

FERRARO VEGA EMPLOYMENT LAWYERS, INC.
Nicholas J. Ferraro, State Bar No. 306528
nick@ferrarovega.com
Lauren N. Vega, State Bar No. 306525
lauren@ferrarovega.com
3160 Camino del Rio South, Suite 308
San Diego, California 92108
Telephone: (619) 693-7727

Attorneys for Plaintiff
GABRIEL LAFARGA

CDF LABOR LAW LLP
Garrett V. Jensen, State Bar No. 242874
gjensen@cdflaborlaw.com
18300 Von Karman Avenue, Suite 800
Irvine, CA 92612
Telephone: (949) 622-1661

POYNER SPRUILL LLP
David L. Woodard, State Bar No. North Carolina State Bar No. 19343
dwoodard@poynerspruill.com
301 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601
Telephone: (919) 783-6400

Attorneys for Defendant
G.I. TRUCKING COMPANY D/B/A ESTES WEST

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

19	GABRIEL LAFARGA, as an individual and on	)	Case No. 37-2022-00028993-CU-OE-CTL
20	behalf of all others similarly situated,	)	
	Plaintiff,	)	Assigned for All Purposes To:
21	vs.	)	Judge: Gregory W. Pollack
		)	Dept: C-71
22	G.I. TRUCKING COMPANY D/B/A ESTES	)	JOINT STIPULATION OF SETTLEMENT
23	WEST; and DOES 1 through 50, inclusive,	)	AND RELEASE OF CLASS AND PAGA
	Defendants.	)	ACTIONS
24		)	Action Filed: July 22, 2022

1 This Joint Stipulation of Settlement and Release of Class and PAGA Action (“Agreement”)
2 is made and entered into between Plaintiff Gabriel LaFarga (“Plaintiff”), individually and on behalf
3 of the proposed putative Class Members and PAGA Members, (defined below), and Defendant G.I.
4 Trucking Company d/b/a Estes West (“Defendant”). Plaintiff and Defendant are collectively
5 referred to in this Agreement as “Parties.” This Agreement is subject to approval of the Court and
6 is made for the sole purpose of settling the Action (as defined below) on a Class and PAGA basis
7 subject to the following terms and conditions. As detailed below, in the event the Court does not
8 enter an order granting approval of the Settlement (as defined below) and enter judgment, or the
9 conditions precedent are not met for any reason, this Agreement is void and of no force or effect
10 whatsoever.

11 1. **DEFINITIONS**

12 As used in this Agreement, the following terms shall have the meanings specified below.
13 To the extent terms or phrases used in this Agreement are not specifically defined below, but are
14 defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

15 1.1 **Action.** “Action” shall mean this civil action titled *Gabriel LaFarga v. G.I.*
16 *Trucking Company d/b/a Estes West, et. al.*, San Diego County Superior Court Case No. 37-2022-
17 00035709-CU-OE-CTL, filed on or about September 6, 2022; the underlying PAGA Notice sent to
18 the Labor and Workforce Development Agency (“LWDA”) by Plaintiff on June 30, 2022; as well
19 as the action titled *Gabriel LaFarga v. G.I. Trucking Company d/b/a Estes West, et. al.*, San Diego
20 County Superior Court Case No. 37-2022-00028993-CU-OE-CTL, filed on or about July 22, 2022.
21 The Consolidated Class and Representative Action Complaint was filed on or about August 9,
22 2023.

23 1.2 **Approval and Fairness Hearing.** “Approval and Fairness Hearing” shall mean
24 the hearing held to ascertain the fairness, reasonableness, and adequacy of the Class and PAGA
25 Settlement. At this hearing, the Court will consider Counsel’s application for Attorneys’ Fees and
26 Expenses, the Enhancement Award, the Administration Expenses, and approval of the PAGA
27 Payment. In advance of the Final Approval and Fairness Hearing, the Parties, through counsel of
28 record, shall meet and confer and agree upon the terms of a proposed Order Granting Approval and

1 Entering Judgment, which shall be submitted by Plaintiff for filing with his Motion for Final
2 Approval. .

3 1.3 **Approval Date.** “Approval Date” shall mean the date upon which the Court
4 enters an order granting approval of the Class and PAGA Settlement and enters Judgment.

5 1.4 **Claims.** “Claims” shall mean the claims and theories asserted and causes of
6 action alleged in the Action, or that could have been alleged in the Action, including the Class
7 claims and PAGA penalties alleged in the Action.

8 1.5 **Court.** “Court” shall mean the Superior Court of California, County of San
9 Diego.

10 1.6 **Class.** “Class” means all current and former non-exempt employees of
11 Defendant in California from July 22, 2018 to the earlier of October 13, 2023 or the date the court
12 preliminarily approves the settlement.

13 1.7 **Class Counsel or Plaintiff’s Counsel.** “Class Counsel” or “Plaintiff’s Counsel”
14 shall refer to class, PAGA, and Plaintiff’s counsel and shall mean Nicholas Ferraro and Lauren
15 Vega, Ferraro Vega Employment Lawyers, Inc., 3160 Camino Del Rio South, Suite 308, San
16 Diego, California 92108, (619) 693-7727.

17 1.8 **Class Counsel’s Attorneys’ Fees and Expenses.** “Class Counsel’s Attorneys’
18 Fees and Expenses” shall mean Class Counsel’s attorneys’ fees and expenses to be requested and
19 subject to approval by the Court at the time of the Approval Hearing in an amount not to exceed
20 one-third of the Gross Settlement Amount and in an amount not to exceed \$25,000 for expenses.

21 1.9 **Class List.** “Class List” means the complete list of all Class Members and
22 PAGA Members that Defendant will compile, based on its business records, and provide to the
23 Settlement Administrator within twenty-one (21) days after Defendant receives notice of
24 Preliminary Approval of this Settlement. Because it may take additional time for the executed
25 Preliminary Approval Order signed by the judge to be conformed and returned to the Parties on the
26 Register of Actions, the Parties agree that the date of “notice of Preliminary Approval of this
27 Settlement” within the meaning of this paragraph shall include verbal notice from the judge at the
28 preliminary approval hearing confirming the tentative ruling and advising he shall sign the Order.

The Class List shall be formatted in Microsoft Office Excel and shall include each Class Member's full name, his or her last known home address, last known phone number, Social Security number, number of workweeks during the Class Period, and number of pay periods during the PAGA Period.

1.10 **Class Member(s).** "Class Member(s)" mean(s) all members of the Class.

1.11 **Class Period.** "Class Period" means July 22, 2018 to the earlier of October 13, 2023 or the date the court preliminarily approves the settlement.

1.12 **Defendant.** "Defendant" or "G.I. Trucking" shall mean G.I. Trucking Company d/b/a Estes West.

1.13 **Defense Counsel.** "Defense Counsel" shall mean Garrett V. Jensen of CDF Labor Law LLP, 18300 Von Karman Avenue, Suite 800, Irvine, California 92612 and David L. Woodard of Poyner Spruill LLP, 301 Fayetteville Street, Suite 1900, Raleigh, NC 27601.

1.14 **Effective Date.** "Effective Date" shall be the later of the time when: (i) the date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment following review pursuant to that grant, (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval Order and Judgment in a form substantially identical to the form of the Final Approval Order entered by the Court, and the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; or (iv) if no appeal is filed (including if an appeal is filed, but then withdrawn), the sixty-first (61st) day after the Court enters final approval of the settlement and the Judgment approving this Agreement.

1.15 **Enhancement Award.** "Enhancement Award" is the award, in the amount of \$10,000, to Plaintiff for acting as the representative and in exchange for executing a general release and a Civil Code Section 1542 release.

1.16 **Final Approval Hearing.** “Final Approval Hearing” means the hearing at which the Court enters a judgment or other order approving the Settlement and Agreement and terminating the Action.

1.17 **Final Order Approving Settlement or Final Order.** “Final Order Approving Settlement” or “Final Order” means the final formal court order signed by the Court at or after the Final Approval Hearing in accordance with the terms herein approving this Agreement.

1.18 **Gross Settlement Amount.** “Gross Settlement Amount” means the agreed upon settlement amount totaling \$650,000.00, to be paid by Defendant in full settlement of the Released Claims asserted in this case, which includes the Individual Settlement Payment(s), Administrator Fees, Class Counsel’s Attorneys’ Fees and Expenses, Enhancement Award to Plaintiff, and payment to the LWDA. In no event shall Defendant be required to pay more than the Gross Settlement Amount.

1.19 **Individual Settlement Payment.** “Individual Settlement Payment(s)” shall mean the proportionate share of the Net Settlement Amount to be distributed to each Participating Class Member and/or each PAGA Member. Individual Settlement Payments will be each Participating Class Member’s share of the Net Settlement Amount (which share shall be determined by the calculations provided in this Agreement), minus applicable withholdings, and each PAGA Member’s share of the Net Settlement Amount (which share shall be determined by the calculations provided in this Agreement).

1.20 **Net Settlement Amount.** “Net Settlement Amount” or “NSA” shall mean the Gross Settlement Amount, minus the Court-approved amounts awarded for Class Counsel’s Attorneys’ Fees and Expenses, Settlement Administration Fees, Enhancement Award to Plaintiff (if any), and the LWDA Payment. The Parties intend that the NSA shall be sufficient to pay all valid claims of Participating Class Members and PAGA Members. Accordingly, if for any reason the total value of Individual Settlement Payments to Participating Class Members and PAGA Members exceeds this amount, then payment to each Participating Class Member and/PAGA Member will be adjusted on a pro-rated basis so that the total payout does not exceed the NSA.

1.21 **Non-Participating Class Member(s).** “Non-Participating Class Member(s)” means those Class Members who submit to the Settlement Administrator a valid and timely Opt-Out Request. PAGA Members cannot opt out of the settlement.

1.22 **Opt-Out Request:** “Opt-Out Request” means a written request to be excluded from the Class pursuant to the terms below.

1.23 **PAGA:** “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2699, *et seq.*

1.24 **PAGA Member(s):** “PAGA Member(s)” shall mean all current and former non-exempt employees of Defendant in California during the PAGA Period.

1.25 **PAGA Period.** “PAGA Period” means the period from June 30, 2021 through the earlier of October 13, 2023 or the date the court preliminarily approves the settlement.

1.26 **PAGA Release.** “PAGA Release” shall mean all claims and theories under PAGA that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Period, including but not limited to under California Labor Code sections 200-204, 204(b), 210, 226, 226.3, 226.7, 246-248.6, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1198, 1198.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699 *et seq.*, and applicable wage orders based on the various theories of liability, including, but not limited to, alleged: (1) failure to pay all overtime wages, including, but not limited to, a regular-rate of pay theory; (2) failure to pay minimum wages; (3) meal period violations, including, but not limited to, a regular-rate of pay theory; (4) rest period violations, including, but not limited to, a regular-rate of pay theory; (5) underpaid sick leave wages and supplemental paid sick leave wages, including, but not limited to, a regular rate of pay theory for both; (6) untimely payment of wages; (7) wage statement and recordkeeping violations; and (8) waiting time penalties.

1.27 **Parties.** “Parties” shall mean Plaintiff (as defined below) and Defendant.

1.28 **Participating Class Members.** “Participating Class Members” means all Class Members who do not opt-out from the Class.

1.29 **Pay Periods.** “Pay Periods” means the number of pay periods a PAGA or Class Member was employed during the Class and/or PAGA Period.

1.30 **Plaintiff or Named Plaintiff.** “Plaintiff” or “Named Plaintiff” shall mean Gabriel LaFarga.

1.31 **Preliminary Approval Date:** “Preliminary Approval Date” means the date the Court preliminarily approves the Settlement embodied in this Agreement.

1.32 **Released Class Claims.** “Released Class Claims” shall mean all claims and theories that were set forth, or that could have been set forth based on the facts alleged in the Action during Class Period, including but not limited to under California Labor Code sections 200-204, 204(b), 210, 226, 226.3, 226.7, 246-248.6, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1198, 1198.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699 et seq., and related IWC Wage Orders, and California Business and Professions Code § 17200 et seq. based on the various theories of liability, including, but not limited to, alleged: (1) failure to pay all overtime wages, including, but not limited to, a regular-rate of pay theory; (2) failure to pay minimum wages; (3) meal period violations, including, but not limited to, a regular-rate of pay theory; (4) rest period violations, including, but not limited to, a regular-rate of pay theory; (5) underpaid sick leave wages and supplemental paid sick leave wages, including, but not limited to, a regular rate of pay theory for both; (6) untimely payment of wages; (7) wage statement and recordkeeping violations; (8) waiting time penalties; and (9) unfair competition.

1.33 **Released Parties.** “Released Parties” shall mean G.I. Trucking Company d/b/a Estes West and Estes Express Lines and each of their insurers, brands, concepts, affiliates, subsidiaries, parent companies, predecessors, successors, assigns, employees, officers, directors, agents, attorneys, administrators, representatives, heirs, estates, powers-of-attorney, and any individual or entity that could be jointly liable with Defendant and/or Estes Express Lines.

1.34 **Settlement.** “Settlement” shall mean the settlement between Parties, which is memorialized in this Agreement, including any attached exhibits, and subject to Court approval.

1.35 **Settlement Administrator.** “Settlement Administrator” or “Administrator” shall mean CPT Group, the third-party settlement administrator selected by the Parties and to be approved by the Court, which the Parties have agreed will be responsible for administration of the

Settlement and related matters. The Administrator’s fee and expenses (“Settlement Administration Fees”) are estimated to not exceed \$25,000.00.

1.36 **Settlement Group.** “Settlement Group” or “Settlement Group Members” shall mean all Class Members who do not opt-out from the Class and all PAGA Members.

1.37 **Total Pay Periods.** “Total Pay Periods” means the total aggregate number of pay periods of all PAGA Members.

1.38 **Total Workweeks.** “Total Workweeks” means the total aggregate number of workweeks of all Class Members.

2. **FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

2.1 On July 22, 2022, Plaintiff filed the putative class Action in San Diego Superior Court (“Class Action”). On or about September 6, 2022, Plaintiff filed a separate representative action pursuant to the Private Attorneys General Act, Labor Code Section 2698 et seq. (“PAGA”) against Defendant, alleging the same claims above as theories of liability (“PAGA Action”). On or about August 9, 2023, Plaintiff filed a Consolidated Class and Representative Action Complaint that consolidated the Class Action and PAGA Action.

2.2 The Parties agreed to mediate with Todd Smith, Esq., and Plaintiff requested, and received, informal discovery to evaluate the claims and theories alleged. With the assistance of the mediator, they were able to resolve the matter, the terms of which were memorialized in a Memorandum of Understanding executed by the Parties.

2.3 The Parties and their respective counsel believe this Agreement reflects a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement as a result of arms’-length negotiations, facilitated by an experienced and neutral mediator, taking into account all relevant factors, present and potential.

3. **ALLEGATIONS AND BENEFITS OF THE SETTLEMENT**

3.1 The investigation and extensive exchange of information and informal discovery conducted in this matter, as well as discussions between counsel have been adequate to give Class Counsel an understanding of the merits of the Parties’ respective positions and to evaluate the worth of the claims of the Settlement Group. The information and data exchanged by the Parties

1 prior to and during mediation and settlement negotiations are sufficient to reliably assess the merits
2 of the Parties' respective positions and to compromise the issues on a fair and equitable basis.

3 3.2 The Parties recognize and acknowledge the expense and delay of continued
4 lengthy proceedings necessary to prosecute the Action against Defendant through trial and through
5 appeals. Class Counsel has considered the uncertain outcome of the litigation, the risk of continued
6 litigation in complex actions such as this, as well as difficulties and delays inherent in such
7 litigation, as well as trying the claims of the Settlement Group. Class Counsel believes that the
8 Settlement set forth in this Agreement confers substantial benefits upon Plaintiff and the Settlement
9 Group Members and that an independent review of this Agreement by the Court in the approval
10 process will confirm this conclusion. Based on their own independent investigation and evaluation,
11 Class Counsel has determined that the Settlement set forth in the Agreement is in the best interests
12 of Plaintiff and the Settlement Group Members.

13 4. **NO ADMISSION OF ANY LIABILITY**

14 4.1 This Agreement represents a compromise and settlement of highly disputed
15 claims. This Agreement does not constitute, is not intended to constitute, and will not be deemed
16 to constitute, an admission of liability by Defendant as to the merits, validity, or accuracy of any of
17 the allegations or claims made against Defendant in the Action. Defendant denies each and all of
18 Plaintiff's allegations in their entirety.

19 4.2 Nothing in this Agreement, the Memorandum of Understanding nor any action
20 taken or made in implementation thereof, nor any statements, discussions, or communications, nor
21 any materials prepared, exchanged, issued, or used during the course of the negotiations leading to
22 the Agreement, is intended by the Parties to, nor will any of the foregoing constitute, be introduced,
23 be used, or be admissible in any way in this case or any other judicial, arbitral, administrative,
24 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
25 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
26 in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding in the
27 Court that has as its purpose the interpretation, implementation, or enforcement of the Agreement
28 or any orders or judgments of the Court entered into in connection therewith.

1 4.3 The Parties agree that Plaintiff's motion for approval of the Settlement and
2 Defendants' agreement thereto is for purposes of the Settlement only. If, for any reason, the
3 Settlement is not approved, this Agreement will not be admissible in this or any other proceeding
4 as evidence that (i) the Action should proceed forward, or (ii) Defendant is liable to Plaintiff, Class
5 Members and/or the PAGA Members as Plaintiff alleged. In the event that this Agreement is not
6 approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable,
7 Defendant will not be deemed to have waived, limited, or affected in any way any of its objections
8 or defenses in the Action, including, but not limited to, their ability to move to compel arbitration,
9 raise defenses in opposition to the Action, contest the merits of the claims and theories alleged, etc.

10 5. **SETTLEMENT CONSIDERATION**

11 5.1 **Gross Settlement and Net Settlement Amounts and Distribution.** The Gross
12 Settlement Amount and other actions and forbearances taken by Defendant shall constitute
13 adequate consideration for the Settlement and will be made in full and final settlement of: (a) the
14 Released Class Claims and PAGA Release, (b) Class Counsel's Attorneys' Fees and Expenses, (c)
15 Administration Expenses, (d) LWDA Payment, (e) Enhancement Award to Plaintiff; and (f) the
16 Individual Settlement Payments to Settlement Group Members and PAGA Members, and any other
17 obligation of Defendant under this Agreement. Defendant's monetary obligation under this
18 Settlement and Agreement is limited to the Gross Settlement Amount. Defendant shall not be
19 called upon or required to contribute additional monies above the Gross Settlement Amount under
20 any circumstances whatsoever (aside from payroll taxes on the wage portion of the Net Settlement
21 Amount). All costs and expenses arising out of or in connection with the performance of this
22 Agreement shall be paid from the Gross Settlement Amount.

23 5.2 **Payments to Settlement Group Members.** Each Settlement Group Member
24 shall be eligible to receive an Individual Settlement Payment. The Parties understand that
25 Settlement Group Members who receive an Individual Settlement Payment pursuant to this
26 Agreement shall be solely responsible for any and all other individual tax obligations associated
27 with the payment.
28

1 The Parties agree that the Net Settlement Amount shall be used to fund Individual
2 Settlement Payments. The Parties acknowledge that the settlement in this case was reached based,
3 in part, on the prior settlement in the *Taylor v. G.I. Trucking Company et al.* case. The Settlement
4 Administrator shall allocate 10% of the Net Settlement Amount to the July 22, 2018 to June 15,
5 2021 time period, and 90% to the June 16, 2021 to the earlier of October 13, 2023 or the date the
6 court preliminary approves the settlement time period.

7 The Parties agree that the portion of the Net Settlement Amount allocated to the
8 Released Class Claims shall be divided between all Participating Class Members based on the
9 number of Workweeks they worked for Defendant during the Class Period. The maximum amount
10 that each Participating Class Member is entitled to receive is determined by multiplying the portion
11 of the Net Settlement Amount allocated to the Released Class Claims by a ratio that is determined
12 by dividing a Participating Class Member's total Workweeks by the total number of Workweeks of
13 all Class Members as expressed in the following formula:

$$\begin{array}{ccccccc} \text{Individual} & & & \text{Net} & & & \text{Participating Class Member's} \\ \text{Settlement} & = & & \text{Settlement} & \times & & \text{Total Number of Workweeks} \\ \text{Payment} & & & \text{Amount} & & & \frac{\text{Total Number of Workweeks}}{\text{Of All Participating Class Members}} \end{array}$$

18 The Parties agree that the Net Settlement Amount allocated to the Released Class
19 Claims shall be sufficient to pay all valid claims of Participating Class Members in accordance
20 with the formula set forth above.

21 Each Individual Settlement Payment to Participating Class Members will be allocated as
22 33% to wages, 33% to interest, and 33% to penalties. The Settlement Administrator shall calculate,
23 withhold, and remit to applicable governmental agencies sufficient amounts as may be owed for
24 Participating Class Members' taxes due on the portion of the Settlement Awards allocated to wages
25 that will be reported on an IRS Form W2 basis. The Settlement Administrator shall report those
26 portions of the individual Settlement Awards allocated to interest and penalties on an IRS Form
27 1099 basis. These amounts shall be paid from the Net Settlement Amount. The Settlement
28 Administrator shall also calculate, withhold and remit to the applicable government agencies

sufficient amounts as may be owed by Defendant as the employer for payroll taxes on the portion of the Settlement Awards allocated to wages that will be reported on an IRS Form W2 basis.

The Parties agree that the portion of the Net Settlement Amount allocated to the PAGA Release shall be divided between all PAGA Members based on the number of Pay Periods they worked for Defendant during the PAGA Period. The maximum amount that each PAGA Member is entitled to receive is determined by multiplying the portion of the Net Settlement Amount allocated to the PAGA Release by a ratio that is determined by dividing a PAGA Member's total Pay Periods by the total number of Pay Periods of all PAGA Members as expressed in the following formula:

$$\begin{array}{ccccc} \text{Individual} & & \text{Net} & & \text{PAGA Member's} \\ \text{Settlement} & = & \text{Settlement} & \times & \text{Total Number of Workweeks} \\ \text{Payment} & & \text{Amount} & & \text{Total Number of Pay Periods} \\ & & & & \text{Of All PAGA Members} \end{array}$$

The Parties agree that the Net Settlement Amount allocated to the PAGA Release shall be sufficient to pay all valid claims of PAGA Members in accordance with the formula set forth above.

If for any reason the total value of all payments allocated to Settlement Group Members exceeds the Net Settlement Amount, then the Individual Settlement Payments will be adjusted on a pro-rata basis so that the total payout to Settlement Group Members does not exceed the Net Settlement Amount.

No person shall have any claim of any kind whatsoever against any of the Parties, Defense Counsel, Class Counsel, any Class Member, or the Settlement Administrator, based on the distribution of Individual Settlement Payments made in accordance with this Agreement.

5.3 No Effect on Employee Benefits. Neither the Settlement nor any amounts paid under the Settlement will modify any previously credited hours, days, or weeks or service under any employee benefit plan, policy or bonus program sponsored by Defendant (or its affiliates, parents or successors). Such amounts will not form the basis for additional contributions to, benefit under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies or

1 bonus programs, if any. The payments made under the terms of this Settlement shall not be applied
2 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form
3 of compensation for the purposes of any of Defendant's benefit plans, policies or bonus programs,
4 if any. Defendant retains the right to modify the language of its benefit plans, policies and bonus
5 programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement
6 are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as
7 defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit
8 accrual, or any other purpose, and that additional contributions or benefits are not required by this
9 Agreement. Defendant does not consider the Individual Settlement Payments "compensation" for
10 purposes of determining eligibility for, or benefit accrual within, any benefit plan, policy, or bonus
11 program, or any other plan or program sponsored by Defendant (or its affiliates, parents or
12 successors), if any.

13 5.4 **Class Counsel's Attorneys' Fees and Expenses.** As part of the motion for
14 approval of the Settlement, Class Counsel may submit an application for an award of Attorneys'
15 Fees and Expenses. Defendant agrees not to object to any such fee, cost or expense application in
16 line with this Agreement and in an amount not to exceed 33% of the Gross Settlement Amount for
17 attorneys' fees in the amount of \$216,666.66 and reimbursement of costs not to exceed \$25,000.
18 As a condition of this Settlement, Class Counsel has agreed to pursue fees and costs only in the
19 manner reflected by this Agreement. Any Class Counsel's Attorneys' Fees and Expenses awarded
20 by the Court shall be paid from the Gross Settlement Amount. If the Class Counsel voluntarily
21 reduces the request for Attorneys' Fees and Expenses or the Court's award is less than set forth
22 above, the difference shall be included in the Net Settlement Amount.

23 The Attorneys' Fees and Expenses approved by the Court shall encompass: (a) all work
24 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
25 represent the Settlement Group through the date of this Agreement; (b) all work to be performed
26 and costs to be incurred in connection with approval by the Court of the Settlement set forth in this
27 Agreement; (c) all work to be performed and costs and expenses, if any, incurred in connection
28

1 with administering the Class Settlement through the Effective Date; and (d) may be based on the
2 Catalyst Theory and/or Common Fund Doctrine.

3 5.5 **Payment of Class Counsel's Attorneys' Fees and Expenses.** Class Counsel's
4 Attorneys' Fees and Expenses as awarded by the Court shall be paid by the Settlement
5 Administrator within thirty (30) days of the Effective Date.

6 6. **ADMINISTRATION**

7 6.1 The Parties have chosen CPT Group to administer this Settlement and to act as
8 the Settlement Administrator, including but not limited to distributing and responding to inquiries
9 about the Notice of Proposed Class Action Settlement, determining the validity of all Opt-Out
10 Requests, calculating the Net Settlement Amount and the Individual Settlement Payments,
11 preparing tax statements and/or reports and remitting the necessary tax payments, providing
12 necessary progress reports, preparing declarations required by the Court, preparing a detailed
13 declaration for Defendant that sets forth each of the Class Members who did not submit valid Opt-
14 Out Requests, and, with notice and consent of the Parties, issuing the Individual Settlement
15 Payment checks and distributing them to Participating Class Members, and issuing the checks to
16 Class Counsel for attorneys' fees and costs, the Enhancement Award check to the Named Plaintiff,
17 and the PAGA payment to the LWDA (75% of the full \$40,000). The Settlement Administrator
18 shall expressly agree to all of the terms and conditions of this Agreement relating to the
19 administration of the Settlement. The Parties each represent that they do not have any financial
20 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
21 Administrator that could create a conflict of interest.

22 6.2 The Settlement Administrator shall provide Defense Counsel and Class Counsel
23 a weekly report that certifies: (i) the number of Class Members to whom the Settlement
24 Administrator has mailed the Notice Packet; (ii) the number of Notice Packets that were returned as
25 undeliverable; (iii) the number of Notice Packets that were re-mailed to Class Members; (iv) the
26 number of re-mailed Notice Packets that were returned as undeliverable; (v) the number of Class
27 Members who have submitted valid Opt-Out Requests; (vi) the number of Class Members who
28 have submitted challenges to any information contained in the Notice Packet (the Settlement

1 Administrator shall provide to Defense Counsel only any copies of Opt-Out Requests); and (vii) the
2 number of Settlement Class Members who have submitted objections to the Settlement.

3 Additionally, the Settlement Administrator will provide to Defense Counsel and Class Counsel any
4 updated reports regarding the administration of the Settlement Agreement.

5 6.3 The Settlement Administrator shall maintain throughout the administration of
6 the Settlement all of the Opt-Out Requests that it receives. At the conclusion of the administration
7 of the Settlement, the Settlement Administrator shall retain all Opt-Out Requests for an additional
8 four years. The Settlement Administrator shall provide to Defense Counsel copies of all Opt-Out
9 Requests.

10 6.4 All costs of administering the Settlement, including but not limited to all costs
11 and fees associated with preparing, issuing and mailing any and all notices to Class Members and
12 PAGA Members, all costs and fees associated with computing, processing, reviewing, and mailing
13 the Individual Settlement Payments, all costs and fees associated with preparing any tax returns and
14 any other filings required by any governmental taxing authority or agency, all costs and fees
15 associated with preparing any other checks, notices, reports, or filings to be prepared in the course
16 of administering disbursements from the Net Settlement Amount, and any other costs and fees
17 incurred and/or charged by the Settlement Administrator in connection with the carrying out of its
18 duties under this Agreement, shall be paid to the Settlement Administrator from the Gross
19 Settlement Amount. Class Counsel shall not receive any fees or disbursements from the Gross
20 Settlement Amount relating to the administration of disbursements from the Gross Settlement
21 Amount.

22 6.5 The Settlement Administrator shall be required to acknowledge that in its role as
23 Settlement Administrator it owes fiduciary obligations to the Named Plaintiff and Class Members
24 and will be required to attest that it will make payments consistent only with the terms of this
25 Agreement, including the allocation instructions set forth in this Agreement, or as ordered by the
26 Court. In no event shall the Settlement Administrator permit the disbursement of any portion of the
27 Gross Settlement Amount before the Judgment becomes Final. The obligations of the Settlement
28

1 Administrator are released upon all funds being disbursed by the Settlement Administrator pursuant
2 to this Agreement and/or order(s) of the Court.

3 6.6 Notice to the Settlement Class. Notice of the Settlement shall be provided to the
4 Class Members (attached as **Exhibit B**), and the Class Members may submit objections to the
5 Settlement and/or requests for exclusion from the Class by using the procedures set forth below.
6 Within twenty-one (21) days after receiving notice that the Court has preliminarily approved the
7 Settlement, Defense Counsel will provide the Class List to the Settlement Administrator. Within
8 twenty-eight (28) days after the Preliminary Approval Date, the Settlement Administrator shall
9 update the addresses using the United States Postal Service's NCOALink system and mail the
10 Notice Packet by first-class United States mail to each Class Member. No later than twenty-one
11 (21) days prior to the Final Approval Hearing, the Settlement Administrator shall provide Class
12 Counsel and Defense Counsel with a declaration attesting to completion of the notice process,
13 including any attempts to obtain valid mailing addresses for Class Members and PAGA Members
14 and re-sending any returned Notice Packets, as well as the number of Opt-Out Requests that the
15 Settlement Administrator received and the dates that the Settlement Administrator received those
16 Opt-Out Requests. Compliance with the procedures described in this Section shall constitute due
17 and sufficient notice to Class Members and PAGA Members of this proposed Settlement and the
18 Final Approval Hearing, and shall satisfy the requirements of due process. Nothing else shall be
19 required of, or done by, the Parties, Class Counsel, Defense Counsel, or the Settlement
20 Administrator to provide notice of the proposed Settlement and the Final Approval Hearing.

21 6.7 Any Participating Class Member who disagrees with the data used to calculate
22 his or her claim as reflected on the Notice shall be allowed to indicate and explain such
23 disagreement. Such written dispute must be postmarked to the Settlement Administrator no later
24 than forty-five (45) days after the date the Notice is first mailed (the "Dispute Deadline Date").
25 The Settlement Administrator shall resolve the disagreement with the Participating Class Member
26 using the employee records provided by Defendant and the Class Member. In the event of a
27 dispute or discrepancy between a Participating Class Member's records and the information
28 reflected in Defendant's records, the records of Defendant will control. The date of the postmark

1 on the return envelope shall be the exclusive means used to determine whether a Class Member has
2 “timely” disputed the calculation or application of the formula for determining Settlement Awards.
3 The Settlement Administrator’s decisions as to dates of employment and claim amounts will be
4 final.

5 6.8 By entering into this Agreement, Named Plaintiff agrees that he is not requesting
6 and will not be requesting exclusion from the Class.

7 6.9 The Notice shall provide that Class Members who wish to exclude themselves
8 from the Class must submit a written Opt-Out Request requesting exclusion from the Class on or
9 before forty-five (45) days from the date the Notice is first mailed (the “Objection/Exclusion
10 Deadline Date”). Such Opt-Out Request must contain the name, address, telephone number, and
11 last four digits of the Social Security number of the person requesting exclusion, must be signed by
12 the Class Member requesting exclusion, must be returned by mail to the Settlement Administrator
13 at a specified address, must be postmarked on or before the Objection/Exclusion Deadline Date,
14 and must contain any other language as set forth in the Notice. The date of the postmark on the
15 return mailing envelope shall be the exclusive means used to determine whether an Opt-Out
16 Request has been timely submitted. Any Class Member who opts out of the Class will not be
17 entitled to any recovery under the Settlement and will not be bound by the Settlement or have any
18 right to object, appeal, or comment on the Settlement. Class Members who fail to submit a valid
19 and timely Opt-Out Request on or before the Objection/Exclusion Deadline Date shall be bound by
20 all terms of the Settlement and any Final Judgment entered in this Class Action if the Settlement is
21 approved by the Court, regardless of whether they have requested exclusion from the Settlement.
22 No later than five (5) days after the exclusion deadline, the Settlement Administrator shall provide
23 Defendant’s Counsel with a complete list of all Class Members who have timely requested
24 exclusion from the Class.

25 6.10 By entering into this Agreement, Named Plaintiff agrees that he is not objecting
26 to and will not object to the Settlement or this Agreement. The Notice shall provide that Class
27 Members who wish to object to the Settlement must file with the Court and serve on counsel for the
28 Parties a written statement objecting to the Settlement. Such written statement must be filed with

1 the Court and served on counsel for the Parties by mail no later than forty-five (45) days after the
2 date the Notice is first mailed (the "Objection/Exclusion Deadline Date"). All objections must be
3 in writing, must include the Class Member's name, address, telephone number, and last four digits
4 of his or her Social Security number, and must state the basis on which the objections are asserted.
5 Unless ordered otherwise by the Court, no Class Member shall be entitled to be heard at the Final
6 Approval Hearing (whether individually or through separate counsel) or to object to the Settlement,
7 and no written objections or briefs submitted by any Class Member shall be received or considered
8 by the Court at the Final Approval Hearing, unless written notice of the Class Member's intention
9 to appear at the Final Approval Hearing, and copies of any written objections or briefs, shall have
10 been filed with the Court and served on counsel for the Parties on or before the
11 Objection/Exclusion Deadline Date. The Parties will be permitted to respond in writing to such
12 objections within the time period set by the Court. Unless the Court orders otherwise, Class
13 Members who fail to file and serve timely written objections in the manner specified above shall be
14 deemed to have waived any objections and shall be foreclosed from making any objection (whether
15 by appeal or otherwise) to the Settlement. Class Members are not allowed to both opt out from and
16 object to the Settlement. If a Class Member submits both an Opt-Out Request and an objection, the
17 Opt-Out Request will be deemed void. Even if a Class Member opts out of the Settlement, the
18 Class Member shall still receive a share of the PAGA payment and release that claim (if the Class
19 Member worked any pay periods during the PAGA period).

20 6.11 The Parties agree to use their best efforts to carry out the terms of this
21 Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise
22 encourage Class Members to submit written objections to the Settlement or Opt-Out Requests, or
23 appeal from the Court's Final Judgment. Further, at no time shall any of the Parties or their
24 counsel discourage any Class Members from participating in the Settlement.

25 6.12 Any Class Member who fails to timely file and serve a written statement of his
26 or her intention to object to the Settlement and Agreement shall be foreclosed from making any
27 objection to this Settlement and Agreement, unless otherwise ordered by the Court.
28

1 7. **FINAL APPROVAL HEARING**

2 7.1 A Final Approval Hearing shall be held before the Court on the date set forth in
3 the Order for Preliminary Approval and Notice of Proposed Class Action Settlement, which shall
4 be approximately ninety (90) days after the initial mailing of the Notice of Proposed Class Action
5 Settlement. At the Final Approval Hearing, the Court shall (1) review this Agreement and
6 determine whether the Court should give it final approval, and (2) consider any timely objections
7 made as explained above and all responses by the Parties to such objections. At the Final Approval
8 Hearing, the Parties shall ask the Court to give final approval to this Settlement and Agreement and
9 shall submit to the Court a Proposed Final Order Approving Settlement of Class Action, which the
10 Parties shall jointly agree upon in advance and which shall be entered in the Action.

11 7.2 After entry of the Final Judgment, the Court shall have continuing
12 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this
13 Agreement and all orders and judgments entered in connection with this Agreement, and the Parties
14 and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing,
15 and enforcing the settlement embodied in this Agreement, and all orders and judgments entered in
16 connection with this Agreement.

17 7.3 Waiver of Right to Appeal. Provided that the Final Order is consistent with the
18 terms and conditions of this Agreement, Named Plaintiff, as well as any Class Members who did
19 not timely file and serve an objection to the Settlement and appear at the Final Approval Hearing,
20 hereby waive any and all rights to appeal from the Final Order, including all rights to any post-
21 judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, a
22 motion for new trial, and any extraordinary writ, and the Final Order therefore will become final
23 and non-appealable at the time it is entered. This waiver does not include any waiver of the right to
24 oppose any appeal, appellate proceedings, or post-judgment proceedings.

25 7.4 If, after a notice of appeal or a petition for a writ of *certiorari* or any other
26 motion, petition, or application, the reviewing court vacates, reverses, or modifies the Final Order
27 such that there is a material modification to the Settlement and Agreement, and that court's
28 decision is not completely reversed and the Final Order is not fully affirmed on review by a higher

1 court, then Named Plaintiff and Defendant will each have the right to void the Settlement and
2 Agreement, which the Parties must do by giving written notice to the other Parties, the reviewing
3 court, and the Court not later than fourteen (14) days after the reviewing court's decision vacating,
4 reversing, or materially modifying the Final Order becomes final. A vacation, reversal, or
5 modification of the Court's award of an Enhancement or Class Counsel's fees or costs will not
6 constitute a vacation, reversal, or material modification of the Final Order within the meaning of
7 this paragraph, provided that Defendant's obligation to make payments remains limited as set forth
8 in this Agreement.

9 7.5 In the event: (i) more than 5% of the Class Members submit valid Opt-Out
10 Requests and Defendant elects to void this Agreement; (ii) the Court does not enter any order
11 specified in this Agreement; (iii) the Court does not finally approve the Settlement as provided in
12 this Agreement; (iv) the Court does not enter a Final Judgment as provided in this Agreement
13 which becomes final as a result of the occurrence of the Effective Date; or (v) the Settlement does
14 not become final for any other reason, this Settlement Agreement shall be null and void and any
15 order or judgment entered by the Court in furtherance of this Settlement shall be treated as void, the
16 Parties and any funds to be awarded under this Settlement shall be returned to their respective
17 statuses as of the date and time immediately prior to the execution of this Agreement, and the
18 Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except
19 that any fees already incurred by the Settlement Administrator shall be paid by Defendant in the
20 event of (i) above, and split evenly between Class Counsel and Defendant in the event of (ii), (iii),
21 (iv), or (v) above.

22 7.6 In the event an appeal is filed from the Court's Final Judgment, or any other
23 appellate review is sought prior to the Effective Date, administration of the Settlement shall be
24 stayed pending final resolution of the appeal or other appellate review.

25 8. **FUNDING AND DISTRIBUTION**

26 8.1 **Funding of the Gross Settlement Amount.** The Settlement Administrator will
27 provide Defendant with its bank wire instructions to establish the Qualified Settlement Fund (QSF).
28

1 Within ten (10) calendar days of the Effective Date, Defendant shall transmit the Gross
2 Settlement Amount to the Settlement Administrator.

3 8.2 **Distribution of the Gross Settlement Amount.** Within 30 calendar days of the
4 Effective Date, the Administrator will pay to Settlement Group Members, their Individual
5 Settlement Payments via first-class regular U.S. Mail; to Class Counsel, the Court-awarded Class
6 Counsel's Attorneys' Fees and Expenses; to the LWDA, the Court-approved LWDA Payment;
7 Enhancement Award to Plaintiff; and to the Administrator, the Court-awarded Administration Fees
8 and Expenses.

9 8.3 **Non-Cashed Settlement Checks.** Settlement Group Members shall have one
10 hundred eighty days (180) to cash their checks. Any funds associated with uncashed checks after
11 one hundred eighty (180) days will be sent to the Controller of the State of California to be held
12 pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of
13 those Settlement Group Members whose checks were voided.

14 9. **NULLIFICATION OF THIS AGREEMENT**

15 9.1 **Non-Approval of the Agreement.** If (a) the Court should for any reason fail to
16 approve this Agreement in the form agreed to by the Parties, or (b) the Court should for any reason
17 fail to enter a judgment on this Action, or (c) the approval of the Settlement and judgment is
18 reversed, modified or declared or rendered void, then the Settlement shall be considered null and
19 void, and neither the Settlement nor any of the related negotiations or proceedings shall be of any
20 force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice,
21 as if the Settlement has been neither entered into nor filed with the Court. Notwithstanding the
22 foregoing, the Parties may attempt in good faith to cure any perceived defects in the Agreement to
23 facilitate approval. In the event the Court awards less than the requested amounts for
24 Administration Fees, Class Counsel's Attorneys' Fees and Expenses, Enhancement Award to
25 Plaintiff (if any), or the PAGA Payment, the difference shall become part of the Net Settlement
26 Amount.

1 9.2 **Invalidation.** Invalidation of any material portion of the Settlement shall
2 invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that
3 the remaining provisions of the Settlement are to remain in full force and effect.

4 9.3 **Stay Upon Appeal.** In the event of a timely appeal from the approval of the
5 Settlement and Judgment, the Judgment shall be stayed, and Defendant shall not be obligated to
6 fund the Gross Settlement Amount or take any other actions required by this Agreement until all
7 appeal rights have been exhausted by operation of law.

8 10. **MOTION FOR COURT APPROVAL**

9 10.1 **Motion for Conditional Class Certification and Preliminary Approval.**
10 Named Plaintiff will bring a motion before the Court for an order conditionally certifying the Class,
11 for settlement purposes only, to include all causes of action pled in the Action based on the
12 preliminary approval of this Agreement, including the Notice to the Class. Named Plaintiff shall
13 request a hearing before the Court to request preliminary approval of the Settlement. In
14 conjunction with this hearing, Named Plaintiff will submit this Agreement, which sets forth the
15 terms of this Settlement, and will include proposed forms of all notices and other documents
16 necessary to implement the Settlement. Counsel for the Named Plaintiff will prepare the motion
17 for preliminary approval and the motion for final approval, and their supporting papers, which shall
18 be subject to review by Counsel for Defendant before filing.

19 11. **RELEASES AND WAIVERS**

20 11.1 **Settlement Group Members' Release.** On the Effective Date, Named Plaintiff
21 and all other Class Members, except those Class Members who submitted a timely and valid Opt-
22 Out Request as described above and thus became Non-Participating Class Members, shall be bound
23 by this Agreement. If a Non-Participating Class Member receives an Individual Settlement
24 Payment check notwithstanding his or her submission of an Opt-Out Request, such person shall be
25 bound by the terms of this Agreement if such person cashes the Individual Settlement Payment
26 check.

27 Upon final approval by the Court of this Agreement, and except as to such rights or
28 claims as may be created by this Agreement, the Participating Class Members, comprised of each

1 member of the Class who has not submitted a valid Opt-Out Request, fully releases and discharges
2 Released Parties from the Released Class Claims. The Class Members agree not to sue or otherwise
3 make a claim against any of the Released Parties that is in any way related to the Released Class
4 Claims. The Class Members may later discover facts in addition to or different from those they
5 now know or believe to be true with respect to the subject matter of this Release, but the Class
6 Members upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment
7 shall have, fully, finally, and forever settled and released any all of the claims released pursuant to
8 this Release.

9 Upon final approval by the Court, Plaintiff, the PAGA Members, and the State of
10 California vis-à-vis the LWDA shall hereby release the Released Parties for the PAGA Release for
11 the PAGA Period.

12 It is agreed that because the Class Members are so numerous, it is impossible or
13 impractical to have each Class Member execute this Agreement. The Notice of Proposed Class
14 Action Settlement will advise all Class Members (and PAGA Members) of the binding nature of
15 the releases. Excepting only the Class Members who timely submit a valid Opt-Out Request, the
16 Notice of Proposed Class Action Settlement shall have the same force and effect as if this
17 Settlement and Agreement were executed by each Class Member with regard to the claims that he
18 or she is releasing pursuant to the Settlement and Agreement.

19 11.2 **General Release by Plaintiff.** Plaintiff, for himself, his heirs, successors, and
20 assigns, waives, releases, acquits, and forever discharges the Released Parties from any and all
21 claims, actions, charges, complaints, grievances, and causes of action, of any nature arising from
22 Plaintiff's employment with Defendant whether known or unknown, which exist or may exist as of
23 the Parties' execution of this Agreement.

24 Section 1542 of the California Civil Code provides as follows:

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

1 Plaintiff's general release provided herein is made with an express waiver and
2 relinquishment of any claim, right, or benefit under California Civil Code § 1542. Plaintiff warrants
3 that he has read this Agreement, including this waiver of California Civil Code § 1542, and that
4 Plaintiff has consulted with or had the opportunity to consult with counsel about this Agreement
5 and specifically about the waiver of § 1542, and that Plaintiff understands this Agreement and the §
6 1542 waiver, and so he is freely and knowingly entering into this Agreement. Plaintiff further
7 acknowledges that he later may discover facts different from or in addition to those Plaintiff now
8 knows or believes to be true regarding the matters released or described in this Agreement, and
9 even so Plaintiff agrees that the releases and agreements contained in this Agreement shall remain
10 effective in all respects notwithstanding any later discovery of any different or additional facts.

11 11.3 **Inapplicability of Labor Code Section 206.5.** The Class Members, including,
12 without limitation, Named Plaintiff, shall be deemed to have acknowledged and agreed that their
13 claims for wages and/or penalties and/or any other recovery solely in connection with this Action
14 are disputed, and that the payments to them set forth in this Agreement constitute payment of all
15 sums allegedly due to them solely from the claims alleged in the Action. The Class Members,
16 including, without limitation, Named Plaintiff, shall be deemed to have acknowledged and agreed
17 that California Labor Code section 206.5 does not apply to any such payments. That section
18 provides in pertinent part as follows: **"No employer shall require the execution of any release of**
19 **any claim or right on account of wages due, or to become due, or made as an advance on**
20 **wages to be earned, unless payment of such wages has been made."** Each Participating Class
21 Member shall be deemed to have made the foregoing Release as if by manually signing it. This
22 section in no way limits the releases set forth above.

23 12. **DUTIES OF THE PARTIES**

24 12.1 **Mutual Full Cooperation.** The Parties agree to cooperate fully with one
25 another to accomplish and implement the terms of this Agreement. Such cooperation shall include,
26 but not be limited to, execution of such other documents and the taking of such other actions as
27 may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best
28 efforts, including all effects contemplated by this Agreement and any other efforts that may become

1 necessary by Court order or otherwise, to effectuate the terms of this Agreement. As soon as
2 practicable after execution of this Agreement, Class Counsel, with the cooperation of Defendant
3 and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final
4 approval of this Agreement.

5 12.2 **Duty to Support and Defend the Settlement.** The Parties agree to abide by all
6 of the terms of the Settlement in good faith and to support the Settlement fully and to use their best
7 efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

8 13. **MISCELLANEOUS PROVISIONS**

9 13.1 **Different Facts.** The Parties hereto, and each of them, acknowledge that, except
10 for matters expressly represented herein, the facts in relation to the dispute and all claims released
11 by the terms of this Agreement may turn out to be other than or different from the facts now known
12 by each party and/or their counsel, or believed by such Party or counsel to be true, and each Party
13 therefore expressly assumes the risk of the existence of different or presently unknown facts, and
14 agrees that this Agreement shall be in all respects effective and binding despite such difference.

15 13.2 **No Prior Assignments.** The Parties represent, covenant, and warrant that they
16 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
17 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
18 action, or right herein released and discharged except as set forth herein.

19 13.3 **Non-Admission.** Nothing in this Agreement shall be construed as or deemed to
20 be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any
21 other Party, or any other person, and the Parties specifically disclaim any culpability, negligence, or
22 wrongdoing toward each other or any other person. Each of the Parties has entered into this
23 Agreement with the intention to avoid further disputes and litigation with the attendant
24 inconvenience, expenses, and contingencies. Nothing herein shall constitute any admissions by
25 Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action.
26 Nothing herein shall constitute any admission by Defendant regarding the merits of the Claims in
27 this Action. Nothing herein shall constitute an admission by Defendant that the Action was
28 properly brought as a representative action or class action other than for settlement purposes. To

1 the contrary, Defendant has denied and continues to deny each and every material factual allegation
2 and all Claims. To this end, the Settlement of the Action, the negotiation and execution of this
3 Agreement, and all acts performed or documents executed pursuant to or in furtherance of this
4 Agreement or the Settlement are not, shall not be deemed to be, and may not be used as, an
5 admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any
6 of the factual allegations in the Action; and are not, shall not be deemed to be, and may not be used
7 as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal
8 or administrative proceeding in any court, administrative agency or other tribunal.

9 13.4 **Media or Press.** Plaintiff and Defendant, and their respective counsel, agree to
10 limit public comment on this Settlement, the Action, and claims in the Action, stating that the
11 matter has been resolved to the satisfaction of the Parties. Plaintiff and Defendant, and their
12 respective counsel shall not initiate public comment and/or discuss with or present to the media or
13 press.

14 13.5 **Construction.** The Parties hereto agree that the terms and conditions of this
15 Agreement are the result of lengthy, intensive, arms-length non-collusive negotiations between the
16 Parties and that this Agreement is not to be construed in favor of or against any party by reason of
17 the extent to which any Party or their counsel participated in the drafting of this Agreement. If any
18 of the dates in the Agreement fall on a weekend, bank or court holiday, the time to act shall be
19 extended to the next business day.

20 13.6 **Governing Law.** This Agreement is intended to and shall be governed by the
21 laws of the State of California, without regard to conflict of law principles, in all respects,
22 including execution, interpretation, performance, and enforcement.

23 13.7 **Captions and Interpretations.** Section titles or captions contained herein are
24 inserted as a matter of convenience and for reference only and in no way define, limit, extend, or
25 describe the scope of this Agreement or any provision thereof.

26 13.8 **Modification.** This Agreement may not be changed, altered, or modified,
27 except in writing signed by the Parties and approved by the Court. This Agreement may not be
28

1 discharged except by performance in accordance with its terms or by a writing signed by the
2 Parties.

3 13.9 **Invalidity.** Before declaring any provision of this Agreement invalid, the Court
4 shall first attempt to construe the provisions valid to the fullest extent possible consistent with
5 applicable precedents so as to define all provisions of this Agreement valid and enforceable. The
6 provisions of this Agreement are severable. To the extent any provision is deemed unlawful, to the
7 extent possible, such provision shall be severed and the remainder of the Agreement shall remain
8 valid and enforceable.

9 13.10 **Integration Clause.** This Agreement contains the entire agreement between the
10 Parties relating to the Settlement of the Action and the transactions contemplated thereby, and all
11 prior or contemporaneous agreements, understandings, representations, and statements, whether
12 oral or written, and whether by a party or such party's legal counsel, are hereby superseded. No
13 rights under this Agreement may be waived except in writing as provided above.

14 13.11 **Successors and Assigns.** This Agreement shall be binding upon and inure to
15 the benefit of the Parties and Settlement Group Members and their respective present and former
16 heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents,
17 employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare
18 benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint
19 ventures, predecessors, successors, and assigns.

20 13.12 **Corporate Signatories.** Any person executing this Agreement or any such
21 related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants
22 and promises, for the benefit of all Parties hereto, that such person has been duly authorized by
23 such corporation or partnership to execute this Agreement or any such related document.

24 13.13 **Execution in Counterparts.** This Agreement shall become effective upon its
25 execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and
26 execution of counterparts shall have the same force and effect as if all Parties had signed the same
27 instrument.
28

13.14 **Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically provided for herein, each Party shall bear their or its own attorneys' fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other Party to this Agreement.

13.15 **Enforcement.** The Parties agree this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of this Action over all Parties and Class Members to interpret and enforce the terms, conditions, and obligations of the Settlement. The Named Plaintiff, Class Members, and Defendant hereby submit to the personal and exclusive 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. The prevailing party in any action or proceeding to enforce this Agreement or otherwise concerning the terms of the settlement of the Action shall be awarded his, her, or its costs and attorneys' fees.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures of their representatives. The date of the Agreement shall be the date of the latest signature.

Dated: September 20, 2023 PLAINTIFF

By: *Gabriel lafarga*
Gabriel LaFarga

Dated: September __, 2023 G.I. TRUCKING COMPANY D/B/A ESTES WEST

By: _____
Its: _____

1 13.14 **Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically
2 provided for herein, each Party shall bear their or its own attorneys' fees, costs and expenses,
3 taxable or otherwise, incurred by them in or arising out of the Action and shall not seek
4 reimbursement thereof from any other Party to this Agreement.

5 13.15 **Enforcement.** The Parties agree this Agreement shall be enforceable by the
6 Court and the Court shall retain exclusive and continuing jurisdiction of this Action over all Parties
7 and Class Members to interpret and enforce the terms, conditions, and obligations of the
8 Settlement. The Named Plaintiff, Class Members, and Defendant hereby submit to the personal
9 and exclusive jurisdiction of the Court for purposes of interpreting, implementing and enforcing the
10 Settlement embodied in this Agreement and all orders and judgments entered in connection
11 therewith. The prevailing party in any action or proceeding to enforce this Agreement or otherwise
12 concerning the terms of the settlement of the Action shall be awarded his, her, or its costs and
13 attorneys' fees.

14 IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on
15 the date below their signatures of their representatives. The date of the Agreement shall be the date
16 of the latest signature.

17 Dated: September __, 2023 PLAINTIFF

18
19 By: _____
20 Gabriel LaFarga

21
22 Dated: ^{Oct.} September 10, 2023 G.I. TRUCKING COMPANY D/B/A ESTES WEST

23
24 By: Tracey Hughes
25 Its: OP Compliance, Benefits Spend
26 mgmt

1 **APPROVED BY COUNSEL AS TO FORM:**

2 Dated: September 20, 2023

FERRARO VEGA EMPLOYMENT LAWYERS, INC.

3
4 By: Nicholas J. Ferraro
5 Nicholas J. Ferraro
6 Attorneys for Plaintiff
7 GABRIEL LAFARGA

8 Dated: October 11, 2023
9 ~~September 20, 2023~~

CDF LABOR LAW LLP

10 By: Garrett V. Jensen
11 Garrett V. Jensen
12 Attorneys for Defendant
13 G.I. TRUCKING COMPANY D/B/A ESTES WEST
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28