

Exhibit 1

David R. Markham, CA Bar No. 071814
dmarkham@markham-law.com
Maggie Realin, CA Bar No. 263639
mrealin@markham-law.com
Lisa Brevard, CA Bar No. 323391
lbrevard@markham-law.com
THE MARKHAM LAW FIRM
888 Prospect Street, Suite 200
La Jolla, CA 92037
Tel.: 619.399.3995; Fax: 619.615.2067

(Additional Counsel listed on next page)
Attorneys for Plaintiffs on behalf of themselves and all
others similarly situated

GBG LLP
ELIZABETH A. BROWN (SB# 235429)
JENNIFER SVANFELDT (SB# 233248)
TERESA W. GHALI (SB# 252961)
lisabrown@gbgllp.com
jensvanfeldt@gbgllp.com
teresaghali@gbgllp.com
633 West 5th Street, Suite 3330
Los Angeles, CA 90071
Tel.: (213) 358-2810; Fax: (213) 995-6382

Attorneys for
UNITED PARCEL SERVICE, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OSCAR DIAZ, an individual, JACE
O'GUINN, an individual, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

UNITED PARCEL SERVICE, INC., an Ohio
Corporation

Defendant.

Case No. 1:22-CV-00246-ADA-CDB

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

Complaint Filed: February 25, 2022

Trial Date: None

District Judge: Hon. Ana de Alba

Magistrate Judge: Hon. Christopher D. Baker

1 Walter L. Haines (SBN 071075)
walter@uelglaw.com
2 UNITED EMPLOYEES LAW GROUP
5500 Bolsa Avenue, Suite 201
3 Huntington Beach, CA 92649
Tel.: 888.474.7242; Fax: 562.256.1006
4

5 Attorneys for Plaintiffs on behalf of themselves and all others similarly situated.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 This Joint Stipulation of Class and Representative Action Settlement and Release of Claims
2 is entered into by and between Plaintiffs OSCAR DIAZ and JACE O'GUINN, individually and on
3 behalf of the Settlement Class and the State of California, as private attorneys general, on the one
4 hand, and Defendant UNITED PARCEL SERVICE, INC. on the other hand.

5 This Joint Stipulation of Class and Representative Action Settlement and Release of Claims
6 shall be binding on Plaintiffs, the current and former employees they seek to represent, the
7 Settlement Class, and on Defendant, and subject to the definitions, recitals, and terms set forth
8 herein and the approval of the Court.

9 **I. DEFINITIONS**

10 **1. Action**

11 "Action" or "Lawsuit" means the civil action filed in the United States District Court's
12 Eastern District of California, titled *OSCAR DIAZ, an individual, JACE O'GUINN, an individual,*
13 *on behalf of themselves, and all others similarly situated, PLAINTIFFS, v. UNITED PARCEL*
14 *SERVICE, INC, an Ohio Corporation, DEFENDANT*, Case No. 1:22-CV-00246-ADA-CDB.

15 **2. Class Counsel**

16 "Class Counsel" means The Markham Law Firm and United Employees Law Group, PC
17 who, subject to Court approval, shall act as counsel for the Settlement Class.

18 **3. Class Counsel Award**

19 "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and resolution
20 of this Lawsuit, and Class Counsel's expenses and legal costs incurred in connection with this
21 Lawsuit.

22 **4. Class Information**

23 "Class Information" means information regarding Settlement Class Members that
24 Defendant will in good faith compile from their records and provide to the Settlement
25 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each
26 Settlement Class Member's full name; last known address; last known home telephone number;
27 social security number; dates of employment as a Class Member during the Class Period, and
28 Compensable Work Weeks.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

All current and former Part–Time Supervisors, including employees with similar job titles and/or duties, who worked for Defendant within the State of California during the Settlement Class Period, defined as from April 19, 2018 and through the date of the Preliminary Settlement Approval, and who at least once during the Settlement Class Period took paid vacation under UPS’s vacation policy, and whose average straight-time daily paid hours exceeded 5.5 hours per day for the prior Vacation Year, but whose vacation pay was limited to 5.5 hours per day, or 27.5 hours per week of vacation in the Vacation Year.

8
9

10
11
12

13

14

14

15

16

16
17
18
19

20

21

21
22
23

24

25

25

26

27

27

1 **12. Defendant**

2 “Defendant” means Defendant UNITED PARCEL SERVICE, INC., an Ohio corporation.

3 **13. Effective Date**

4 “Effective Date” of the Settlement means the date on which the Court’s order granting Final
5 Approval of this Joint Stipulation becomes final. Such order becomes final upon the later of: (a)
6 The Court's final approval of the settlement and entry of the Final Approval Order and of
7 Final Judgment, if no objections by or on behalf of Class Members have been filed, or if an
8 objection has been filed but is withdrawn prior to or at the Court’s Final Approval Hearing;
9 (b) the time for filing an appeal has expired if an objection has been filed and no appeal has
10 been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.

11 **14. Final Approval Hearing**

12 “Final Approval Hearing” means the final hearing held to ascertain the fairness,
13 reasonableness, and adequacy of the Settlement.

14 **15. Final Approval Order**

15 “Final Approval Order” means the proposed order granting final approval of the Parties’
16 settlement and constituting a Final Judgment, in a form substantially similar to the order attached
17 hereto as **Exhibit C**.

18 **16. Final Judgment**

19 “Final Judgment” means a judgment issued by the Court approving this Agreement as
20 binding upon the Parties. The Final Judgment shall constitute a judgment binding the Parties within
21 the meaning and for purposes of the Federal Rules of Civil Procedure and on the PAGA claims for
22 purposes of enforcing the rule announced in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

23 **17. Gross Settlement Amount**

24 “Gross Settlement Amount” means the agreed upon settlement amount totaling
25 \$1,375,000.00 (One Million Three Hundred Seventy Five Thousand Dollars and Zero Cents) to be
26 paid by Defendant in full settlement of the Released Claims, and includes the Class Counsel
27 Award, Class Representative Service Awards, Individual Settlement Payments, PAGA Payments,
28 Settlement Administrator Costs, and the employer’s share of payroll taxes due on the portion of the

Individual Settlement Payments that is allocated to wages.

18. Individual Settlement Payment

“Individual Settlement Payment” means the amount paid from the Net Settlement Amount to a Participating Class Member, based upon his/her Waiting Time Penalties Subclass Allocation, as applicable, and then as determined by his/her Compensable Work Weeks.

19. LWDA

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

20. Net Settlement Amount

“Net Settlement Amount” means the Gross Settlement Amount, less Court-approved Class Counsel Award, Class Representative Service Awards, PAGA Payments, the Settlement Administration Costs, and the employer’s share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages.

21. Notice of Class and Representative Action Settlement

“Notice of Class and Representative Action Settlement” means the Notice of Pendency of Class and Representative Action Settlement and Hearing Date for Court Approval substantially in the form attached hereto as **Exhibit A**, which shall include an approximation of each Settlement Class Member’s anticipated Individual Settlement Payment, and each PAGA Settlement Member’s anticipated PAGA Payment. It is the notice approved by the Parties and subject to Court approval explaining the terms of this Agreement and the settlement process, which the Settlement Administrator will mail to each Settlement Class Member.

22. PAGA

“PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2698 et seq.

23. PAGA Payment to LWDA

“PAGA Payment to LWDA” means the payment made hereunder to the LWDA pursuant to PAGA.

24. PAGA Payments to PAGA Settlement Members

“PAGA Payments to PAGA Settlement Members” means the payments made to PAGA

Settlement Members based on the PAGA Pay Periods worked during the PAGA Period, and collectively with the PAGA Payment to LWDA, are the “PAGA Payments.”

25. PAGA Period

“PAGA Period” means the period from April 20, 2021 (one year prior to Plaintiffs’ PAGA letter (dated April 20, 2022)), to Preliminary Settlement Approval.

26. PAGA Pay Periods

“PAGA Pay Periods” means the number of pay periods which PAGA Settlement Member(s) performed work for Defendant in the State of California during the PAGA Period based on Defendant’s records.

27. PAGA Period Information

“PAGA Period Information” means information regarding PAGA Settlement Members that Defendant will in good faith compile from their records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each PAGA Settlement Member’s full name; last known address; last known home telephone number; social security number; dates of employment as a PAGA Settlement Member during the PAGA Period, and PAGA Pay Periods.

28. PAGA Released Claims

“PAGA Released Claims” means all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories asserted in the operative complaint and/or the PAGA letter referenced in paragraph 25 above, and which could have been asserted based on the facts alleged in the operative complaint, and/or the PAGA letter referenced in paragraph 25 above, which during the PAGA Period are or could be the basis of claims for: (a) breach of contract; (b) failure to pay all wages due for vacation taken; (c) promissory estoppel; (d) failure to provide accurate, itemized wage statements; and (e) failure to pay all final wages due upon separation of employment.

29. PAGA Settlement Members

“PAGA Settlement Members” means all current and former Part–Time Supervisors, including employees with similar job titles and/or duties, who worked for Defendant within the

State of California during the PAGA Period, and who at least once during the PAGA Period took paid vacation under UPS's vacation policy, and whose average straight-time daily paid hours exceeded 5.5 hours per day for the prior Vacation Year, but whose vacation pay was limited to 5.5 hours per day, or 27.5 hours per week of vacation in the Vacation Year.

30. Participating Class Members

"Participating Class Members" means those Class Members who did not file a valid and timely Request for Exclusion from the class action settlement pursuant to section III, paragraph 12 of this Agreement.

31. Parties

"Parties" means Plaintiffs and Defendant, collectively, and "Party" shall mean Plaintiffs or Defendant, individually.

32. Payment Ratio – Class

"Payment Ratio - Class" means first, the Settlement Class Member's Waiting Time Penalties Allocation, as applicable, and second, the respective Compensable Work Weeks during which an employee worked, in proportion to the aggregate number of Compensable Work Weeks worked by all Settlement Class Members.

33. Payment Ratio – PAGA

"Payment Ratio – PAGA" means the respective PAGA Pay Periods during which an employee worked, in proportion to the aggregate number of PAGA Pay Periods worked by all PAGA Settlement Members.

34. Plaintiffs

"Plaintiffs" means Plaintiff OSCAR DIAZ and Plaintiff JACE O'GUINN.

35. Preliminary Approval Date

"Preliminary Approval Date" means the date on which the Court issues an order granting preliminary approval of the proposed order in a form substantially similar to the order attached hereto as **Exhibit B**.

36. Released Claims

"Released Claims" means any and all claims, demands, rights, liabilities, and causes of

1 action that are asserted in the operative complaint and which could have been asserted based on the
2 facts alleged in the complaint, which are or could be the basis of claims for: (a) breach of contract;
3 (b) failure to pay all wages due for vacation taken; (c) promissory estoppel; (d) failure to provide
4 accurate, itemized wage statements; (e) failure to pay all final wages due upon separation of
5 employment; (f) all claims for unfair business practices; and (g) a claim under the California Labor
6 Code Private Attorneys General Act of 2004.

7 **37. Released Parties**

8 “Released Parties” means Defendant, its past and present officers, directors, shareholders,
9 employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and their
10 respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys.

11 **38. Request for Exclusion**

12 “Request for Exclusion” means a letter setting forth a Class Member’s name, present
13 address, and a simple statement electing to be excluded from the Class Action Settlement.

14 **39. Response Deadline**

15 “Response Deadline” means the date forty-five (45) days after the Settlement Administrator
16 mails the Notice of Class Action Settlement to Settlement Class Members, which is the last date on
17 which Settlement Class Members may: (a) submit a Request for Exclusion; (b) file and serve
18 objections to the settlement; or (c) dispute the information contained in the Notice of Class Action
19 Settlement. If the forty-fifth (45th) day falls on a Sunday or Federal holiday, then the deadline is
20 extended to the next day that the U.S. Postal Service is open.

21 **40. Settlement**

22 “Settlement” or “Settlement Agreement” means the disposition of the Lawsuit pursuant to
23 this Joint Stipulation of Class and Representative Action Settlement and Release of Claims.

24 **41. Settlement Administrator**

25 “Settlement Administrator” means the third-party company that is responsible for
26 administering the Settlement. This Settlement Administrator is Simpluris, Inc.

27 **42. Settlement Administrator Costs**

28 “Settlement Administrator Costs” means the amount to be paid to the Settlement

Administrator from the Gross Settlement Amount for administration of this Settlement, currently estimated at \$38,400.

43. Waiting Time Penalties Subclass

“Waiting Time Penalties Subclass” means all members of the Settlement Class whose employment with Defendant ended at any time from and after April 19, 2019 through Preliminary Settlement Approval. In recognition that the maximum potential exposure of Defendant for claims under Labor Code 203 represents approximately 75% of the maximum potential exposure of Defendant for all claims to be released under this Settlement, the Waiting Time Penalties Subclass Settlement Allocation will be 75% of the Net Settlement Amount, as specified in paragraph 44, below.

44. Waiting Time Penalties Subclass Allocation

“Waiting Time Penalties Subclass Allocation” means the portion of the Net Settlement Amount allocated to the members of the Waiting Time Penalties Subclass. The Waiting Time Penalties Subclass Settlement Allocation is 75% of the Net Settlement Amount, and will be distributed among the members of the Waiting Time Penalties Subclass based on the number of workweeks they worked at any time from and after April 19, 2019 through Preliminary Settlement Approval, in proportion to the aggregate number of workweeks worked by all members of the Waiting Time Penalties Subclass.

II. RECITALS

1. Class Certification.

The Parties stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this Settlement, the Parties shall work together in good faith to agree on a revised settlement agreement to address the Court’s concerns. If the Parties are unable to reach agreement, or the Court does not grant either preliminary or final approval of the revised settlement, the Parties agree that this stipulation regarding class certification will be revoked and the Parties will return to a point in litigation prior to the execution of the Memorandum of Understanding dated January 18, 2023 (“MOU”).

1 **2. Procedural History**

2 On February 25, 2022, Plaintiff Oscar Diaz filed a Class Action Complaint in the Eastern
3 District of California of the United States District Court. The complaint did not allege the claims at
4 issue in this Settlement.

5 On April 19, 2022, Plaintiff Diaz amended his Class Action Complaint to include Jace
6 O’Guinn as an additional representative plaintiff, and to solely allege the following claims: (1)
7 breach of contract/vacation pay policy, (2) promissory estoppel, (3) failure to pay accrued vacation
8 pay upon termination/waiting time penalties, (4) failure to furnish timely and accurate wage
9 statements, and (5) violation of California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code
10 17200, *et seq.*

11 On April 20, 2022, Plaintiffs Oscar Diaz and Jace O’Guinn sent the LWDA notice, via
12 online filing, of their intent to file an action seeking civil penalties under PAGA, and sent a
13 certified mail copy of the LWDA notice to Defendant.

14 On June 27, 2022, Plaintiffs Diaz filed a Second Amended Class Action Complaint to
15 include a cause of action for PAGA penalties. The operative Second Amended Complaint alleges
16 claims for: (1) breach of contract/vacation pay policy; (2) promissory estoppel; (3) failure to pay
17 accrued vacation pay upon termination/waiting time penalties; (4) failure to furnish timely and
18 accurate wage statements; (5) violation of UCL; and (6) violation of PAGA.

19 After the matter was at issue, the Parties began to engage in informal discovery to
20 understand the nature of the allegations and the scope of potential liability. The Parties began to
21 discuss the possibility of mediation and ultimately stayed formal discovery and case management
22 dates to focus their efforts on potential resolution. Defendant provided Plaintiffs’ counsel with
23 pertinent data for the Class Members so that the Parties could fully-investigate the claims at issue
24 and understand their strengths and weaknesses.

25 On January 18, 2023, the Parties attended a full-day mediation with experienced mediator
26 David Rotman. After the mediation session, the Parties reached a settlement that day, as provided
27 herein, to settle Plaintiffs’ claims on a class-wide and representative basis.

28 Defendant denies any liability or wrongdoing of any kind associated with the claims

1 asserted in Plaintiffs' Complaint, disputes the damages and penalties claimed by Plaintiffs, and
2 further contends that, for any purpose other than settlement, Plaintiffs' claims are not appropriate
3 for class or representative action treatment. This Stipulation is a compromise of disputed claims.
4 Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry
5 out this Stipulation, shall be construed or used as an admission by or against Defendant as to the
6 merits or lack thereof of the claims asserted in this Lawsuit. Defendant contends, among other
7 things, that, at all times, it has complied with all applicable state, federal and local laws related to
8 the Settlement Class Members' employment.

9 The Class Representatives are represented by Class Counsel. Class Counsel conducted an
10 investigation into the facts relevant to the Lawsuit, including reviewing documents and information
11 provided by Defendant. Based on their own independent investigation and evaluation, Class
12 Counsel are of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and
13 in the best interest of the Settlement Class in light of all known facts and circumstances, including
14 the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
15 representative action trial on the merits, and numerous potential appellate issues. Although
16 Defendant denies liability, Defendant agrees to this Settlement in part to avoid the cost of further
17 litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle,
18 compromise and discharge all disputes and claims arising from or relating to the Action on the
19 terms set forth herein.

20 **3. Benefits of Settlement to Class Members.**

21 Plaintiffs and Class Counsel recognize the expense and length of continued proceedings
22 necessary to litigate their disputes through trial and through any possible appeals. Plaintiffs have
23 also taken into account the uncertainty and risk of the outcome of further litigation, and the
24 difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel are also aware of
25 the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both
26 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
27 damages for the Settlement Class Members. Plaintiffs and Class Counsel have also taken into
28 account Defendant's agreement to enter into a settlement that confers substantial relief upon the

members of the Settlement Class. Based on the foregoing, Class Counsel have concluded that settlement for the consideration and on the terms set forth in this Settlement Agreement, is fair, reasonable, and adequate and is in the best interest of the putative class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, numerous potential appellate issues, and other risks inherent in litigation.

4. Defendant's Reasons for Settlement.

Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have been and, unless this Settlement is completed, will continue to be devoted to, the defense of the claims asserted by Plaintiffs and Settlement Class Members. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Even though Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiffs in this Lawsuit, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has complied with all applicable state, federal, and local laws.

5. Settlement of Disputed Claims.

This Agreement is a compromise of disputed claims. Defendant contends that the Released Claims have no merit and do not give rise to liability. Plaintiffs and Settlement Class Members have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement, no documents referred to herein, and no action taken to carry out this Agreement, may be construed or used as an admission by or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

III. TERMS OF AGREEMENT

1. Release as To All Participating Class Members.

As of the Effective Date, the Participating Class Members, including Plaintiffs, release the Released Parties from the Released Claims for the Settlement Class Period.

The period of release shall extend to the limits of the Settlement Class Period. Defendant

shall be entitled to a release of Released Claims which occurred during the Settlement Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the Settlement Class Period.

2. Release as to All PAGA Settlement Members

As of the Effective Date, the PAGA Settlement Members, including Plaintiffs, release the Released Parties from the PAGA Released Claims for the PAGA Period.

The period of release shall extend to the limits of the PAGA Period. Defendant shall be entitled to a release of PAGA Released Claims which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the PAGA Period.

3. Release of Claims by Plaintiffs

As of the Effective Date, Plaintiffs release the Released Parties from all of the Released Claims during the Settlement Class Period and PAGA Released Claims during the PAGA Period. Plaintiffs, for themselves and their heirs, successors and assigns, further waive, release, acquit and forever discharge the Released Parties from any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on behalf of Plaintiffs as of the date of this Agreement, including, but not limited to, any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act (FLSA), the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the

California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code §§17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance.

Plaintiffs' releases set forth herein include a waiver of all rights under California Civil Code §1542, which provides:

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

Plaintiffs may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but Plaintiffs expressly agree to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiffs' employment with Defendant.

4. Tax Liability.

The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Class Members are not relying on any statement or representation by the Parties in this regard. Participating Class Members understand and agree that they will be responsible for the payment of taxes and penalties assessed on the payments described herein and will hold the Parties free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes. Moreover, this Agreement is based upon a good faith determination of the Parties to resolve a disputed claim.

5. Circular 230 Disclaimer.

Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure

1 between or among the Parties or their attorneys and other advisers, is or was intended to be, nor
2 shall any such communication or disclosure constitute or be construed or be relied upon as, tax
3 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
4 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
5 independent legal and tax counsel for advice (including tax advice) in connection with this
6 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
7 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
8 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
9 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party
10 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
11 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
12 acknowledging party of the tax treatment or tax structure of any transaction, including any
13 transaction contemplated by this Agreement.

14 **6. Preliminary Approval of Settlement.**

15 Promptly upon execution of this Agreement, Plaintiffs will move the Court to grant
16 preliminary approval of this Settlement, certifying the Settlement Class for settlement purposes
17 only and setting a date for the Final Approval Hearing. All Parties agree to work diligently and
18 cooperatively to have this Settlement presented to the Court for preliminary approval. The
19 proposed preliminary approval order shall provide for the Notice of Class and Representative
20 Action Settlement to be sent to Settlement Class Members and PAGA Settlement Members as
21 specified herein.

22 **7. Settlement Administrator.**

23 Upon the Court granting preliminary approval of this Agreement, Defendant shall provide
24 the Settlement Administrator with the Class and PAGA Period Information within thirty (30)
25 calendar days for purposes of mailing the Notice of Class and Representative Action Settlement to
26 the Settlement Class Members and PAGA Settlement Members. No later than three (3) business
27 days after receipt of the Class and PAGA Period Information, the Settlement Administrator shall
28 notify counsel for the Parties that the list has been received and state the number of Settlement

Class Members and PAGA Settlement Members included in the Class and PAGA Period Information.

8. Notice by First Class U.S. Mail.

Upon receipt of the Class and PAGA Period Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within twenty-one (21) calendar days of the Settlement Administrator's receipt of the Class and PAGA Period Information, the Settlement Administrator shall mail copies of the Notice of Class and Representative Action Settlement to all Settlement Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Settlement Class Member, including performing a skip-trace to identify any updated addresses. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.

9. Undeliverable Notices.

Any Notice of Class Action Settlement returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or social security number of the Settlement Class Member whose notice was undeliverable, and shall then re-mail all returned, undelivered mail within five (5) calendar days of receiving notice that a notice was undeliverable. Settlement Class Members who receive a re-mailed Notice of Class Action Settlement shall have their Response Deadline extended by the longer of fourteen (14) calendar days from the date of re-mailing or the remaining original Response Deadline period.

10. Disputes Regarding Individual Settlement Payments.

Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the dates of employment stated on their Notice of Class and Representative Action Settlement, to provide documentation and/or an explanation to show

contrary information by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Settlement Class Members and the Parties. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's records will be given a rebuttable presumption of accuracy.

11. Disputes Regarding Administration of Settlement.

Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

12. Requests for Exclusion.

The Notice of Class and Representative Action Settlement shall state that Settlement Class Members who wish to exclude themselves from the class action portion of the Settlement must submit a Request for Exclusion by the Response Deadline. The Notice will state that the Request for Exclusion: (1) must contain the name, address, and telephone number of the Settlement Class Member requesting exclusion; (2) must contain a statement expressing that the Settlement Class Member elects to be excluded from the Settlement; (3) must be signed by the Settlement Class Member; and (4) must be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax number. The Request for Exclusion will be deemed invalid if it does not contain a Settlement Class Member's name, address, signature, and a statement requesting exclusion. The date of the postmark on the return mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. If the Settlement Administration is unsure of the validity of a Request for Exclusion, it must provide a copy of the Request for Exclusion to the Parties to review and make a determination as to its validity. Any Settlement Class Member who

requests to be excluded from the Settlement Class will not be entitled receive an Individual Settlement Payment from the class action portion of the Settlement and will not be bound by the terms of the class action Settlement or have any right to object, appeal, or comment thereon. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in this Lawsuit if the Settlement is approved by the Court. No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a complete list of all members of the Settlement Class who have timely submitted a Request for Exclusion. PAGA Settlement Members may not exclude themselves from the PAGA portion of the settlement and will have released the PAGA Released Claims even if they exclude themselves from the Settlement Class.

13. Objections.

The Notice of Class and Representative Action Settlement shall state that Settlement Class Members who wish to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing. Any written objection (“Notice of Objection”) must be mailed or faxed to the Settlement Administrator by the Response Deadline. The date of mailing on the envelope or the date of the fax transmission shall be deemed the exclusive means for determining that a Notice of Objection was timely received. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the basis for the objection; and (3) if the Settlement Class Member intends to appear at the Final Approval Hearing. The Settlement Administration must provide a copy of written objections to the Parties within three (3) calendar days of receipt. Class Counsel will ensure that any Notices of Objection received by the Settlement Administrator by the Response Deadline are filed with the Court along with the Motion for Final Approval. Either of the Parties may file a responsive document to any objection at least ten (10) court days before the Final Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant no later than the Response Deadline. Class Counsel shall not represent any Settlement Class Members with respect

1 to any such objections.

2 Any Class Member who fails to submit a timely written objection or to present an objection
3 in person at the Final Approval Hearing shall be deemed to have waived any objections and shall
4 be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

5 An individual who submits a valid Request for Exclusion may not object to the Settlement.

6 **14. No Solicitation of Settlement Objections or Exclusions.**

7 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
8 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class
9 Members to submit either written objections to the Settlement or requests for exclusion from the
10 Settlement, or to appeal from the Court's Final Judgment.

11 **15. Funding and Allocation of Gross Settlement Amount.**

12 No later than thirty (30) calendar days after the Effective Date, Defendant shall provide the
13 Gross Settlement Amount to the Settlement Administrator to fund the Settlement, as set forth in
14 this Agreement. Defendant shall pay the Settlement Administrator's fee sooner than this deadline,
15 should the Settlement Administrator require it. However, Defendant will not be obligated to make
16 any payments contemplated by this Agreement unless and until the Court enters the Final Approval
17 Order and Final Judgment, and after the Effective Date of the Agreement. Within fourteen (14)
18 calendar days of the receipt of the Gross Settlement Amount, the Settlement Administrator shall
19 make the Settlement payments as specified in this Settlement Agreement.

20 **16. Net Settlement Amount.**

21 The Net Settlement Amount will be determined by the Settlement Administrator by
22 subtracting the Court-approved Class Counsel Award, Class Representative Service Awards,
23 PAGA Payments to the LWDA, Settlement Administrator Costs, and employer's share of payroll
24 taxes due on the portion of the Individual Settlement Payments allocated to wages, from the Gross
25 Settlement Amount. This is a non-reversionary Settlement in which Defendant is required to pay
26 the entire Gross Settlement Amount, which includes, the Class Counsel Award, Class
27 Representative Service Awards, Individual Settlement Payments, PAGA Payments, the employer's
28 share of payroll taxes due on the portion of the Individual Settlement Payments allocated to wages,

and Settlement Administrator Costs. No portion of the Gross Settlement Amount will revert to Defendant.

17. Individual Settlement Payments.

Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing address within fourteen (14) calendar days after Defendant makes the final settlement payment. All Individual Settlement Payments, other than the payments made to the Waiting Time Penalties Subclass, will be allocated as follows: twenty percent (20%) as wages, forty percent (40%) as interest, and forty percent (40%) as statutory penalties. The payments made to the Waiting Time Penalties subclass will be allocated 100% as statutory penalties. The Settlement Administrator shall provide to the Parties the anonymized list containing its settlement payment calculations at least 3 business days before mailing.

18. PAGA Settlement Member Payments.

PAGA Payments to PAGA Settlement Members will be paid pursuant to the formula set forth herein. PAGA Payments to PAGA Settlement Members shall be mailed by regular First-Class U.S. Mail to each PAGA Settlement Member's last known mailing address within fourteen (14) calendar days after Defendant makes the final settlement payment. All PAGA Payments to PAGA Settlement Members will be allocated as one hundred percent (100%) statutory penalties.

19. Class Member's Payment Ratio.

Participating Class Members will be paid first for their portion of Applicable Waiting Time Penalties, if applicable, and then second, on a pro-rata basis. The Settlement Administrator will distribute 75% of the Net Settlement Amount among participating Waiting Time Penalty Subclass Members as specified in section I, paragraph 44, above. The Settlement Administrator will distribute the 25% of the Net Settlement Amount among Participating Class Members on a pro rata basis based on the number of Compensable Work Weeks during which s/he worked in proportion to the aggregate number of Compensable Work Weeks worked by all Settlement Class members, reduced as necessary to account for the employee's mandatory payroll withholdings.

1 **20. PAGA Settlement Member's Payment Ratio.**

2 PAGA Settlement Members will be paid on a pro-rata basis. PAGA Payments to PAGA
3 Settlement Members will be based on the number of PAGA Pay Periods during which s/he worked
4 in proportion to the aggregate number of PAGA Pay Periods worked by all PAGA Settlement
5 Members.

6 **21. Payment to Class Members and PAGA Settlement Members.**

7 Checks shall be made payable to each Participating Class Member and PAGA Settlement
8 Member for payment of each Participating Class Member's Individual Settlement Payment, and
9 each PAGA Settlement Member's PAGA Payment, respectively, as set forth in Paragraph III. 19-
10 20 of this Agreement.

11 **22. Form of Payment to Class Members and PAGA Settlement Members.**

12 The Individual Settlement Payment amount due to each Participating Class Member, and
13 the PAGA Payment due to each PAGA Settlement Member, shall be paid in the form of a check to
14 each Participating Class Member and PAGA Settlement Member, respectively. Defendant shall
15 fully discharge its obligations to those Participating Class Members and PAGA Settlement
16 Members to whom Defendant will pay Individual Settlement Payment(s) and/or PAGA Payment(s)
17 through the mailing of the settlement checks via Settlement Administrator, regardless of whether
18 settlement checks are actually received and/or negotiated by Class Members and/or PAGA
19 Settlement Members.

20 **23. Unclaimed Settlement Payment(s).**

21 After one hundred and eighty (180) calendar days of the mailing of the Individual
22 Settlement Payment checks, and PAGA Payments to PAGA Settlement Members, funds
23 attributable to unclaimed, undeliverable, or expired Individual Settlement Payment checks and/or
24 PAGA Payments to PAGA Settlement Members, will be transmitted to the State of California
25 Office of the Controller Unclaimed Property Fund in the name of the Participating Class Members
26 and/or PAGA Settlement Members who did not cash his/her Settlement check. The Parties agree
27 to coordinate their efforts to seek Court approval for such an escheatment process of uncashed
28 funds. If, for some reason, the Court does not approve the escheatment of uncashed funds, the

Parties agree to meet and confer to identify a mutually-agreeable cy pres recipient(s).

24. Class Representative Service Awards.

Plaintiffs will request that the Court approve Class Representative Service Awards of up to \$6,500 to each Plaintiff. The Class Representative Service Awards shall be paid to Plaintiffs from the Gross Settlement Amount within fourteen (14) calendar days after Defendant provides the Gross Settlement Amount to the Settlement Administrator. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Plaintiffs for their respective Class Representative Service Awards. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their Class Representative Service Awards and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Awards. The Class Representative Service Awards shall be in addition to the Plaintiffs' Individual Settlement Payments as Settlement Class Members and PAGA Payment as PAGA Settlement Members. Any amount requested by Plaintiffs for the Class Representative Service Awards and not granted by the Court shall return to the Net Settlement Amount and be distributed to Participating Class Members as provided in this Agreement.

25. Class Counsel Award.

Class Counsel will request that the Court approves attorneys' fees in the amount of up to one-third of the Gross Settlement Amount. This amount is currently anticipated to be \$458,333.33. Class Counsel will request that the Court approve the reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of this matter from the Gross Settlement Amount not to exceed \$30,000. Class Counsel shall be paid any Court-approved fees and costs no later than fourteen (14) calendar days after Defendant provides the Gross Settlement Amount to the Settlement Administrator. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Award and not granted by the Court shall return to the Net Settlement Amount and

be distributed to Participating Class Members as provided in this Agreement.

26. Settlement Administrator Costs.

The Parties agree the Settlement Administrator Costs are estimated to be \$38,400, and will be paid from the Gross Settlement Amount. The Settlement Administrator shall have the authority and obligation to make payments, credits and disbursements to Settlement Class Members in the manner set forth herein, calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement.

27. Responsibilities of the Settlement Administrator.

The Settlement Administrator shall be responsible for the following: processing and mailing payments to Plaintiffs, Class Counsel, Participating Class Members, and PAGA Settlement Members; printing, and mailing the Notice of Class and Representative Action Settlement and tax forms to the Participating Class Members as directed by the Court; receiving and reporting the requests for exclusion and objections submitted by Settlement Class Members; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement, setting up and maintaining a static settlement website; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. Before making the Settlement payments, the Settlement Administrator will prepare an anonymized excel spreadsheet for the Parties' review and approval, which will list all amounts to be paid under this Settlement. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

28. Settlement Administrator Fees.

The Settlement Administrator shall be paid the Settlement Administrator Costs within fourteen (14) calendar days after Defendant provides the Gross Settlement Amount to the Settlement Administrator, unless required to be paid sooner, but not before the Effective Date of this Settlement.

1 **29. Payment to the LWDA.**

2 A total payment of \$68,750 from the Gross Settlement Amount will be allocated as the
3 PAGA Payment to be paid as penalties under the Labor Code Private Attorneys General Act of
4 2004, to the LWDA. Seventy-five percent (75%) of the PAGA Payment (\$51,562.50) will be paid
5 to the LWDA and the remaining twenty-five (25%) (\$17,187.50) shall be distributed to PAGA
6 Settlement Members.

7 **30. Final Approval Hearing and Entry of Final Judgment.**

8 Upon expiration of the Response Deadline, with the Court's permission, the Final Approval
9 Hearing shall be conducted to determine final approval of the Settlement along with the amount
10 properly payable for: (i) the Class Counsel Award; (ii) the Class Representative Service Awards;
11 (iii) Individual Settlement Payments; (iv) the Settlement Administrator Costs; and (v) PAGA
12 Payments.

13 **31. Final Approval Order.**

14 Plaintiffs will request that the Court enter, after the Final Approval Hearing, a Final
15 Approval Order. Plaintiffs will request that the Final Approval Order certify the Settlement Class;
16 find that this Agreement is fair, just, adequate, and in the best interests of the Class; and require the
17 Parties to carry out the provisions of this Agreement.

18 **32. Nullification of Settlement Agreement.**

19 In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court
20 denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgment as provided
21 herein; or (iv) the Settlement does not become final for any other reason, this Settlement
22 Agreement shall be null and void and any order or judgement entered by the Court in furtherance
23 of this Settlement shall be treated as void from the beginning. To the extent the total number of opt
24 outs exceed ten percent (10%), Defendant has the option to nullify this settlement prior to the final
25 fairness hearing via a written notice to Plaintiffs' counsel. If one or more of such events occur
26 causing the Settlement Agreement to become null and void, the Parties shall proceed in all respects
27 as if this Agreement had not been executed and the Parties shall return to status quo ante that
28 existed prior to the execution of the January 18, 2023 MOU, except that any fees already incurred

1 by the Settlement Administrator shall be paid by the party terminating the Settlement or Defendant
2 will be solely responsible for the costs incurred for the settlement administration should it exercise
3 its option to nullify this agreement. The return of any paid Settlement funds to Defendant shall
4 occur no later than five (5) business days after one or more of the triggering events leading to
5 nullification occurs. In the event an appeal is filed from the Court's Final Judgment, or any other
6 appellate review is sought, administration of the Settlement shall be stayed pending final resolution
7 of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior
8 to it being notified of the filing of an appeal from the Court's Final Judgment, or any other
9 appellate review, shall be paid to the Settlement Administrator by Defendant within thirty (30)
10 days of such notification.

11 **33. Increase in Compensable Work Weeks.**

12 Defendant represented to Class Counsel that the Compensable Work Weeks between April
13 19, 2018 and July 31, 2022 were estimated to be 766,214. To the extent the number of
14 Compensable Work Weeks during the same time period increases by more than ten percent (10%),
15 it will trigger an escalator provision where the Net Settlement Amount shall increase by the
16 percentage by which the increased class size measured in Compensable Workweeks exceeds 10%
17 of the represented class size. (e.g., if the actual class size is 12% higher than the represented class
18 size, the Net Settlement Amount shall be increased by 2%).

19 **34. No Effect on Employee Benefits.**

20 Amounts paid to Plaintiffs or other Settlement Class Members pursuant to this Agreement
21 shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for,
22 or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.)
23 of Plaintiffs or Settlement Class members.

24 **35. No Admission by Defendant.**

25 Defendant denies any and all claims alleged in this Lawsuit and denies all wrongdoing
26 whatsoever. This Agreement is not a concession or admission, and shall not be used against
27 Defendant as an admission or indication with respect to any claim of any fault, concession, or
28 omission by Defendant.

1 **36. Exhibits and Headings.**

2 The terms of this Agreement include the terms set forth in any attached Exhibits, which are
3 incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are
4 an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this
5 Agreement are inserted for convenience of reference only and do not constitute a part of this
6 Agreement.

7 **37. Interim Stay of Proceedings.**

8 The Parties agree to stay all proceedings in the Action, except such proceedings necessary
9 to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by
10 the Court.

11 **38. Amendment or Modification.**

12 This Agreement may be amended or modified only by a written instrument signed by
13 counsel for all Parties or their successors-in-interest.

14 **39. Entire Agreement.**

15 Apart from the written Memorandum of Understanding, which the Parties specifically agree
16 to integrate herein, this Agreement and any attached Exhibits constitute the entire Agreement
17 among these Parties, and no oral or written representations, warranties, or inducements have been
18 made to any Party concerning this Agreement or its Exhibits other than the representations,
19 warranties, and covenants contained and memorialized in the Agreement and its Exhibits. The
20 Parties are entering into this Agreement based solely on the representations and warranties herein
21 and not based on any promises, representation, and/or warranties not found herein.

22 **40. Authorization to Enter into Settlement Agreement.**

23 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
24 whom they represent to negotiate this Agreement and to take all appropriate actions required or
25 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
26 execute any other documents required to effectuate the terms of this Agreement. The Parties and
27 their counsel will cooperate with each other and use their best efforts to effect the implementation
28 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of

any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant that they are authorized to sign this Agreement on behalf of Defendant. Plaintiffs represent and warrant that they are authorized to sign this Agreement and that they have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

41. Binding on Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

42. California Law Governs.

All terms of this Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

43. Counterparts.

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

44. Jurisdiction of the Court.

The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

45. Invalidity of Any Provision.

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

46. Publicity.

Plaintiffs and Class Counsel agree not to disclose or publicize this Settlement, including the

fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except potential Settlement Class Members and as shall be contractually required to effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiffs and Class Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the name of the Parties in this action and the venue/case number of this action, and the Gross Settlement Amount, for such purposes.

47. Notice of Settlement to LWDA.

Plaintiffs will provide submit this Agreement and proposed settlement to the Labor Workforce Development Agency (“LWDA”) as required by Labor Code Section 2699(l)(2) at the same time that it is submitted to the Court for preliminary approval.

48. Representations by Plaintiff Oscar Diaz:

Plaintiff Oscar Diaz acknowledge the following:

1. Plaintiff Diaz has carefully read and fully understands all of the provisions of this Settlement;
2. Plaintiff Diaz has had at least twenty-one (21) calendar days to consider this Settlement before signing it although he could choose to sign it earlier;
3. Plaintiff Diaz may revoke the release of any age claims under the OWBPA after he signs the Settlement by delivering written notice to Counsel for Defendant, Elizabeth Brown, before the close of business seven days after he signs this Settlement;
4. In the event Plaintiff Diaz revokes the release pursuant to paragraph 48(3), he will not receive the Class Representative Award specified above.

1 WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class members, and
2 Defendant have executed this Agreement as of the dates set forth below.

3 **IT IS SO AGREED:**

4
5 Dated: Mar 2, 2023 By: Oscar Diaz
6 OSCAR DIAZ

7
8 Dated: _____ By: _____
9 JACE O'GUINN

10
11 Dated: _____ By: _____
12 UNITED PARCEL SERVICE, INC.

13 **APPROVED AS TO FORM:**

14
15 DATED: February 27, 2023 THE MARKHAM LAW FIRM

16
17
18 By: _____
19 David R. Markham
20 Maggie Realin
21 Lisa Brevard

22
23
24 DATED: February 27, 2023 UNITED EMPLOYEES LAW GROUP

25
26 By: _____
27 Walter Haines
28 Attorneys for Plaintiffs and Proposed Class

WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class members, and Defendant have executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: _____ By: _____

OSCAR DIAZ

Dated: Feb 27, 2023 By: Jace O'Guinn

JACE O'GUINN

Dated: _____ By: _____

UNITED PARCEL SERVICE, INC.

APPROVED AS TO FORM:

DATED: February 27, 2023

THE MARKHAM LAW FIRM

By: Markham
David R. Markham
Maggie Realin
Lisa Brevard

DATED: February 27, 2023

UNITED EMPLOYEES LAW GROUP

By: Walter Haines
Walter Haines

Attorneys for Plaintiffs and Proposed Class

WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class members, and Defendant have executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

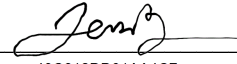
Dated: _____ By: _____

OSCAR DIAZ

Dated: _____ By: _____

JACE O'GUINN

Dated: 2/27/2023 By: _____

DocuSigned by:

40C612DD01AA4C7...

UNITED PARCEL SERVICE, INC.

APPROVED AS TO FORM:

DATED: THE MARKHAM LAW FIRM

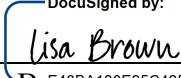
By: _____
David R. Markham
Maggie Realin
Lisa Brevard

DATED: UNITED EMPLOYEES LAW GROUP

By: _____
Walter Haines
Attorneys for Plaintiffs and Proposed Class

1 DATED: 2/27/2023

2 GBG LLP

3
4 By: 
5 Elizabeth A. Brown E48BA130E95C425...

6 Attorneys for Defendant UNITED PARCEL
7 SERVICE, INC.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “A”

1 [CLASS MEMBER NAME]

2 **OSCAR DIAZ and JACE O'GUINN v. UNITED PARCEL SERVICE, INC.**

3 **United States District Court, Eastern District of California**

4 **Case No.: 1:22-CV-00246-ADA-CDB**

5 If you are a current or former employee of UNITED PARCEL SERVICE, INC.
6 (“Defendant”), a class and representative action lawsuit may affect your rights and you may be
7 entitled to benefits under the settlement.

8 You are not being sued. A court authorized this notice. This is not a solicitation from a
9 lawyer.

10 **PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT**
11 **INFORMATION ABOUT YOUR RIGHTS.**

- 12 • This lawsuit involves a class defined as: All current and former Part-Time Supervisors,
13 including employees with similar job titles and/or duties, who worked for Defendant within
14 the State of California during the Settlement Class Period, defined as from April 19, 2018
15 and through [insert the date of the Preliminary Settlement Approval], and who at least once
16 during the Settlement Class Period took paid vacation under UPS’s vacation policy, and
17 whose average straight-time daily paid hours exceeded 5.5 hours per day for the prior
18 Vacation Year, but whose vacation pay was limited to 5.5 hours per day, or 27.5 hours per
19 week of vacation in the Vacation Year. These individuals are referred to as “Class
20 Members” or “Settlement Class Members”. The “Settlement Class Period” means the time
21 period from April 19, 2018 to Preliminary Settlement Approval, [insert date].
- 22 • You are a member of the Waiting Time Penalties Sub-Class if your employment with UPS
23 ended at any time from and after April 19, 2019 through [insert date of Preliminary
24 Approval].
- 25 • This lawsuit also involves a claim under the Private Attorneys Generals Act of 2004
26 (“PAGA”). The PAGA Settlement includes all current and former Part-Time Supervisors,
27 including employees with similar job titles and/or duties, who worked for Defendant within
28 the State of California during the PAGA Period, and who at least once during the PAGA

Period took paid vacation under UPS's vacation policy, and whose average straight-time daily paid hours exceeded 5.5 hours per day for the prior Vacation Year, but whose vacation pay was limited to 5.5 hours per day, or 27.5 hours per week of vacation in the Vacation Year.

- The "PAGA Period" means the time period from April 20, 2021, to [insert date of Preliminary Settlement Approval].
- You are receiving this Notice because the records reflect that you may be a Settlement Class Member and/or a PAGA Settlement Member.
- Plaintiffs in this class and representative action alleges claims against Defendant for: (a) breach of contract; (b) failure to pay all wages due for vacation taken; (c) promissory estoppel; (d) failure to provide accurate, itemized wage statements; (e) failure to pay all final wages due upon separation of employment; (f) all claims for unfair business practices; and (g) a claim under the California Labor Code Private Attorneys General Act of 2004.
- Defendant denies these allegations and contends that it has complied with the requirements of California law.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiffs' claims or Defendant's defenses.
- You will not be penalized or retaliated against by Defendant for participating in this class action settlement. If you are currently employed by Defendant, your employment will not be affected in any way. Current employees of Defendant who choose to participate in the settlement will not be required to resign and can continue to work for Defendant.
- You have several options available to you:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue for claims pled in the Complaint during the Class and PAGA Periods.
ASK TO BE EXCLUDED (OPT OUT)	Exclude yourself from this the Class Action lawsuit. Keep your rights to file a separate claim against Defendant.

	If you ask to be excluded, you will not receive a share of the Class Action settlement proceeds, but you keep any rights you may have to bring your own suit against Defendant for the same legal claims in this lawsuit. If you request exclusion from the Class portion of the Settlement, you will not receive money from the Class portion of the Settlement. You will still receive your share of civil penalties under the PAGA portion of the Settlement. You will release claims for penalties under PAGA for the legal claims in this lawsuit during the PAGA Period.
OBJECT	Object to the terms of this Settlement.
DISPUTE THE INFORMATION CONTAINED IN THIS NOTICE	You may dispute the number of workweeks as shown in Paragraph 5 of this notice, by following the procedures stated in Paragraph 6 of this Notice.

Your options are explained in this notice.
To opt out, object, or dispute your employment dates, you must act by [REDACTED].

1. Why did I get this notice?

A proposed settlement has been reached in a class and representative action lawsuit that was brought on behalf of a group of Defendant's Part Time Supervisor employees. You have received this notice because Defendant's records indicate that you are a "Class Member" and/or a "PAGA Settlement Member." This means you are eligible to receive a payment from this settlement.

2. What is this lawsuit about?

This lawsuit was filed on February 25, 2022 on behalf of all current and former Part-Time Supervisors, including employees with similar job titles and/or duties, who worked for Defendant within the State of California during the Settlement Class Period, defined as from April 19, 2018 and through [insert date or Preliminary Approval], and who at least once during the Settlement Class Period took paid vacation under UPS's vacation policy, and whose average straight-time daily paid hours exceeded 5.5 hours per day for the prior Vacation Year, but whose vacation pay was limited to 5.5 hours per day, or 27.5 hours per week of vacation in the Vacation Year. The operative complaint asserts the following allegations on behalf of all proposed class members: (a) breach of contract; (b) failure to pay all wages due for vacation taken; (c) promissory estoppel; (d) failure to provide accurate, itemized wage statements; (e) failure to pay all final wages due upon separation of employment; (f) all claims for unfair business practices; and (g) a claim under PAGA.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiffs' allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk and expense of further litigation. Plaintiffs and their attorneys believe the proposed settlement is fair, adequate and in the best interest of all Class Members given the outcome of their investigation, the time and resources required in connection with further litigation, the risks as to the outcome, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiffs' claims and

maintains that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be protracted and expensive and would also divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount is \$1,375,000. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

Class Representative Service Awards:	not to exceed \$13,000 total for two Plaintiffs
Class Counsel Fees:	not to exceed \$458,333.33
Class Counsel Costs:	not to exceed \$30,000
PAGA Payments	\$68,750 (75%, or \$51,562.50, to the LWDA and 25%, or \$17,187.50 to the PAGA Settlement Members)
Settlement Administrator Costs:	\$38,400

And the employer's share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages, which is approximately 14% of net settlement amount attributable to wages. .

After these deductions, it is anticipated that there will be available \$783,704.17 available to be divided amongst the Class Members receiving this notice, minus the employer's share of payroll taxes as estimated in the paragraph above ("Net Settlement Amount").

Each Participating Class Member's Individual Settlement Payments shall be determined first based on the Participating Class Member's share of Waiting Time Penalties for members of the Waiting Time Penalties Sub-Class (who are former employees). In recognition that the maximum potential exposure of Defendant for claims under Labor Code 203 ("waiting time penalties") represents approximately 75% of the maximum potential exposure of Defendant for all claims released under this Settlement, 75% of the Net Settlement Amount will be distributed to Participating Class Members who are also a member of the Waiting Time Penalties Sub-Class based on the number of workweeks they worked at any time from and after April 19, 2019 through [insert Preliminary Settlement Approval date], in proportion to the aggregate number of workweeks worked by all members of the Waiting Time Penalties Subclass.

The remaining 25% of the Net Settlement Amount will be distributed to Participating Class Members on a pro rata basis based upon the number of workweeks during which the employee worked in proportion to the aggregate number of workweeks by all Settlement Class Members. This means that, after any allocation for Waiting Time Penalties, your anticipated payment is "pro rata" and will be based upon the number of weeks you worked for Defendant during the time period from April 19, 2018 to [date of preliminary approval].

All Individual Settlement Payments, other than the payments made to the Waiting Time Penalties Subclass, will be allocated as follows: twenty percent (20%) to settlement of wage claims, forty percent (40%) to settlement of claims for interest, and forty percent (40%) to settlement of claims for statutory penalties. The payments made to the Waiting Time Penalties Subclass will be allocated 100% as statutory penalties.

Additionally, Class Members who were employed by UPS at any time during the period from April 20, 2021, to [insert date of Preliminary Settlement Approval], will receive a pro rata payment of the \$17,187.50 allocated to these PAGA Settlement Members based on their respective number of pay periods during the PAGA Period. This payment is being provided to these individuals because it releases claims for civil penalties belonging to the State of California for alleged violations of the

California Labor Code and IWC Wage Order provisions identified in the PAGA Notice sent to the LWDA and further identified in the operative complaint that are alleged to have occurred during the PAGA Period.

All PAGA Payments will be allocated as one hundred percent (100%) settlement of claims for statutory penalties.

According to Defendant's records, your employment dates as a Settlement Class Member during the relevant time period (April 19, 2018 to [insert date of Preliminary Approval] are: [redacted] to [redacted].

According to Defendant's records, the total number of workweeks that you worked as a Settlement Class Member *during the relevant time period* is [redacted]. The total number of pay periods that you worked during the PAGA Period is [redacted].

If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these workweeks, your estimated class settlement amount is \$[INSERT]. Please note **these are estimated amounts** and may change based on the Settlement Administrator's final calculation of the Net Settlement Amount.

6. What if I disagree with the number of workweeks shown above?

If you believe the information in the notice is incorrect regarding the number of workweeks attributed to you, you will need to write a letter setting forth the number of workweeks and/or pay periods that you believe are correct. You may attach any relevant documentation in support thereof such as W2s, timesheets, work schedules, etc. You must mail, fax or e-mail your letter to:

Settlement Administrator
c/o <<Name.of.Claims.Admin>>
address
fax number
e-mail address

You must submit such information by XXXX. Class Counsel, Defendant's Counsel, and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, please make sure the Settlement Administrator always has your current home address on file to ensure you receive your settlement share. If you move, call or e-mail the Settlement Administrator to provide your new address at the contact information provided in section 13, below.

You will have 180 days after issuance to cash your settlement check. If you do not cash your check within this time period, then the Settlement Administrator will send the funds represented by the unredeemed check in your name to the California Controller's Office Unclaimed Property Division. In no event will any of the funds revert to Defendant.

8. What rights am I giving up?

The claims you will Release by doing nothing are: "any and all claims that are asserted in the

operative complaint and which could have been asserted based on the facts alleged in the complaint, which are or could be the basis of claims for: (a) breach of contract; (b) failure to pay all wages due for vacation taken; (c) promissory estoppel; (d) failure to provide accurate, itemized wage statements; (e) failure to pay all final wages due upon separation of employment; (f) all claims for unfair business practices; and (g) a claim under the California Labor Code Private Attorneys General Act of 2004.”

In the event you exclude yourself from the Class Action Settlement by following the procedures in Paragraph 9 below, you will still release the PAGA claims during the PAGA Period. The PAGA released claims means “all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories asserted in the operative complaint and/or Plaintiffs’ PAGA letter dated April 20, 2022, and which could have been asserted based on the facts alleged in the operative complaint, and/or Plaintiffs’ PAGA letter dated April 20, 2022, which during the PAGA Period are or could be the basis of claims for: (a) breach of contract; (b) failure to pay all wages due for vacation taken; (c) promissory estoppel; (d) failure to provide accurate, itemized wage statements; and (e) failure to pay all final wages due upon separation of employment.”

9. What if I do not wish to be involved?

Anyone not wishing to participate in the class action portion of the settlement may exclude himself or herself (“opt out”) by completing, signing, and mailing or faxing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, <<Name.of.Claims.Admin>>, by XXXX.

Settlement Administrator
c/o <<Name.of.Claims.Admin>>
[address, telephone & fax numbers]

The Request for Exclusion: (1) must contain your name, address, and telephone number; (2) a statement expressing that you want to be excluded from the Class Action Settlement, in substance stating that “I wish to opt out of the settlement class in *Diaz v. United Parcel Service, Inc.*, Case No. 1:22-CV-00246-ADA-CDB. I understand that by opting out of the settlement class I will not be bound by any class judgment in this action and will not be entitled to receive a payment from the class action portion of the settlement.”; (3) must be signed by you; and (4) must be postmarked or fax stamped by [redacted] and returned to the Settlement Administrator at the specified address or fax number above. The Request for Exclusion will be deemed invalid if it does not contain your name, address, signature, and a statement requesting exclusion.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive a payment from the class action settlement. Such persons will keep any rights to sue Defendant separately about the claims made in this lawsuit, except for PAGA penalties. Any individual who opts-out of the Settlement will still be a PAGA Settlement Member, and will receive a PAGA settlement payment as estimated in Paragraph 5, above. PAGA Settlement Members will be bound by the release of PAGA claims as stated in Paragraph 8, above.

An individual who submits a valid Request for Exclusion may not object to the Settlement.

10. What if I have an objection to the settlement?

A Class Member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator by U.S. Mail or fax no later than XXXX.

The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the basis for the objection; and (3) if the Settlement Class Member intends to appear at the Final Approval Hearing. The Settlement Administration must provide a copy of written objections to the Parties within three calendar (3) days of receipt.

Any Class Member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. The Final Approval and Fairness Hearing will be held at Bakersfield Federal Courthouse, 510 19th Street, Suite 200, Bakersfield, California 93301 on _____, 2023, at XX (a.m./p.m.) (Pacific Time).

Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant no later than the Response Deadline.

Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

<u>Class Counsel:</u>	<u>Counsel for UNITED PARCEL SERVICE, INC.</u>
THE MARKHAM LAW FIRM DAVID R. MARKHAM (SBN 071814) dmarkham@markham-law.com MAGGIE REALIN, (SBN 263639) mrealin@markham-law.com LISA BREVARD (SBN 323391) lbrevard@markham-law.com 888 Prospect Street, Suite 200 La Jolla, CA 92037 Tel: 619.399.3995, Fax 619.615.2067 UNITED EMPLOYEES LAW GROUP WALTER HAINES (SBN 071075) walter@uelglaw.com 5500 Bolsa Avenue, Suite 201 Huntington Beach, CA 92649 Tel: 888.474.727; Fax: 562.256.1006	GBG LLP ELIZABETH A. BROWN (SB# 235429) lisabrown@gbgllp.com JENNIFER SVANFELDT (SB# 233248) jensvanfeldt@gbgllp.com TERESA W. GHALI (SB# 252961) teresaghali@gbgllp.com 633 West 5th Street, Suite 3330 Los Angeles, CA 90071 Tel.: (213) 358-2810; Fax: (213) 995-6382

11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing at Bakersfield Federal Courthouse, 510 19th Street, Suite 200, Bakersfield, California 93301 on _____, 2023, at XX (a.m./p.m.) (Pacific Time), to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiffs' Service Awards, the PAGA Payments, and the costs of Settlement administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

1 **13. How can I receive more information?**

2 This notice is a summary of the basic terms of the settlement. For further information, you may also
3 email or telephone the Settlement Administrator, <<Name.of.Claims.Admin>> at (INSERT address,
4 e-mail, fax numbers) , or Class Counsel (listed above). You may also visit the settlement website at
5 for more information and documents relating to the settlement.

6 **Please do not telephone the Court, the Office of the Clerk, or Defendant's counsel for**
7 **information regarding this settlement**

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “B”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

OSCAR DIAZ, an individual, JACE
O'GUINN, an individual, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

UNITED PARCEL SERVICE, INC., an Ohio
Corporation

Defendant.

Case No. 1:22-CV-00246-ADA-CDB

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Complaint Filed: February 25, 2022

Trial Date: None

District Judge: Hon. Ana de Alba

Magistrate Judge: Hon. Christopher D. Baker

1 The Joint Stipulation of Class and Representative Action Settlement and Release of Claims
2 (“Settlement Agreement”), a copy of which is attached to the Declaration of David Markham in
3 support of Plaintiffs’ Motion for Preliminary Approval of Class and Representative Action
4 Settlement as Exhibit “1”, came before this Court on [REDACTED], 2023. The Court, having
5 considered the papers submitted in support of the motion of the parties, **HEREBY ORDERS THE**
6 **FOLLOWING:**

7 1. The Court grants preliminary approval of the Settlement Agreement and the
8 Settlement Class based upon the terms set forth in the Settlement Agreement filed herewith. The
9 Court preliminarily finds that the Settlement is fair, adequate, and reasonable to the Class when
10 balanced against the possible risks of further litigation, including issues relating to class
11 certification, liability, calculating damages, and potential appeals. The Court finds that: (a)
12 significant investigation, research, and litigation have been conducted, such that the Parties are able
13 to fairly evaluate their respective positions; (b) settlement at this time will avoid the substantial
14 cost, delay and risk presented by further litigation of the action; (c) the Agreement resulted from
15 extensive, informed, non-collusive arm’s length negotiations by experienced counsel with the
16 assistance of a reputable mediator; and (d) the Agreement is sufficient to warrant notice of the
17 Settlement to persons in the Settlement Class and a full hearing on the final approval of the
18 Settlement.

19 2. The Court conditionally certifies and approves, for settlement purposes only, the
20 following Settlement Class as set forth in the Settlement Agreement:

21 All current and former Part-Time Supervisors, including employees with
22 similar job titles and/or duties, who worked for Defendant within the
23 State of California during the Settlement Class Period, defined as from
24 April 19, 2018 and through the date of the Preliminary Settlement
25 Approval, and who at least once during the Settlement Class Period took
26 paid vacation under UPS’s vacation policy, and whose average straight-
27 time daily paid hours exceeded 5.5 hours per day for the prior Vacation
28 Year, but whose vacation pay was limited to 5.5 hours per day, or 27.5
hours per week of vacation in the Vacation Year.

3. The Settlement falls within the range of reasonableness and appears to be
presumptively valid, subject only to any objections that may be raised at the final fairness hearing

1 and final approval by this Court.

2 4. The Court makes the following preliminary findings for settlement purposes
3 only:

- 4 A. The Settlement Class, which consists of a few thousand persons, is so
5 numerous that joinder of all members is impracticable;
- 6 B. There appear to be questions of law or fact common to the Settlement
7 Class for purposes of determining whether this Settlement should be
8 approved;
- 9 C. Plaintiffs' claims appear to be typical of the claims being resolved through
10 the proposed settlement;
- 11 D. Plaintiffs appear to be capable of fairly and adequately protecting the
12 interests of the Settlement Class Members in connection with the proposed
13 settlement;
- 14 E. Common questions of law and fact appear to predominate over questions
15 affecting only individual persons in the Settlement Class. Accordingly,
16 the Settlement Class appears to be sufficiently cohesive to warrant
17 settlement by representation; and
- 18 F. Certification of the Settlement Class appears to be superior to other
19 available methods for the fair and efficient resolution of the claims of the
20 Settlement Class.

21 5. The Court approves, as to form and content, the Notice to Class Members in
22 substantially the form attached to the Settlement Agreement as Exhibit A.

23 6. The Court approves the procedure for Settlement Class Members to request
24 exclusion from the Settlement as set forth in the Notice to Class Members.

25 7. The Court approves the procedure for Settlement Class Members to object to the
26 Settlement as set forth in the Class Notice to Class Members.

27 8. The Court directs the mailing of the Notice to Class Members by U.S. first class
28 mail to the Settlement Class Members in accordance with the Implementation Schedule set forth
below. The Court finds that the dates selected for the mailing and distribution of the Notice to
Class Members, as set forth in the Implementation Schedule, meet the requirements of due process
and provide the best notice practicable under the circumstances and shall constitute due and
sufficient notice to all persons entitled thereto.

9. The Court confirms The Markham Law Firm and United Employees Law Group as

Class Counsel.

10. The Court confirms OSCAR DIAZ and JACE O'GUINN as the Class Representatives.

11. The Court approves Simpluris, Inc. as the Settlement Administrator.

12. The Court orders that pursuant to the California Private Attorneys General Act, Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Settlement has been and will continue to be given to the Labor & Workforce Development Agency.

13. The Court orders the following Implementation Schedule for further proceedings:

a.	Preliminary Approval	XXXX
b.	Deadline for Defendant to Provide Class Information to Settlement Administrator.	Within thirty (30) calendar days from Preliminary Approval (by _____, 2023)
c.	Deadline to Mail Notice to Class Members	Within twenty-one (21) calendar days from Class Administrator's receipt of Class Information (by _____, 2023)
d.	Deadline for Class Members to Postmark and/or Fax any Request for Exclusion	45 calendar days from mailing of Notice (judged by postmark / fax stamp date), unless extended by re-mailing (by _____, 2023)
e.	Deadline for Class Members to Postmark and/or Fax Any Objection	45 calendar days from mailing of Notice (judged by postmark / fax stamp date), unless extended by re-mailing (by _____, 2023)
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	(by _____, 2023)

g.	Deadline for Class Counsel to file Motion for Class Counsel Award	at least 14 calendar days before Class Members' deadline to file an objection to the Settlement expires (by _____, 2023)
h.	Deadline for Class Counsel and/or Defendant's Counsel to file a response to any objection	No later than 10 court days before the Final Approval Hearing (by _____, 2023).
i.	Final Approval Hearing	_____, 2023

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Settlement Agreement, does not occur for any reason, the Settlement Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement Agreement.

16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are hereby stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to members of the Settlement Class.

DATED: _____

Hon. Christopher D. Baker
United States Magistrate Judge