reasonable, and adequate compromise.

12 41. Our office had not filed a Motion for Class Certification at the time settlement was reached.
13 Defendant presented multiple different defenses to certification during mediation and
14 throughout litigation. Even assuming Plaintiff did obtain class certification of the claims, each
15 claim is subject to substantial risk of a Defense verdict at trial.

16 42. Our office has interviewed several Class Members in the course of investigating and litigating
17 this matter. We have also reviewed thousands of pages of documents produced by Defendant,
18 Plaintiff, and Class Members.

19 43. Our office has considerable experience in wage and hour and class action litigation. Trial
20 Attorney, William Sullivan has over 29 years of experience, 28 years of which has been
21 devoted to both prosecuting and defending class action litigation. I have over 12 years of
22 experience all of which have been dedicated primarily to class action and representative action
23 (PAGA) litigation. I am aware counsel for Defendant also has extensive experience handling
24 class action and representative action litigation.

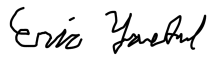
25 44. Based on this experience, and all other relevant factors addressed above, our firm believes the
26 Agreement to represent a fair, adequate and reasonable settlement that is well within the
27 accepted range of recoveries for similar wage and hour class actions. We further believe the
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Agreement is in the best interests of the Settlement Class Members.

45. Based on this experience, we also believe the \$10,000 allocation towards the PAGA claims is a fair, reasonable, and adequate allocation, especially given the risks of mitigation identified above.
46. Prior to preliminary approval, what can be said of the reaction the class members is limited. However, our office has spoken to some Class Members since the parties reached a proposed settlement agreement, and all were in favor of the settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of July, 2023 at San Diego, California.



ERIC K. YAECKEL

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
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JALEEN ROBERTS, in a Representative capacity
only, and on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

ENCONTRO NORTH PARK, LLC, a California
Limited Liability Company; and DOES 1-10,
inclusive,

Defendants.

Case No. 37-2022-00030477-CU-OE-CTL

**STIPULATION OF CLASS ACTION AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

1 This Stipulation of Class Action and PAGA Representative Action Settlement and Release
2 (“Settlement” or “Settlement Agreement”) is entered into by plaintiff JALEEN ROBERTS, in a
3 Representative capacity only, and on behalf of other members of the general public similarly situated
4 (hereinafter referred to as “Plaintiff”), and Defendant ENCONTRO NORTH PARK, LLC,
5 (“Defendant”) (collectively with Plaintiff, the “Parties”).

6 **I. DEFINITIONS**

7 The following definitions are applicable to this Settlement Agreement. Definitions contained
8 elsewhere in this Settlement Agreement will also be effective:

9 **A. “Action”**

10 The case entitled *Jaleen Roberts v. Encontro North Park. et. al.*, San Diego County Superior
11 Court Case No. 37-2022-00030477-CU-OE-CTL.

12 **B. “Court”**

13 The San Diego County Superior Court or any other court taking jurisdiction of the Action.

14 **C. “Defendant’s Counsel”**

15 Lara P. Besser, Abbey M. Jahnke, and Annalyse E. Butler of Jackson Lewis P.C.

16 **D. “Effective Date”**

17 The “Effective Date” means when all of the following events have occurred: (1) The Settlement
18 Agreement has been executed by all Parties, Settlement Class Counsel, and Defendant's Counsel; (2)
19 The Court has given Final Approval to the Settlement; (3) The Court has held a Final Settlement
20 Approval Hearing and has entered a Final Order and Judgment, approving the Settlement. It is the
21 parties' intention that the Settlement shall be final for purposes of the Effective Date at the time of the
22 Final Order/and Judgment, if no objections to the settlement are filed and no one intervenes in the case.
23 Only in the event that objections are filed or intervention, the Effective Date shall be the later of: (a)
24 the date of final affirmance on an appeal of the Judgment; and the expiration of the time for a petition
25 to review the Judgment or file any other appeal; and, if review is granted, the date of final affirmance
26 of the Judgment following review and the expiration of an appeals period; or (b) the date of final
27 dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the
28 Judgment; or (c) if no appeal is filed, the expiration date for filing any appeal from the Judgment.

1 **E. “Final Approval” or “Final Approval Order”**

2 The Court order granting final approval of the Settlement Agreement.

3 **F. “Incentive Award”**

4 An amount not to exceed \$5,000.00 to be paid to Plaintiff in recognition of her efforts and work
5 in prosecuting the Action on behalf of Settlement Class and PAGA Members, subject to Court
6 approval.

7 **G. “Individual Settlement Payment”**

8 Each Participating Settlement Class Member’s share of the Net Settlement Fund.

9 **H. “LWDA Payment”**

10 The amount that the Parties have agreed Defendant will pay to the California Labor and
11 Workforce Development Agency (“LWDA”) in the settlement and release of claims brought pursuant
12 to the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, et seq.,
13 (“PAGA”). The Parties have agreed that \$10,000 of the Settlement Amount will be allocated to the
14 resolution of claims arising under the PAGA. Pursuant to the PAGA, 75%, or \$7,500.00, of the LWDA
15 Payment will be paid to the LWDA, and 25%, or \$2,500.00, of the LWDA Payment will be included in
16 the Net Settlement Fund for employees who worked during the PAGA Period. The PAGA Settlement
17 Amount will be distributed to PAGA Members regardless of whether they request to be excluded from
18 the Settlement as a Class Member.

19 **I. “Net Settlement Fund”**

20 The portion of the Settlement Amount remaining after deducting the Court approved:
21 (i) Settlement Class Counsel Costs, (ii) Settlement Class Counsel Fees, (iii) Settlement Administration
22 Costs, (iv) Incentive Award, and (iv) LWDA Payment. There will be no reversion of the Net
23 Settlement Fund to Defendant. In otherwards, the Net Settlement Fund is the portion of the Settlement
24 Amount that will be distributed to Participating Class Members who do not request exclusion from the
25 Settlement and the PAGA Members. The payment of employee-side taxes on the portion of the
26 settlement shares earmarked as wages shall be paid out of the Net Settlement Fund. Thus, the
27 Individual Settlement Payments shall be reduced by the employee’s tax liability for their share.
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1 **J. “Notice of Objection”**

2 A Settlement Class Member’s valid and timely objection to the Settlement Agreement. Any
3 written objection must include: (a) the objector’s full name, signature, address, and telephone number;
4 (b) a written statement of all grounds for the objection; (c) copies of any papers, briefs, or other
5 documents upon which the objection is based; and (d) be faxed or postmarked before the Response
6 Deadline. The date of the fax or postmark on the return mailing envelope will be the exclusive means
7 to determine whether an objection has been timely submitted. Objections may also be made in person
8 at the Final Approval hearing.

9 **K. “Notice Packet”**

10 The Notice of Class Action Settlement, substantially in the form of Exhibit A to this
11 Agreement.

12 **L. “PAGA Members”**

13 All current and former nonexempt employees of Defendant who were employed between May
14 29, 2021, through the date of Preliminary Approval.

15 **M. “PAGA Period”**

16 May 29, 2021 through the date of Preliminary Approval.

17 **N. “PAGA Settlement Amount”**

18 The twenty-five percent (25%), or Two Thousand Five Hundred (\$2,500) of the PAGA
19 allocation that will be distributed to PAGA Members.

20 **O. “Participating Settlement Class Members”**

21 All Settlement Class Members who do not submit a valid and timely Requests for Exclusion.
22 “Participating Settlement Class Members” also includes all Settlement Class Members who submit
23 valid and timely objections.

24 **P. “Preliminary Approval” or “Preliminary Approval Order”**

25 The Court order granting preliminary approval of this Settlement Agreement.

26 **Q. “Qualified Settlement Fund or QSF”**

27 The Parties agree that the Settlement Amount is intended to be a “Qualified Settlement Fund”
28 or “QSF” under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-

1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement
2 Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the
3 earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be
4 attached to the appropriate returns as required by law.

5
6 **R. “Released Claims”**

7 All claims, rights, demands, liabilities and causes of action of any nature or description arising
8 from the facts, theories of liability and claims asserted in the operative Complaint of the Action and/or
9 the claims that could have been asserted in the Action based on the facts ascertained or alleged in the
10 operative Complaint of the Action, whether known or unknown, including without limitation, any and
11 all statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, civil
12 and statutory penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, and
13 equitable or other relief, under any federal, state or local law or administrative order, including the: (a)
14 failure to pay the wages; (b) failure to pay employees for all hours worked, including but not limited to
15 any claim for minimum, straight time, or overtime wages, and including any claim involving “off the
16 clock” work, “rounding,” or the failure to pay for all time under the employer’s control; (c) failure to
17 correctly calculate or include bonuses, other incentive pay, or compensation of any kind in the “regular
18 rate” of pay or compensation; (d) failure to properly provide meal periods and/or authorize and permit
19 rest periods, to pay premiums for missed, late, short, unprovided, on-duty, or interrupted meal and/or
20 rest periods, or to pay such premiums at the regular rate of compensation; (e) failure to keep accurate
21 records or to issue proper wage statements to employees; (f) failure to timely pay wages, including but
22 not limited to any claim of violation of Labor Code §§ 201, 202 or 204, and any claim for waiting time
23 penalties under Labor Code § 203; (g) failure to reimburse for necessary business expenses under
24 Labor Code §§2800 or 2802, including but not limited to any claim for the failure to provide and/or
25 reimburse necessary business expenses; (j) any and all claims for unfair business practices in violation
26 of Business and Professions Code sections 17200, *et seq.*; and (k) any and all penalties pursuant to the
27 Private Attorneys General Act (“PAGA”) of 2004 (collectively, the “Released Claims”). The Released
28 Claims include, but are not limited to, all claims arising under the California Labor Code sections 201,

202, 203, 204, 210, 218.5, 218.6, 226-226.5, 226.7, 227.3, 246, 432, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2698, 2699, 2699.3; the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200 et seq.; the California common law of contract; and federal common law. The release excludes the release of claims not permitted by law. The Released Claims cover the time period of June 7, 2019 through the date of Preliminary Approval.

S. “Released PAGA Claims”

All claims asserted through California Labor Code §§ 2698, et seq., that arise out of or are related to the Released Claims during the PAGA Period. A Class Member who is also a PAGA Member will receive his or her share of the PAGA Settlement Payment regardless of whether the Class Member opts out of the Settlement.

T. “Released Parties”

Defendant ENCONTRO NORTH PARK, LLC, and any of Defendant’s respective past, present and future agents, employees, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations and/or partnerships, divisions, predecessors, successors, insurers, consultants, employee benefit plans and fiduciaries thereof, and affiliated organizations, and the respective successors and assigns of any of the foregoing persons.

U. “Request for Exclusion”

A timely letter submitted by a Settlement Class Member requesting to be excluded from the Settlement Agreement. The Request for Exclusion must be signed by the Settlement Class Member, be returned by fax or mail to the Settlement Administrator, and be faxed or postmarked on or before the Response Deadline. The date of the fax or postmark on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. A Settlement Class Member who does not request exclusion from the Settlement will be deemed to be a Participating Settlement Class Member and will be bound by all terms of the Settlement Agreement if the Court grants Final Approval of the Settlement, meaning that the Participating Settlement Class

1 Member's Released Claims will be deemed released, barred, and extinguished by the Court's Final
2 Approval Order and by the operation of law.

3 **V. "Response Deadline"**

4 The deadline by which Settlement Class Members must postmark or fax to the Settlement
5 Administrator valid Requests for Exclusion or postmark Notices of Objection to the Settlement. The
6 Response Deadline will be 30 calendar days from the Settlement Administrator's initial mailing of the
7 Notice Packet, unless the 30th day falls on a Sunday or federal holiday, in which case the Response
8 Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response
9 Deadline for Requests for Exclusion will be extended 10 calendar days for any Class Member who is
10 re-mailed a Notice Packet by the Settlement Administrator due to an incorrect mailing address, unless
11 the 10th day falls on a Sunday or federal holiday, in which case the Response Deadline will be
12 extended to the next day on which the U.S. Postal Service is open. Under no circumstances will the
13 Settlement Administrator have the authority to unilaterally extend the deadline for Settlement Class
14 Members to submit a Request for Exclusion or Notice of Objection to the Settlement.

15 **W. "Settlement Administration Costs"**

16 The costs payable from the Settlement Amount to the Settlement Administrator for
17 administering this Settlement, including, but not limited to, printing, distributing, and tracking
18 documents for this Settlement; calculating estimated Individual Settlement Payments; tax reporting and
19 payments; distributing the Individual Settlement Payments, the LWDA Payment, any Incentive Award
20 and Attorneys' Fees and Costs; and providing necessary reports and declarations, and other duties and
21 responsibilities set forth herein to process this Settlement, and as requested by the Parties. The
22 Settlement Administration Costs, which shall not exceed \$10,000, will be paid from the Class
23 Settlement Amount, including, if necessary, any such costs over the amount represented by the
24 Settlement Administrator as being the maximum costs necessary to administer the Settlement.

25 **X. "Settlement Administrator"**

26 The Parties have agreed on CAC Services, LLC to administer the Settlement. The Parties each
27 represent that they do not have any financial interest in the Settlement Administrator or otherwise have
28 a relationship with the Settlement Administrator that could create a conflict of interest.

1 **Y. “Settlement Amount.”**

2 The maximum settlement amount of One Hundred Twenty Thousand Dollars \$120,000.00 to be
3 paid by Defendant in full satisfaction of all Released Claims, which includes all Individual Settlement
4 Payments to Participating Settlement Class Members, any Incentive Award, the Cost of
5 Administration, the LWDA Payment, the PAGA Settlement Amount, and Attorneys’ Fees and Costs.
6 The Settlement Amount does not include the employer’s share of payroll taxes, which shall also be
7 paid by Defendant, as calculated by the Settlement Administrator.

8 **Z. “Settlement Class,” “Class,” “Class Member,” or “Settlement Class Members.”**

9 Settlement Class Members: all current and former nonexempt employees of Defendant who
10 were employed in California between June 7, 2019 through the date of Preliminary Approval.
11 Defendant represents that, as of May 10, 2023, there were approximately 9,186 workweeks worked by
12 Settlement Class Members. If, it turns out that as of the end date of the Class Period, the number of
13 workweeks ends up increasing by more than 10 percent Defendant shall increase the total Settlement
14 Amount proportionally (i.e. for an increase of 6 percent in workweeks, Defendant shall add an extra 1
15 % to the Settlement Amount, for a 10 percent increase in workweeks Defendant shall add an extra 5%
16 to the Settlement Amount).

17 **AA. “Settlement Class Counsel.”**

18 Eric K. Yaeckel and Ryan T. Kuhn of Sullivan & Yaeckel Law Group, APC.

19 **BB. “Settlement Class Counsel Costs.”**

20 The costs approved by the Court for Settlement Class Counsel’s litigation and resolution of the
21 Action, including, but not limited to, costs associated with documenting the Settlement, securing the
22 Court’s approval of the Settlement, and obtaining entry of the Judgment terminating the Action.
23 Settlement Class Counsel will request costs in an amount not over \$11,000. Defendant agrees not to
24 oppose Settlement Class Counsel’s request for costs as set forth above.

25 **CC. “Settlement Class Counsel Fees.”**

26 The attorneys’ fees approved by the Court for Settlement Class Counsel’s litigation and
27 resolution of the Action, including, but not limited to, attorneys’ fees associated with the litigation of
28 the Action, including documenting the Settlement, providing any notices required as part of the

1 Settlement or Court order, securing the Court's approval of the Settlement, handling any objections or
2 appeals related to the Settlement, and obtaining entry of the Judgment approving the Settlement.

3 Settlement Class Counsel will request attorneys' fees not to exceed thirty-three and one third percent
4 (33 & 1/3%) of the Settlement Amount, or Forty Thousand Dollars and Zero Cents (\$40,000.00).

5 Defendant agrees not to oppose Settlement Class Counsel's request for attorneys' as set forth above.

6 **DD. "Settlement Class List Data."**

7 A complete list of all Settlement Class Members that Defendant will diligently and in good faith
8 compile from its records and provide to the Settlement Administrator within 10 calendar days after
9 Preliminary Approval of this Settlement. The Settlement Class List will be provided directly to the
10 Settlement Administrator formatted in a Microsoft Office Excel spreadsheet and will include each
11 Settlement Class Member's full name; most recent mailing address if available; Social Security
12 Number; and dates of employment during the Class Period.

13 **EE. "Settlement Class Period" or "Class Period."**

14 The period from June 7, 2019 through the date of Preliminary Approval.

15 **II. TERMS OF AGREEMENT**

16 Plaintiff, on behalf of herself and the Settlement Class, and Defendant, in consideration of the
17 mutual covenants, promises, and undertakings set forth herein agree, subject to the Court's approval, as
18 follows:

19 **1. Stipulation to Add Class Claims and Class Certification for Settlement Purposes Only.**

20 Plaintiff agrees that prior to filing her Motion for Preliminary Approval of Class Settlement,
21 Plaintiff will file a First Amended Complaint to add claims for statutory penalties under the California
22 Labor Code ("Class Claims") based on all underlying Labor Code claims asserted in her original
23 PAGA Complaint. The Parties agree that, for settlement purposes only, they will jointly request the
24 Court to approve the filing of a First Amended Complaint that adds Class Claims via a separate
25 stipulation. The Court shall also be asked to certify a Settlement Class consistent with this Settlement
26 Agreement. The Parties agree that nothing in this Settlement Agreement, including the Parties'
27 agreement regarding certification for settlement purposes only, is in any way an admission that class
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1 certification is proper and that evidence of this limited stipulation for settlement purposes only will not
2 be deemed admissible in this or any other proceeding for any reason. If the Court does not approve the
3 Settlement, this stipulation to certification will be void. The Parties further agree that this Settlement
4 Agreement, and specifically the certification for purposes of settlement, is not a waiver of Defendant's
5 claimed right to oppose certification or assert any of its affirmative defenses in the Action in the event
6 that the Effective Date does not occur.

7 **2. Settlement Amount.**

8 Defendant agrees to pay no more than the Settlement Amount. However, as to that portion of
9 the Net Settlement Fund paid to Participating Settlement Class Members that constitutes wages,
10 Defendant will be responsible for the employer's portion of payroll taxes. Defendant will pay no other
11 amounts in connection with this Settlement Agreement.

12 **3. Funding of the Settlement Amount.**

13 Within 30 calendar days after the Effective Date, Defendant will deposit the Settlement Amount
14 into a Qualified Settlement Fund ("QSF") to be established as a trust by the Settlement Administrator.
15 The Settlement Administrator shall then distribute the Individual Settlement Payments, the LWDA
16 Payment, Settlement Class Counsel's Attorneys' Fees and Costs, Plaintiff's Incentive Award, and a
17 payment to itself for Court-approved services performed in connection with the Settlement. The Parties
18 agree that the amounts held in the QSF will always be treated as a "qualified settlement fund" within
19 the meaning of Treas. Reg. § 1.468B-1, et seq. The Parties further agree that for purposes of Section
20 468B of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury Regulations
21 promulgated thereunder, Defendant shall be treated as the "transferor" within the meaning of Treasury
22 Regulation § 1.468B-1(d)(1), and that the Settlement Administrator shall be the "administrator" of the
23 QSF within the meaning of Treas. Reg. § 1.468B-2(k)(3). The Parties agree that the Settlement
24 Administrator shall, in establishing the trust, make any such elections as necessary or advisable to carry
25 out the "relation back election" (as defined in Treas. Reg. § 1.468B-1(j)(2)(i)) back to the earliest
26 permitted date. Such elections shall comply with the procedures and requirements contained in such
27 regulations. It shall be the Settlement Administrator's responsibility to timely and properly prepare and
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1 deliver the necessary documentation for signature by all necessary Parties, and to cause the appropriate
2 filing to occur. The Parties intend that the transfers to the trust described in this section will satisfy the
3 “all events test” and the “economic performance” requirement of Code Section 461(h)(1) and Treasury
4 Regulation Section 1.461-1(a)(2). The Settlement Administrator shall be responsible for filing tax
5 returns for the trust, if appropriate, including application for employer identification numbers in
6 accordance with Treasury Regulation Section 1.468B-2(k)(4). It will be considered a material breach of
7 the agreement if Defendant fails to fund by the Effective Date. If that occurs, Defendant will pay
8 interest on the total settlement amount for each day that the settlement is late at the rate of 10% per
9 annum. Additionally, in the event of failure to make payment by the Effective Date, Plaintiff may
10 immediately petition the Court for settlement enforcement, and will be entitled to an award of all fees
11 and costs incurred in conjunction with settlement enforcement.

12 **4. Settlement Class Counsel Fees and Settlement Class Counsel Costs.**

13 Defendant agrees not to oppose or impede any application or motion by Settlement Class
14 Counsel for attorneys’ fees of not more than thirty three and one third percent (33 & 1/3%) of the Class
15 Settlement Amount, or Forty Thousand Dollars and Zero Cents (\$40,000.00), plus the reimbursement
16 of costs and expenses in amount not to exceed \$11,000, which will be paid from the Settlement
17 Amount provided that such application or motion is consistent with this Settlement Agreement, and
18 approved by the Court. The Court’s approval of the Settlement Class Counsel Fees is not a material
19 term this Settlement Agreement. If the Court does not approve or approves only a lesser amount than
20 that requested by Settlement Class Counsel, the other terms of this Settlement Agreement shall apply.
21 The Court’s refusal to approve the Settlement Class Counsel Fees as requested by Settlement Class
22 Counsel does not give Plaintiff, Class Members, PAGA Members, or Class Counsel any basis to
23 abrogate this Settlement. Any amount of the Settlement Class Counsel Fees as requested by Settlement
24 Class Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

25 **5. Incentive Award.**

26 In recognition of her efforts and work in prosecuting the Action, Defendant agrees not to
27 oppose or impede any application or motion for an Incentive Award of \$5,000 to Plaintiff. The
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1 Incentive Award will be paid from the Class Settlement Amount, provided that such application or
2 motion is consistent with this Settlement Agreement and that it is approved by the Court. Plaintiff will
3 be solely and legally responsible to pay all applicable taxes on the payments made pursuant to this
4 section and will indemnify and hold Defendant and the Released Parties harmless from any claim or
5 liability for taxes, penalties, or interest arising as a result of the payment. The Court's approval of the
6 Incentive Award is not a material term this Settlement Agreement. If the Court does not approve or
7 approves only a lesser amount than that requested by Settlement Class Counsel, the other terms of this
8 Settlement Agreement shall apply. The Court's refusal to approve the Incentive Award as requested by
9 Settlement Class Counsel does not give Plaintiff, Class Members, PAGA Members, or Class Counsel
10 any basis to abrogate this Settlement. Any amount of the Incentive Award as requested by Settlement
11 Class Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

12 **6. Settlement Administration Costs.**

13 The Settlement Administrator will be paid for the reasonable costs of administration of the
14 Settlement and distribution of payments from the Class Settlement Amount, which have been quoted
15 by the settlement administrator as not to exceed \$10,000.00. These costs, which will be paid from the
16 Class Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual
17 Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing the Notice Packet,
18 calculating and distributing the Settlement Amount and Individual Settlement Payments, administering
19 the QSF, and providing necessary reports and declarations.

20 **7. Labor and Workforce Development Agency Payment.**

21 Subject to Court approval, the Parties agree that \$10,000 from the Settlement Amount will be
22 designated for satisfaction of Plaintiff's and Class Members' PAGA claims for civil penalties. Pursuant
23 to the PAGA, 75%, or \$7,500.00, of the PAGA Settlement Amount will be paid to the LWDA; and
24 25%, or \$2,500, of the PAGA Settlement Amount will be included in the Net Settlement Amount. The
25 LWDA shall be notified of the existence of the Settlement. If the LWDA objects to the amount of its
26 payment and the Court sustains the objection, or if the Court denies approval of the Settlement
27 Agreement based on the sufficiency of the PAGA Settlement Amount or LWDA Payment, the Parties
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1 will negotiate a different portion of the Settlement Amount to be allocated to the PAGA Settlement
2 Payment. In no event will the allocation result in an increase in the Class Settlement Amount. Pursuant
3 with controlling California law, class members who were employed during the applicable PAGA
4 period will not be able to opt-out of receipt of his or her PAGA penalty payment and his/her PAGA
5 rights will be extinguished.

6 **8. Net Settlement Amount.**

7 The Net Settlement Amount will be used to satisfy Individual Settlement Payments to
8 Participating Settlement Class Members from the Settlement Class in accordance with the terms of this
9 Settlement. No portion of the Net Settlement Amount will revert or be retained by Defendant.

10 **9. Calculation of Individual Settlement Payment.**

11 Individual Settlement Payments will be calculated and apportioned from the Net Settlement
12 Amount based on the number of pay periods a Participating Settlement Class Member is calculated to
13 have worked during the Class Period. A Class Member's Settlement Share will equal the Net
14 Settlement Amount times the ratio of: (i) the number of pay periods worked by the Class Member for
15 Defendant during the Settlement Class Period (ii) the total number of pay periods worked by all such
16 Class Members during the Settlement Class Period (other than those who elected not to participate in
17 the Settlement).

18 The entire Net Settlement Amount will be disbursed to all Class Members who do not submit a
19 timely and valid Request for Exclusion. If there are any valid and timely Requests for Exclusion, the
20 Settlement Administrator shall remove the number of pay periods worked by the excluded individual
21 for Defendant during the Class Period from the total number of pay periods worked by all Class
22 Members, such that 100% of the Net Settlement Amount is distributed.

23 **10. Calculation of the Individual PAGA Settlement Payment.**

24 Class Members who are also PAGA Members will be entitled to receive a portion of the PAGA
25 Settlement Amount, in accordance with the formula set forth below:

26 A PAGA Members' Settlement Share will equal the PAGA Settlement Amount times the ratio
27 of: (i) the number of pay periods worked by the PAGA Member for Defendant during the PAGA
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1 Period in California as a non-exempt hourly employee to (ii) the total number of pay periods worked by
2 all such PAGA Members during the PAGA Period.

3 **11. No Credit Towards Benefit Plans.**

4 The Individual Settlement Payments made to Participating Settlement Class Members under
5 this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to
6 calculate any benefits under any employee benefit plans to which any Settlement Class Members may
7 be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase
8 plans, vacation plans, sick leave plans, PTO plans, or any other benefit plan. Rather, it is the Parties'
9 intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which
10 any Settlement Class Members may be entitled under any employee benefit plans.

11 **12. Administration Process.**

12 The Parties agree to cooperate in the administration of the Settlement and to make all
13 reasonable efforts to control and minimize the costs and expenses incurred in the administration of the
14 Settlement.

15 **13. Delivery of the Settlement Class List Data.**

16 Within 10 calendar days of Preliminary Approval, Defendant will provide the Settlement Class
17 List to the Settlement Administrator. The Settlement Class List Data shall only be used by the
18 Settlement Administrator to notify the Settlement Class Members of the Settlement. This information
19 shall not be disclosed to Class Counsel, Plaintiff, any Class Members or their counsel, or any other
20 third party.

21 **14. Notice by First-Class U.S. Mail.**

22 Within 10 calendar days after receiving the Settlement Class List from Defendant, the
23 Settlement Administrator will mail a Notice Packet to all Settlement Class Members via regular First-
24 Class U.S. Mail, using the most recently known mailing addresses identified in the Class List or any
25 updated addresses found by the Settlement Administrator.
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1 **15. Confirmation of Contact Information in the Settlement Class List.**

2 Prior to mailing the Notice Packets, the Settlement Administrator will perform a search based
3 on the National Change of Address Database for information to update and correct for any known or
4 identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-
5 deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail
6 to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of
7 such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement
8 Administrator will promptly attempt to determine the correct address using a skip-trace, or other search
9 using the name, address and/or Social Security Number of the Class Member involved, and will then
10 perform a single re-mailing. Those Settlement Class Members who receive a re-mailed Notice Packet,
11 whether by skip-trace or by request, will have the later of: (a) an additional 10 calendar days from the
12 date of re-mailing or (b) the Response Deadline, to postmark a Request for Exclusion or Notice of
13 Objection to the Settlement. Unless the Settlement Administrator receives a Notice Packet returned
14 from the United States Postal Service as non-deliverable, the Settlement Class Notice shall be deemed
15 mailed and received by the Settlement Class Member to whom it was sent 5 days after mailing.

16 **16. Notice Packets.**

17 All Settlement Class Members will be mailed a Notice Packet containing the Notice attached as
18 Exhibit A. Each Notice will provide: (a) information regarding the nature of the Action; (b) a summary
19 of the Settlement's principal terms; (c) the Settlement Class definition; (d) each Settlement Class
20 Member's estimated Individual Settlement Payment and the general formula for calculating Individual
21 Settlement Payments; (e) the dates which comprise the Settlement Class Period; (g) instructions on
22 how to submit Requests for Exclusion or Notices of Objection; (h) the deadlines by which the
23 Settlement Class Member must postmark or fax Requests for Exclusions or postmark or fax Notices of
24 Objection to the Settlement; (i) the claims to be released, as set forth herein; and (j) the date for the
25 Final Approval Hearing.
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1 **17. Disputed Claims.**

2 All disputes by Class Members regarding their Individual Settlement Payment must be
3 addressed to the Settlement Administrator and postmarked on or before the Response Deadline. Such
4 disputes will be resolved by the time of the Final Approval Hearing. Defendant's records, however, are
5 presumed to be correct unless a Settlement Class Member proves otherwise with documentary
6 evidence. The Settlement Administrator will evaluate the evidence submitted by the Settlement Class
7 Member and will make the final decision as to the dispute. The decision shall be binding on the
8 Settlement Class Member and no additional rights of appeal shall exist.

9 **18. Request for Exclusion Procedures.**

10 Any Settlement Class Member wishing to opt out from the Settlement Agreement must sign and
11 postmark or fax a written Request for Exclusion to the Settlement Administrator on or before the
12 Response Deadline. The postmark date on the return mailing envelope or fax receipt confirmation will
13 be the exclusive means to determine whether a Request for Exclusion has been timely submitted. All
14 Requests for Exclusion will be submitted to the Settlement Administrator, who will certify jointly to
15 Settlement Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely
16 submitted. All Settlement Class Members who do not submit a valid and timely Request for Exclusion
17 will be deemed a Participating Settlement Class Member and will be entitled to receive an Individual
18 Settlement Payment.

19 If a Settlement Class Member's Request for Exclusion is defective as to the requirements listed
20 herein, that Settlement Class Member will be given an opportunity to cure the defect(s). The Settlement
21 Administrator will mail the Settlement Class Member a cure letter within three (3) business days of
22 receiving the defective submission to advise the Settlement Class Member that his or her submission is
23 defective, the reason(s) why it is defective and that the defect(s) must be cured to render the Request
24 for Exclusion valid. The Settlement Class Member will have until the later of: (a) the Response
25 Deadline or (b) ten (10) calendar days from the date of the cure letter, whichever date is later, to
26 postmark or fax a corrected Request for Exclusion. If the corrected Request for Exclusion is not
27 postmarked or received by fax within that period, it will be deemed untimely.

1 **19. Confidentiality and Publicity.**

2 Neither Plaintiff nor Settlement Class Counsel, directly or indirectly, shall issue a press release
3 or hold a press conference, publish information about the Settlement on any website, or otherwise
4 publicize the Settlement with the exception that Settlement Class Counsel may post the Settlement
5 Class Notice on its website. Plaintiffs' counsel also agrees to provide to Defendants' counsel a copy of
6 any such information that will be posted on their website seven days in advance of the posting. Plaintiff
7 and Settlement Class Counsel agree not to respond to any press inquiries concerning the Settlement
8 except to state, if necessary, that the matter was resolved.

9 **20. Revocation of Settlement Agreement.**

10 Only Defendant has the right to withdraw from or rescind the Settlement Agreement, and
11 Defendant shall only have the right to do so if, prior to the Final Approval hearing: (a) 10% or more of
12 all Settlement Class Members submit a valid and timely Requests for Exclusion; (b) the Settlement is
13 construed in such a fashion that Defendant is required to pay more than the Settlement Amount as
14 described herein; or (c) the Court does not certify the Settlement Class or does not certify a class
15 releasing the claims set forth herein, or otherwise makes an order inconsistent with any of the material
16 terms of this Settlement Agreement. If Defendant withdraws or rescinds the Settlement, it will be
17 responsible for paying for all of the Claims Administrator costs incurred, including the costs for any
18 notice that the Court orders be sent to the Settlement Class Members to inform them of Defendant's
19 withdrawal or rescission.

20 **21. Settlement Terms Bind All Settlement Class Members Who Do Not Opt Out.**

21 Any Settlement Class Member who does not affirmatively opt out of the Settlement Agreement
22 by submitting a timely and valid Request for Exclusion will be a Participating Settlement Class
23 Member and will be bound, on their own behalf and on behalf of their respective heirs, administrators,
24 executors, estates, agents, representatives, successors and assigns, by all of the terms of the Settlement
25 Agreement, including those pertaining to the Released Claims, as well as any Judgment that may be
26 entered by the Court if it grants final approval to the Settlement.
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1 **22. Objection Procedures.**

2 To object to the Settlement Agreement in writing, a Settlement Class Member should postmark
3 a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline. The
4 Settlement Class Member must sign the Notice of Objection, and the Notice of Objection must contain
5 all information this Settlement Agreement requires. The postmark date will be deemed the exclusive
6 means for determining that the Notice of Objection is timely. Settlement Class Members may also
7 appear at the Final Approval Hearing to have objections heard by the Court. None of the Parties or their
8 counsel will seek to solicit or otherwise encourage Class Members to submit objections to the
9 Settlement Agreement or appeal from the Final Approval Order. Class Counsel will not represent any
10 Class Members with respect to any such objections to this Settlement. Plaintiff will neither submit a
11 Request for Exclusion nor Notice of Objection to the Settlement.

12 **23. Certification Reports Regarding Individual Settlement Payment Calculations.**

13 The Settlement Administrator will provide Defendant's counsel and Settlement Class Counsel a
14 weekly report which certifies the number of Settlement Class Members who have submitted valid
15 Requests for Exclusion, any Objections, and whether any Settlement Class Member has submitted a
16 challenge to any information contained in their Notice Packet. Additionally, the Settlement
17 Administrator will provide to counsel for both Parties any updated reports regarding the administration
18 of the Settlement Agreement as needed or requested.

19 **24. Settlement Checks.**

20 If a Class Member is entitled to both an Individual Net Settlement Payment and an Individual
21 PAGA Settlement Payment, the Individual Net Settlement Payment and the Individual PAGA
22 Settlement Payment will be combined and distributed as one single check.

23 **25. Uncashed Settlement Checks.**

24 Any checks the Settlement Administrator issues to Participating Settlement Class Members will
25 be negotiable for 120 calendar days, after which they will become void. Those funds represented by
26 settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more
27 than 120 calendar days after issuance will be delivered to Freedom Dogs, a non-profit organization or
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1 foundation within the meaning of California Code of Civil Procedure section 382.4, subdivision (b).
2 Both parties and their counsel all represent they have no interest or relationship, financial or otherwise,
3 with Freedom Dogs and are not aware of any facts that could reasonably create the appearance of
4 impropriety between the selection of Freedom Dogs as the cy pres recipient in this settlement and the
5 interests of the Class.

6 **26. Certification of Completion.**

7 Upon completion of administration of the Settlement, the Settlement Administrator will provide
8 a written declaration under oath to certify such completion to the Court and counsel for all Parties.

9 **27. Tax Treatment of Individual Settlement Payments.**

10 All Individual Settlement Payments will be allocated as follows: 10% of each Individual
11 Settlement Payment will be allocated as wages, 90% of each Individual Settlement Payment will be
12 allocated to penalties, interest and expenses. The portion allocated to wages will be reported on an IRS
13 Form W-2 and the portions allocated to non-wages will be reported on an IRS Form-1099 by the
14 Settlement Administrator. Only the employee share of payroll tax withholdings shall be taken from
15 each Settlement Class Member's Individual Settlement Payment.

16 **28. Administration of Taxes by the Settlement Administrator.**

17 The Settlement Administrator will be responsible for issuing to Plaintiff, Participating
18 Settlement Class Members, PAGA Members, and Settlement Class Counsel any W-2, 1099, or other
19 tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement
20 Administrator will also be responsible for forwarding all payroll taxes to the appropriate government
21 authorities.

22 **29. Tax Liability.**

23 Defendant and Settlement Class Counsel make no representation as to the tax treatment or legal
24 effect of the payments called for in this Settlement Agreement, and Plaintiff and Participating
25 Settlement Class Members and PAGA Members are not relying on any statement, representation, or
26 calculation by Defendant, Settlement Class Counsel or by the Settlement Administrator in this regard.
27 Plaintiff and Participating Settlement Class Members and PAGA Members understand and agree that,
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1 they will be solely responsible for the payment of any taxes and penalties assessed on the payments
2 described herein, and they shall not seek any indemnification from the Parties or any of the Released
3 Parties in this regard. The Parties agree that, in the event that any taxing body determines that
4 additional taxes are due from any Settlement Class Member, such Settlement Class Member assumes
5 all responsibility for the payment of such taxes.

6 **30. Circular 230 Disclaimer.**

7 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
8 “ACKNOWLEDGING PARTY” IS EACH PARTY TO THIS AGREEMENT, AND AN
9 “OTHER PARTY” IS ANY PARTY OTHER THAN THE ACKNOWLEDGING
10 PARTY) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
11 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
12 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
13 ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH
14 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
15 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
16 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED);
17 (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS,
18 HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
19 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B)
20 HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
21 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY TO ANY
22 OTHER PARTY OR ANY ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
23 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
24 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX
25 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND
26 (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY
27 LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH
28 ATTORNEY’S OR ADVISOR’S TAX STRATEGIES (REGARDLESS OF WHETHER
SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE
OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
BY THIS AGREEMENT.

31. **No Prior Assignments.**

The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

1 **32. Nullification of Settlement Agreement.**

2 If: (a) the Court does not finally approve the Settlement as provided herein; or (b) the
3 Settlement does not become final for any other reason, then this Settlement Agreement and all the
4 terms and agreements contained therein, and any documents generated to bring it into effect, will be
5 null and void, and all amounts deposited into the QSF will be returned to Defendant with the exception
6 of the Claims Administrators' costs incurred. Any order or judgment the Court enters in furtherance of
7 this Settlement Agreement will likewise be treated as void from the beginning.

8 **33. Preliminary Approval Hearing.**

9 Plaintiff will obtain a hearing before the Court to request Preliminary Approval of the
10 Settlement Agreement and the entry of a Preliminary Approval Order that: (a) conditionally certifies
11 the Settlement Class for settlement purposes only, (b) preliminarily approves the Settlement
12 Agreement, and (c) sets a date for a Final Approval Hearing.

13 The Preliminary Approval Order will provide for the Notice Packet to be sent to all Settlement
14 Class Members as specified herein. In conjunction with the Preliminary Approval Hearing, Plaintiff
15 will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include
16 the proposed Notice Packet, *i.e.*, the proposed Notice of Class Action Settlement documents.
17 Settlement Class Counsel will be responsible for drafting all documents necessary to obtain
18 Preliminary Approval with review by and in consultation with Defendant's Counsel. Settlement Class
19 Counsel will also be responsible for sending this Settlement Agreement to the LWDA.

20 **34. Final Approval Hearing and Entry of Judgment.**

21 Upon expiration of the deadlines to postmark Requests for Exclusion or objections to the
22 Settlement Agreement, and with the Court's permission, a Final Approval Hearing will be conducted to
23 determine whether to grant final approval of the Settlement Agreement along with the amounts
24 properly payable for: (a) Individual Settlement Payments; (b) the LWDA Payment; (c) Settlement
25 Class Counsels' Attorneys' Fees and Costs; (d) the Incentive Award; and (e) all Settlement
26 Administration Costs. Settlement Class Counsel will be responsible for drafting all documents
27
28

1 necessary to obtain final approval. Settlement Class Counsel will also be responsible for drafting the
2 attorneys' fees and costs and Incentive Award application to be heard at the Final Approval Hearing.

3 **35. Judgment and Continued Jurisdiction.**

4 Upon final approval of the Settlement by the Court or after the Final Approval Hearing, the
5 Parties will present a Proposed Judgment to the Court for its approval. After entry of the Judgment, the
6 Court will have continuing jurisdiction until all payments and obligations provided for in the
7 Settlement have been fully executed solely for purposes of addressing: (a) the interpretation and
8 enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-
9 Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

10 **36. Release by Participating Settlement Class Members.**

11 Upon the Effective Date, the Participating Settlement Class Members will be deemed to have
12 released and forever discharged the Released Parties of the Released Claims.

13 **37. Release by Plaintiff**

14 As of the Effective Date, and in exchange for the Incentive Award to the named Plaintiff in an amount
15 not to exceed Five Thousand Dollars (\$5,000.00), Plaintiff shall give the following general release of
16 claims for herself and her respective spouse, heirs, successors and assigns, forever release the Released
17 Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
18 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties
19 and expenses of any nature whatsoever, from the beginning of time through the date of her signature on
20 this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or
21 otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but
22 not limited to all claims arising out of, based upon, or relating to her employment with Defendant or
23 the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a
24 waiver of California Civil Code section 1542, which provides as follows:
25

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

1 **PARTY.**

2 This release excludes any release of any claims not permitted to be released by law and any and all
3 claims subject to the separate settlement agreement and release of Plaintiff's individual claims. This
4 release also excludes Plaintiff's claims and prayers for relief stemming from her claims under the Fair
5 Employment and Housing Act, which are subject to a separate confidential settlement agreement
6 between Plaintiff and the Defendant.

7 **38. Exhibits Incorporated by Reference.**

8 The terms of this Settlement include the terms set forth in any attached Exhibits, which are
9 incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement are an
10 integral part of the Settlement.

11 **39. Entire Agreement.**

12 This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties'
13 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed
14 binding on the Parties. Except as otherwise provided herein, each party shall bear its own costs and
15 attorneys' fees.

16 **40. Amendment or Modification.**

17 This Settlement Agreement may be amended or modified only by a written instrument, to be
18 signed either by authorized representatives of all Parties or their respective successors-in-interest.

19 **41. Authorization to Enter into Settlement Agreement.**

20 Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom
21 they represent to negotiate this Settlement Agreement and to take all appropriate action required or
22 permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and
23 to execute any other documents required to effectuate the terms of this Settlement Agreement.

24 **42. Use of Best Efforts.**

25 The Parties and their counsel will cooperate with each other and use their best efforts to effect
26 and implement all terms and conditions of the Settlement and to exercise their best efforts to
27 accomplish the foregoing terms and conditions of the Settlement. If the Parties are unable to reach
28

1 agreement on the form or content of any document needed to implement the Settlement, or on any
2 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the
3 Parties may seek the Court's assistance to resolve such disagreement.

4 **43. Binding on Successors and Assigns.**

5 This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or
6 assigns of the Parties, as previously defined.

7 **44. California Law Governs.**

8 All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted
9 according to the laws of the State of California.

10 **45. Execution and Counterparts.**

11 The Settlement Agreement may be executed in one or more counterparts. All executed
12 counterparts and each of them, including facsimile and scanned copies of the signature page, will be
13 deemed to be one and the same instrument provided that counsel for the Parties will exchange among
14 themselves original signed counterparts upon request.

15 **46. Acknowledgement that the Settlement Is Fair and Reasonable.**

16 The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of
17 the Action and have arrived at this Settlement after extensive arm's-length negotiations and in the
18 context of adversarial litigation, considering all relevant factors, present and potential. The Parties
19 further acknowledge that they have had an opportunity to consult with their counsel regarding the
20 fairness and reasonableness of this Settlement. Plaintiff agrees not to opt-out or object to the
21 Settlement.

22 **47. No Admission of Liability.**

23 Defendant and the Released Parties deny all claims asserted or that could have been asserted on
24 behalf of the Settlement Class and deny all wrongdoing whatsoever. This Settlement Agreement is not
25 a concession or admission, and will not be used against Defendant or any of the Released Parties as an
26 admission or indication with respect to any claim of any fault, concession, or omission by Defendant or
27 any of the Released Parties. Regardless of whether the Settlement Agreement is finally approved,
28

1 neither the Settlement Agreement, nor any document, statement, proceeding, or conduct related to this
2 Settlement Agreement, nor any reports or accounts thereof, shall in any event be construed as, offered
3 or admitted in evidence as, received as, or deemed to be, evidence of a presumption, concession,
4 indication, or admission by Defendant, or any of the Released Parties of any liability, fault,
5 wrongdoing, omission, concession, or damage.

6 **48. Communications about Settlement.**

7 The Parties and their counsel will keep the Settlement negotiations confidential and will not
8 disclose that information to any third party (including the press) except as set forth herein or unless the
9 Parties otherwise agree in writing. For purposes of this section, third parties shall not include other
10 attorneys, if any, representing Plaintiff in this matter. Except as provided herein, the Parties will keep
11 the Settlement confidential until the filing of the Motion for Preliminary Approval. To the extent any
12 Settlement Class Members inquire regarding the status of the case, the Parties and their counsel may
13 indicate that a tentative settlement has been reached subject to preliminary approval by the Court (or
14 that a settlement has been preliminarily approved, if applicable) but may not disclose the terms prior to
15 the filing of the Motion for Preliminary Approval. Notwithstanding the foregoing, Defendant shall have
16 the right to disclose the terms of the Settlement for accounting, tax, or public filing purposes. Plaintiff
17 and her counsel agree that at no time will they, verbally or in writing, defame or make disparaging
18 remarks or encourage, solicit, induce or entice others to make disparaging remarks about Defendant or
19 the Released Parties unless the Court denies approval of this Settlement and the Parties are unable to
20 negotiate a different settlement.

21 **49. Data and Documents Produced by Defendant.**

22 Plaintiff and Settlement Class Counsel agree to keep confidential all data and documents
23 produced by Defendant as “confidential” during discovery or in connection with the mediation and/or
24 settlement of this matter. Unless otherwise ordered by a court or permitted in writing by Defendant,
25 Plaintiff agrees to not disclose the confidential information or documents, and Settlement Class
26 Counsel agrees to not disclose the confidential information or documents under any circumstances
27 except as necessary if threatened with or named in a lawsuit alleging malpractice and/or if their
28

1 respective malpractice carriers request to see the file or as required by law. Notwithstanding any other
2 provision in this paragraph, Settlement Class Counsel may use the information that they received from
3 Defendant in the motions for preliminary and final approval of the Settlement or if it is needed to
4 uphold the Settlement.

5 **50. Full Payment of Attorneys' Fees and Costs.**

6 Plaintiff and Settlement Class Counsel understand and agree that any attorneys' fees and costs
7 payments made under this Settlement will be the full, final, and complete payment of all attorneys' fees
8 and costs related to the Action, including all attorneys' fees and costs arising from or relating to the
9 representation of Plaintiff, the Settlement Class Members, the LWDA, the State of California, or any
10 other attorneys' fees and costs associated with the investigation, discovery, and/or prosecution of the
11 claims released under the Settlement Agreement. Plaintiff's counsel will release any claim they may
12 have against Defendants and the Released Parties for attorneys' fees or costs arising from or relating to
13 the representation of Plaintiff, the Settlement Class Members, the LWDA, the State of California, or
14 any other attorneys' fees and costs associated with the investigation, discovery, and/or prosecution of
15 the claims released by the Settlement Agreement and the Action. Defendant's sole obligations to
16 Settlement Class Counsel and the Settlement Administrator are set forth in this Settlement. Class
17 Counsel shall not seek to recover any fees or costs awarded in excess of the terms in this Settlement if
18 this Settlement is approved and the Effective Date occurs.

19 **51. Invalidity of Any Provision.**

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

23 **52. Waiver of Certain Appeals.**

24 The Parties agree to waive appeals and to stipulate to class certification for purposes of this
25 Settlement only. Either party may appeal any court order that materially alters the Settlement
26 Agreement's terms.
27
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1 **53. Captions.**

2 The captions and section numbers in this Settlement Agreement are inserted for the reader's
3 convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of
4 this Settlement Agreement.

5 **54. Waiver.**

6 No waiver of any condition or covenant contained in this Settlement Agreement or failure to
7 exercise a right or remedy by any of the Parties will be considered to imply or constitute a further
8 waiver by such party of the same or any other condition, covenant, right or remedy.

9 **55. Mutual Preparation.**

10 The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement
11 Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one
12 party than another merely by virtue of the fact that it may have been prepared by counsel for one of the
13 Parties, it being recognized that, because of the arms'-length negotiations between the Parties, all
14 Parties have contributed to the preparation of this Settlement Agreement.

15 **56. Interim Stay of Proceedings**

16 The Parties agree to stay and hold all proceedings in the Action in abeyance, except such
17 proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing
18 to be conducted by the Superior Court.

19 **57. Representation by Counsel.**

20 The Parties acknowledge that they have been represented by counsel throughout all negotiations
21 that preceded the execution of this Settlement Agreement and that this Settlement Agreement has been
22 executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and Settlement
23 Class Counsel warrant and represent that there are no liens on the Settlement Agreement or on any
24 amounts to be paid to them under the Settlement Agreements' terms.

25 **58. All Terms Subject to Final Court Approval.**

26 All amounts and procedures described in this Settlement Agreement will be subject to final
27 Court approval.
28

59. Cooperation and Execution of Necessary Documents.

All Parties will cooperate in good faith and sign all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

60. Binding Agreement.

The Parties warrant that they understand and have full authority to enter into this Settlement, further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

61. Notice to Parties.

Whenever this Settlement requires or contemplates that one party, the Court, or the Settlement Administrator shall or may give notice to another, notice shall be provided by email facsimile and/or next-day (excluding Sundays and Court holidays) express delivery service as follows:

If to Defendant, then to:

Lara P. Besser [CSB No. 282289]
Lara. Besser @jacksonlewis.com
Abbey M. Jahnke [CSB No. 302454]
abbey.jahnke@jacksonlewis.com
Annalyse E. Butler [CSB No. 328753]
annalyse.buttler@jacksonlewis.com
JACKSON LEWIS P.C.
225 Broadway, Suite 1800
San Diego, CA 92101
(619)573-4900; (619)573-4901 FAX

If to Plaintiff, then to:

Eric K. Yaeckel
yaeckel@sullivanlawgroupapc.com
Ryan T. Kuhn
ryan@sullivanlawgroupapc.com
SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
(619) 702-6760; (619) 702-6761 FAX

[REMAINDER OF PAGE LEFT BLANK]

SIGNATURES - READ CAREFULLY BEFORE SIGNING

6/28/2023

Dated: _____

DocuSigned by:
Jaleen Roberts
EC3DAE3A94924AF...

Plaintiff JALEEN ROBERTS, in a Representative capacity only, and on behalf of other members of the general public similarly situated

Dated: _____

Linde Hotchkiss
On behalf of Defendants ENCONTRO NORTH PARK, LLC

APPROVED AS TO FORM

4884-0020-0550, v. 3

Dated: 7/7/23

SULLIVAN & YAECKEL LAW GROUP, APC

BY: *Eric Yaeckel*

Eric K. Yaeckel
Attorneys for Plaintiff JALEEN ROBERTS

JACSON LEWIS P.C.

Dated: _____

By: _____
Lara Besser
Attorneys for Defendant ENCONTRO NORTH PARK LLC

SIGNATURES - READ CAREFULLY BEFORE SIGNING

Dated: _____

Plaintiff JALEEN ROBERTS, in a Representative capacity only, and on behalf of other members of the general public similarly situated



Dated: 06/27/2023

Linde Hotchkiss
On behalf of Defendants ENCONTRO NORTH PARK, LLC

APPROVED AS TO FORM

4884-0020-0550, v. 3

Dated: _____

SULLIVAN & YAECKEL LAW GROUP, APC

By: _____
Eric K. Yaeckel
Attorneys for Plaintiff JALEEN ROBERTS

Dated: June 28, 2023

JACSON LEWIS P.C.


By: _____
Lara Besser
Attorneys for Defendant ENCONTRO NORTH PARK LLC

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

JALEEN ROBERTS, in a Representative capacity only,
and on behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

ENCONTRO NORTH PARK, LLC, a California Limited
Liability Company; and DOES 1-10, inclusive.

CASE No. 37-2022-00030477-CU-OE-CTL
JUDGE: Honorable Timothy Taylor
DEPARTMENT: C-72

**NOTICE OF CLASS AND PAGA ACTION
SETTLEMENT AND RELEASE**

I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in the case entitled *JALEEN ROBERT v. ENCONTRO NORTH PARK, LLC, et al*, Case No. 37-2022-00030477-CU-OE-CTL (the “Action”).

This notice is to inform you of the proposed settlement of the Action. The notice is also intended (i) to describe the settlement, including how the settlement monies will be allocated and how the settlement may affect you; and (ii) to advise you of your rights and options with respect to the settlement.

You are receiving this notice by order of the Court because the records of Encontro North Park, LLC. (hereinafter “Defendant” or “Encontro”), indicate that you are a current or former employee who worked for Defendant in California during the time period of June 7, 2019 through the date of Preliminary Approval of the Settlement (the “Class”). As a result, **you are eligible to receive a portion of the settlement amount.**

This is **not** a notice of a lawsuit against you. **You are not being sued.** Your participation in the settlement will **not** affect your employment with Encontro in any way whatsoever.

II. WHAT IS THE CLASS ACTION LAWSUIT ABOUT?

In August 2, 2022, Jaleen Roberts, a former Encontro North Park, LLC employee in California, filed a lawsuit in which she alleged violations of California wage- and-hour laws on a class and representative basis as to all of Defendant’s current and former non-exempt employees in California.

The Class Action alleges that the Class was not paid regular, minimum, or overtime wages or final wages upon separation from employment, as required by California law; was not provided meal and rest periods under the California Labor Code and Wage Orders; was not reimbursed for all business-related expenses; and, was not provided pay statements with information specified in the California Labor Code. The Class Action also alleges violations under the California Business and Professions Code §§ 17200 et. seq. based on these state law claims. The lawsuit also seeks penalties under California’s Private Attorneys General Act (“PAGA”) and the California Labor Code.

The individual who is suing is referred to in this document as “Plaintiff.” Plaintiff’s attorneys, Sullivan & Yaeckel Law Group, APC, have been litigating the Action since filing it.

Defendant has denied and continues to deny the factual and legal allegations in the case and believe that they have strong defenses to all of Plaintiff’s claims. Defendant also claims that the Class has been paid all monies due, and maintain that they have complied with all California wage-and-hour laws. This settlement is **not** an admission of any liability and is **not** evidence of any wrongdoing, nor does it indicate that any of Defendant’s policies are unlawful.

The Court has not ruled on whether Plaintiff’s allegations have any merit. However, in order to avoid the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, the parties have negotiated a settlement whereby Defendant has agreed to pay a total of \$120,000.00. As a Class Member, you are eligible to receive a portion of this amount.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

All current and former non-exempt employees who worked for Encontro North Park, LLC in California from June 7, 2019 through the date of Preliminary Approval of the Settlement. This is the “Class Period”.

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

Under the terms of the parties’ proposed settlement, the following will occur if the settlement is given final approval by the Court:

A. A claims administrator has been appointed by the Court to administer the settlement. The claims administrator will pay: (1) Plaintiff’s counsel’s attorneys’ fees, up to \$83,333.33; (2) Plaintiff’s costs of litigation, up to the amount of \$11,000.00; (3) The expenses of administering the settlement, up to the amount of \$10,000.00; (4) An enhancement award of up to \$5,000.00 for Plaintiff’s role in pursuing the litigation; (5) Defendants’ share of payroll taxes; (5) A payment of \$7,500.00 to the California Labor & Workforce Development Agency; and (6) A payment of \$2,500 to be divided between employees who worked during the PAGA Period. It will be indicated in paragraph C below, if your employment fell within the PAGA Period.

B. The amount remaining after those deductions is estimated to be \$ [REDACTED], and will be divided among all Class Members and PAGA Members based on the estimated number of pay periods worked for Encontro as a non-exempt employee in California by each Class Member.

C. According to Defendant’s records, you worked for the Defendant in the State of California for approximately [INSERT NUMBER OF pay periods] during the Class Period, which runs from June 7, 2019 through the date of Preliminary Approval of the Settlement. Your estimated class settlement amount is <<AMOUNT>>. This is only an estimate. Your actual share may change depending on the Court’s final ruling and the final number of participating Class Members.

[IF APPLICABLE] Because you worked for Defendant during the “PAGA Period” between May 29, 2021 through the date of Preliminary Approval of Settlement, you will also receive a payment for PAGA claims based on the number of pay periods worked during that period. According to Defendant’s records, [INSERT NUMBER OF pay periods] during this PAGA Period. Your estimated PAGA settlement amount is \$ [REDACTED]. If you are eligible to receive a PAGA settlement amount and a portion of the class settlement, those amounts will be combined into one check.

If you believe the information above is incorrect, you may dispute this information by sending your corrections and any supporting documentation to the Claims Administrator via U.S. Mail, at CAC Services, 6420 Flying Cloud Dr., Ste. 100, Eden Prairie, MN 55344 Please be advised that the information listed above is presumed to be correct unless you prove otherwise.

D. If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will release Encontro and as applicable, each of their respective past, present and future agents, employees, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations and/or partnerships, divisions, predecessors, successors, insurers, consultants, employee benefit plans and fiduciaries thereof, and affiliated organizations, and their respective successors and assigns of any of the foregoing persons/entities (the “Released Parties”) from all wage and hour claims, rights, demands, liabilities and causes of action of any nature or description arising from the facts, theories of liability and claims asserted in or contemplated by the Action and/or the claims that could have been asserted in the Action based on the facts ascertained or alleged in the Action, including without limitation, any and all statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, and equitable or other relief based on the following categories: (a) any and all claims involving any alleged failure to pay the wages required by state or federal law; (b) any and all claims arising under state or federal law involving any alleged failure to pay employees for all hours worked, including but not limited to any claim for minimum, straight time, or overtime wages; (c) any and all claims arising under state or federal law involving any alleged failure to pay wages, including but not limited to any claim involving “off the clock” work, “rounding,” or the failure to pay for all time under the employer’s control; (d) any and all claims involving payment of wages based on Encontro defined workday or workweek; (e) any and all claims involving the failure to correctly calculate or include bonuses, other incentive pay, or compensation of any kind in the “regular rate” of pay or compensation; (f) any and all claims arising under state law involving any alleged failure to properly provide meal periods and/or authorize and permit rest periods, to pay premiums for missed, late, short, unprovided, on-duty, or interrupted meal and/or rest periods, or to pay such premiums at the regular rate of compensation; (g) any and all claims involving any alleged failure to keep accurate records or to issue proper wage statements to employees; (h) any and all claims involving any alleged failure to timely pay wages, including but not limited to any claim of violation of Labor Code §§ 201 or 202, and any claim for waiting time penalties under Labor Code § 203; (i) any and all claims involving any alleged failure to reimburse for necessary business expenses under Labor Code §§ 2800 or 2802, including but not limited to any claim for the failure to provide and/or reimburse necessary business expenses; (j) any and all claims for unfair business practices in violation of Business and Professions Code sections 17200, et seq.; and (k) any and all penalties pursuant to the Private Attorneys General Act (“PAGA”) of 2004 (collectively, the “Released Claims”). The Released Claims include, but are not limited to, all claims arising under the California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 246, 432, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2698, 2699, 2699.3; the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200 et seq.; the California common law of contract; and federal common law. The release excludes the release of claims not permitted by law (the “Released Claims”).

V. WHAT ARE MY OPTIONS?

A. *You may accept your share of the settlement and be bound by the release of all claims described above.* Settlement awards will be paid by check after the settlement is given final approval by the Court. The checks will be mailed to you by the Claims Administrator. Your check will remain valid and negotiable for one hundred twenty (120) days from the date on which it is issued. After those one hundred eighty (120) days expire, the check will become void and your settlement amount will be paid to the non-profit organization Freedom Dogs; **or**

B. You may exclude yourself from the settlement, in which case you will not receive your share of the settlement and you will not be bound by the settlement. If you choose to be excluded, by no later than _____ (30 calendar days after mailing of this Notice), you must send a written request for exclusion, by mail, to the claims administrator, CAC Services located at 6420 Flying Cloud Dr. Ste. 100, Eden Prairie, MN 55344. In order to be considered valid, your request for exclusion *must* include your name, your address, a request for exclusion, and your signature. However, even if you choose Option B, you will still release the Released PAGA Claims and will receive payment from the PAGA settlement amount if you are deemed to be a PAGA Member.

C. You may object to the settlement. The procedures for objecting to the settlement are described below in Section VIII of this form.

VI. WHAT ARE THE PROCEDURES FOR PAYMENT?

A. The claims administrator will calculate your share of the settlement and will issue you a check.

B. Ten percent (10%) of your share of the settlement will be considered wages from which ordinary tax withholdings will be deducted. No tax deductions shall be made from the remaining ninety percent (90%), which is allocated to penalties, interest and expenses. You will be given IRS tax forms for each of these amounts. You are responsible for paying the correct amount of taxes on each portion of your share of the settlement.

C. It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the Claims Administrator to report any change of your address after you receive this Notice. Failure to report a change of address may result in you not receiving your share of the settlement money.

VII. HEARING ON PROPOSED SETTLEMENT

A final fairness hearing will be held before the Court on _____, 2023, at _____ a.m., in Department C-72 of the San Diego County Superior Court, located at the Hall of Justice, 330 West Broadway, San Diego, California 92101, to decide whether or not the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you. You are not required to attend the hearing. Sullivan & Yaeckel Law Group, APC (contact information below), counsel for Plaintiff and the Class, will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. Procedures for making remote appearances at the hearing are allowed, but are subject to change. However, those procedures are posted on the Court's website at: <https://www.sdcourt.ca.gov/virtualhearings>. You should check the Court website for up-to-date information before attempting to make a remote appearance.

VIII. PROCEDURES FOR OBJECTING TO SETTLEMENT

You have the option of objecting to the settlement and telling the Court that you don't agree with the settlement or some part of it. The Court will consider your views. To object, you may send a letter, which you must sign, saying that you object to the settlement of *Roberts v. Encontro North Park, LLC.. et al.*, Case No. 37-2022-00030477-CU-OE-CTL. Be sure to include the case name and case number (as shown in the preceding sentence), your name, the last four digits of your Social Security Number, your address, your telephone number, the specific reasons you object to the terms of the settlement, and your signature. Mail the objection to the Claims Administrator address at 6420 Flying Cloud Dr. Ste. 100, Eden Prairie, MN 55344 or fax to (888) 495-9746 on or before _____, 2023 (30 calendar days after mailing of this notice). A written objection is optional. You may also appear at the Final Approval Hearing, as described in Section VII, above, to have any objections heard by the Court.

IX. EXAMINATION OF COURT PAPERS AND QUESTIONS

This notice summarizes the settlement. For more detailed information, you may view a complete copy of the settlement agreement, and any papers filed in the Action, which are on file with the Clerk of the Court, case number 37-2022-00030477-CU-OE-CTL. The pleadings and all other records from this litigation may be examined by inspecting the Court file in the at the filing department of the San Diego County Superior Court, located at Hall of Justice, 330 West Broadway, San Diego, California 92101. You may also review the settlement agreement, along with other court records regarding this case, on the Court's website, <https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>, through the link to the "Register of Actions" and doing a search based on the case number set forth above.

If you have any questions, you can call the Claims Administrator at (888) 602-2260 or Class Counsel (see below for phone numbers.)

ATTORNEYS REPRESENTING PLAINTIFF AND THE CLASS

Eric K. Yaeckel
yaeckel@sullivanlawgroupapc.com
Ryan T. Kuhn
ryan@sullivanlawgroupapc.com
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**PLEASE DO NOT CALL THE COURT, ENCONTRO NORTH PARK, LLC. OR
THEIR CORPORATE OFFICE, MANAGERS, NOR ENCONTRO NORTH
PARK, LLC'S ATTORNEYS REGARDING THIS SETTLEMENT.**
