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Attorneys for Defendant
DIRT CHEAP, INC. dba DCG FULFILLMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

ERICK FUENTES, individually and on behalf
of all other aggrieved employees,

Plaintiff,

vs.

EMPLOYER'S OUTSOURCING, INC., a
California corporation; DIRT CHEAP, INC.,
doing business as, DCG FULFILLMENT, a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

) Case No. CIVSB2221480

) Assigned for All Purposes To:

) Judge: Joseph T Ortiz

) Dept: S-17

) **JOINT STIPULATION OF SETTLEMENT**
) **AND RELEASE TO SETTLE CLASS**
) **ACTION**

) Action Filed: September 28, 2022

JOINT STIPULATION OF SETTLEMENT

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court, that the full and final Settlement of this Action shall be effectuated upon and subject to
3 the following terms and conditions. Capitalized terms shall have the meanings set forth in Article I
4 or as defined elsewhere in this Joint Stipulation of Settlement and Release to Settle Class Action
5 (hereinafter "Agreement").

6 This Agreement is made and entered into by and between Plaintiff ERICK FUENTES
7 ("Plaintiff" or "Named Plaintiff") on behalf of himself and other similarly situated employees, on
8 the one hand, and Defendants DIRT CHEAP, INC. DBA DCG FULFILLMENT ("DCG") and
9 EMPLOYERS OUTSOURCING, INC. ("EOI") (collectively, "Defendants"), on the other hand.
10 Plaintiff and Defendants collectively are referred to in the Agreement as "the Parties."

11 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
12 concluded by agreement of Defendants to pay no more than the settlement sum of Two Hundred
13 Twenty Five Thousand Dollars (\$225,000.00) as provided in Section 3.06(a) below ("Gross
14 Settlement Amount") with the addition of the employer's portion of payroll taxes on the wage
15 portion of the Settlement, upon the terms and conditions of the Agreement and for the
16 consideration set forth herein, including, but not limited to, a general release of claims by Named
17 Plaintiff Erick Fuentes as described herein, and the release of the Class Members' claims as set
18 forth in this Agreement.

19 ARTICLE I

20 DEFINITIONS

21 Unless otherwise defined herein, the following terms used in this Agreement shall have the
22 meanings ascribed to them as set forth below:

23 a. "Action" means the class and representative claims asserted in the Complaint filed
24 in San Bernardino Superior Court on September 28, 2022, and the Stipulation for the filing of
25 Plaintiff's First Amended Complaint in San Bernardino County Superior Court was submitted on
26 January 29, 2024, titled *Erick Fuentes, on behalf of himself and all other similarly situated v.*
27 *Defendants Employer's Outsourcing, Inc. and Dirt Cheap, Inc., and DOES 1 through 10, inclusive,*
28 *San Bernardino County Superior Court, Case No.*

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2 2221480, as well as the PAGA letters provided to the LWDA on behalf of Plaintiff and the
3 allegedly aggrieved employees on July 15, 2021, September 21, 2022, and January 11, 2024.

4 b. **"Agreement"** means this Joint Stipulation of Class Settlement and Release to Settle
5 Class Action, including Exhibit "A", attached hereto.

6 c. **"Class"** means all current and former direct and temporary hourly-paid employees
7 who worked or were otherwise placed on assignment at a DCG facility within the State of
8 California at any time during the period from February 25, 2020 to the date the Court grants
9 preliminary approval of the settlement.

10 d. **"Class Counsel"** or **"Plaintiff's Counsel"** means the attorneys for the Settlement
11 Class, who are:

12 LAW OFFICE OF SCOTT EARNEST WHEELER
13 Scott E. Wheeler, Esq.
14 Justin A. Wheeler, Esq.
15 sew@scottwheelerlawoffice.com
16 jaw@scottwheelerlawoffice.com
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988

17 e. **"Class List"** means a true and complete list of all Class Members that Defendants
18 will compile, based on their business records, and provide to the Settlement Administrator within
19 twenty one (21) days after the Court grants preliminary approval of the Settlement. The Class List
20 shall be formatted in Microsoft Office Excel and shall include each Class Member's full name, his
21 or her last known home address, telephone number, social security number, beginning and ending
22 dates of employment, and number of workweeks in the Class Period.

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

24 g. **"Class Period"** February 25, 2020, through the date the Court grants preliminary
25 approval.

26 h. **"Court"** means the San Bernardino Superior Court in which the Action is pending.

27 i. **"DCG"** means Defendant Dirt Cheap, Inc. doing business as DCG Fulfillment, Inc.

28 j. **"EOI"** means Defendant Employer's Outsourcing, Inc.

1 k. **“Defendants”** mean DCG and EOI.

2 l. **“Defendants’ Counsel”** or **“Defense Counsel”** means:

3 CDF LABOR LAW LLP
4 David G. Hagopian, Esq.
dhagopian@cdf litigation.com
5 Garrett V. Jensen, Esq.
gjensen@cdf laborlaw.com
6 Ashley A. Halberda
ahalberda@cdf laborlaw.com
7 18300 Von Karman Ave., Suite 800
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9 KOREY RICHARDSON LLP
10 Ronald Z. Gomez, Esq.
rgomez@korey richardsonlaw.com
11 Jordan Oslin, Esq.
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12 835 Wilshire Boulevard, 5th Floor
Los Angeles, CA 90017
Tel: (213) 271-2717

13 m. **“Disposition”** means the method by which the Court adopts the terms of the
14 Settlement and Agreement, which may be by judgment or other final order, and retains jurisdiction
15 over the enforcement, implementation, construction, administration, and interpretation of the
16 Settlement and Agreement.

17 n. **“Effective Date”** of this Settlement shall be the later of the time when: (i) the date
18 of final affirmance of the Judgment on an appeal, the expiration of the time for, or the denial of, a
19 petition to review the Judgment, or if review is granted, the date of final affirmance of the
20 Judgment following review pursuant to that grant, (ii) the date of final dismissal of any appeal from
21 the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the
22 Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or withdrawal) of
23 any filed appeal in a way that affirms the Final Approval Order and Judgment in a form
24 substantially identical to the form of the Final Approval Order entered by the Court, and the time to
25 petition for review with respect to any appellate decision affirming the Final Approval Order has
26 expired; or (iv) if no appeal is filed, the sixty-first (61st) calendar day after the Court enters final
27 approval of the Settlement and the Judgment approving this Agreement.

28 o. **“Enhancement Award”** means a monetary amount of up to Six Thousand Dollars

1 (\$6,000.00), subject to Court approval, for Plaintiff Erick Fuentes, which will be paid pursuant to
2 Section 3.06(c) of this Agreement.

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

5 q. **“Final Order Approving Settlement of Class Action”** or **“Final Order”** means
6 the final formal court order signed by the Court at or after the Final Approval Hearing in
7 accordance with the terms herein approving this Agreement.

8 r. **“Gross Settlement Fund”** means the maximum settlement sum of Two Hundred
9 Twenty-Five Dollars (\$225,000.00), to be paid by Defendants under the terms and conditions of
10 this Agreement. Defendants shall remit their share of the employers’ payroll taxes, as provided
11 herein, in addition to the Gross Settlement Fund.

12 s. **“Individual Settlement Payments”** or **“Verified Class Member Payments”** means
13 the amounts of money from the Net Settlement Amount that shall be paid to the Verified Class
14 Members. Individual Settlement Payments will be each Verified Class Member’s share of the Net
15 Settlement Amount (which share shall be determined by the calculations provided in this
16 Agreement), minus the employee’s share of payroll and income taxes on the portion which is
17 wages and all other applicable deductions or withholding required by law or expressly authorized
18 by the Class Member.

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

20 u. **“Named Plaintiff”** or **“Plaintiff”** means Erick Fuentes.

21 v. **“Net Class Settlement Amount”** means the Gross Settlement Fund of Two
22 Hundred Twenty-Five Dollars (\$225,000.00) less all of the following: (a) Enhancement Award to
23 Plaintiff not to exceed Six Thousand Five Hundred Dollars (\$6,00.00); (b) an award of attorneys’
24 fees to Class Counsel in an amount not to exceed Seventy Five Thousand Dollars (\$75,000); (c)
25 documented costs of Class Counsel in an amount not to exceed Eighteen Thousand Dollars
26 (\$18,000.00); (d) Settlement Administration Costs; and (e) the PAGA Settlement Amount of Thirty
27 Thousand Dollars (\$30,000) paid to the LWDA and the PAGA Group Members.

28 w. **“Non-Verified Class Member(s)”** means those Class Members who submit to the

1 Settlement Administrator a valid and timely Opt-Out Request pursuant to Section 3.04(b) below.

2 ///

3 x. **“Notice Packet”** or **“Class Notice”** means the Notice of Proposed Class Action
4 Settlement substantially in the form attached hereto as Exhibit “A” (the **“Notice”**).

5 y. **“Operative Complaint”** means the First Amended Complaint pursuant to Section
6 II.b. below.

7 z. **“Opt-Out Request”** means a written request to be excluded from the Class pursuant
8 to Section 3.04(b) below.

9 aa. **“PAGA”** means the Private Attorneys General Act of 2004, California *Labor Code*
10 §§2698 *et seq.*

11 bb. **“PAGA Group Members”** means all current and former direct and temporary
12 hourly-paid employees who worked or were otherwise placed on assignment at a DCG facility
13 within the State of California at any time during the period from July 15, 2021, through the date the
14 Court grants preliminary approval.

15 cc. **“PAGA Period”** means July 15, 2021, through the date the Court grants preliminary
16 approval.

17 dd. **“PAGA Settlement Amount”** means Thirty Thousand Dollars (\$30,000.00), of the
18 Gross Settlement Fund allocated to PAGA penalties (PAGA Settlement Amount), seventy-five
19 percent (75%) of which, or Twenty Two Thousand and Five Hundred Dollars (\$22,500.00), was
20 paid to the LWDA, and twenty-five percent (25%) of which, or Seven Thousand and Five Hundred
21 Dollars (\$7,500.00) will be distributed to the PAGA Group Members.

22 ee. **“Parties”** means collectively Plaintiff and Defendants.

23 ff. **“Preliminary Approval Date”** means the date on which the Court preliminarily
24 approves the Settlement embodied in this Agreement, including, without limitation, the Notice of
25 Proposed Class Action Settlement, which is attached hereto as Exhibit “A.”

26 gg. **“Settlement”** means the resolution of this Action and all related claims effectuated
27 by this Agreement.

28 hh. **“Settlement Class Members”** means any Class Members and PAGA Group

1 Members.

2 ///

3 ii. **“Settlement Administration Costs”** means all costs incurred by the Settlement
4 Administrator in administration of the Settlement, including, but not limited to, any notices that
5 must be provided to the Class, calculating employer payroll taxes, performing address updates and
6 verifications as necessary prior to the first mailing, performing a single address follow-up on any
7 returned mail, calculating Individual Settlement Payments and tax withholdings, providing
8 declarations, generating Individual Settlement Payment checks and related tax reporting forms,
9 completing administrative work related to unclaimed checks, if any, processing and sending
10 uncashed checks to defense counsel on behalf of Defendants, generating checks to Class Counsel
11 for attorneys’ fees and costs, and to Plaintiff for his Enhancement Award, and any other actions of
12 the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this
13 Agreement.

14 jj. **“Settlement Administrator”** means ILYM Group, Inc., which was mutually
15 selected by the Parties for the administration of the Settlement including, without limitation, the
16 distribution of the Individual Settlement Payments to be made by Defendants from the Gross
17 Settlement Fund and related matters under this Agreement.

18 kk. **“Verified Class Members”** means all Class Members who did not opt-out.

19 ll. **“Total Workweeks”** means the total aggregate number of Workweeks of all Class
20 Members during the Class Period.

21 mm. **“Workweek”** means a week during the Class Period commencing on Sunday and
22 ending on the following Saturday in which a Class Member worked one or more days.

23 ARTICLE II

24 FACTUAL BACKGROUND

25 a. Plaintiff has provided three PAGA notices to Defendants and the LWDA dated July
26 15, 2022, September 21, 2022, and January 11, 2024, articulating the provisions of the Labor Code
27 alleged to have been violated and facts and theories in support of those alleged violations (“PAGA
28 Notices”).

1 On or about September 28, 2022, Plaintiff filed an action in California Superior Court, County of
2 San Bernardino, Case No. 2221480, alleging a single cause of action for violation of PAGA.

3 **b.** On January 29, 2024, Plaintiff submitted the Stipulation to file a First Amended
4 Complaint was filed in this action adding class claims and additional theories of liability under
5 PAGA. The First Amended Complaint is the “**Operative Complaint**”.

6 **c.** Defendants generally deny all of the allegations asserted in the Action, including
7 those in the Operative Complaint, and specifically deny any violation of the (i) California *Labor*
8 *Code*, (ii) the California Industrial Welfare Commission Wage Orders, and/or (iii) California
9 *Business and Professions Code*. Defendants further deny any pendant or related charges, deny
10 violating any other law or right of Plaintiff or any Settlement Class Member, and deny any liability
11 is owed to Plaintiff and Settlement Class Members.

12 **d.** On October 26, 2023, the Parties engaged in private mediation with the Honorable
13 Glenda Sanders (Ret.), an experienced wage and hour class action mediator, and thereafter reached
14 an agreement to resolve this matter. The settlement discussions were conducted at arm’s-length.
15 The Settlement is the result of an informed and detailed analysis of the risks facing the parties in
16 litigating this case, including but not limited to, careful consideration of the legal and factual
17 obstacles to Plaintiff’s prospects of obtaining class certification and on the merits, and Defendants’
18 defenses, as well as Defendants’ potential exposure and the additional costs of litigating the Action.

19 **e.** It is the desire of the Parties to fully, finally, and forever settle, compromise and
20 discharge any and all known and unknown claims that were raised, or could have been raised
21 during the Class Period and PAGA Period based upon the facts alleged in this Action, including
22 those to alleged in the Operative Complaint and the PAGA Notices. In order to achieve a full and
23 complete release of Defendants, each Settlement Class Member acknowledges that this Settlement
24 Agreement is intended to include in its effect all claims of any nature that were raised in the
25 Action, or could have been raised based upon the facts alleged in this Action and the PAGA
26 Notices on behalf of Settlement Class Members, including, but not limited to: (1) all statutory and
27 common law causes of action referenced in the Action and the PAGA Noticed and corresponding
28 provisions of the applicable Industrial Welfare Commission Wage Orders, including, but not

1 limited to, failure to pay minimum wages, wage statement violations, failure to pay all wages due
2 at time of termination, waiting time penalties, failure to indemnify, failure to pay overtime
3 (including off the clock work, failing to pay for travel time, not paying at regular rate, failing to pay
4 for training time, rounding, editing/manipulating time entries, pre-and post-shift work (including
5 COVID screenings and donning and doffing uniforms and safety equipment), failure to provide rest
6 periods, failure to pay rest period premiums at regular rate, failure to pay meal premiums at regular
7 rate, failure to provide meal periods (including requiring employees to carry cell phones and
8 walkie-talkies during meal periods, auto-deducting meal periods, and not permitting employees to
9 leave the premises), failure to keep accurate time records, wage statements and personnel records,
10 failure to provide COVID sick pay and supplemental sick leave and/or failure to permit use upon
11 request and/or include used or available COVID sick pay and supplemental sick pay on wage
12 statements in violation of Labor Code sections 246, 248.1, 248.6, failure to provide proper notice of
13 COVID exposure in violation of Labor Code sections 6409.6 and 6432, failure to provide sick
14 leave, unlawful background checks and inquiry into salary history, failure to comply with Labor
15 Code section 2810.5 by failing to provide rates of pay and overtime rates applicable to
16 employment, allowances claimed as part of minimum wage, information regarding paid sick leave
17 and other information required by Labor Code 2810.5, failure to furnish employees with documents
18 signed or obtained to hold employment under Labor Code section 432, personnel records under
19 Labor Code 1198.5, and payroll records under Labor Code sections 226 et seq. and 1174 et seq., as
20 well as liability under Labor Code section 558 the applicable Industrial Welfare Commission
21 Wage Orders; Cal. Code Regs. Title 8, § 11070; and the Business & Professions Code §17200, et
22 seq., interest, attorneys' fees and costs, including as permissible under California Code of Civil
23 Procedure § 1021.5, or (2) any claims that reasonably arise out of the facts alleged in the Operative
24 Complaint and the PAGA Notices.

25 f. It is the intention of the parties that this Settlement Agreement shall constitute a full
26 and complete settlement and release of all claims arising from the allegations of the Action on
27 behalf of Settlement Class Members, which release is set forth in Section 5.01 below.

28 g. Named Plaintiff and Class Counsel have each conducted a thorough investigation

1 into the facts of this class action case, including an extensive review of relevant documents, and
2 have diligently pursued an investigation of Settlement Class Members' claims against Defendants.
3 Based on their respective own independent investigation and evaluation, Named Plaintiff and Class
4 Counsel are each of the opinion that the Settlement with Defendants for the consideration and on
5 the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
6 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
7 significant delay, the risk the Settlement Class will not be certified by the Court, defenses asserted
8 by Defendants, and numerous potential appellate issues.

9 **h.** The Parties agree to cooperate and take all steps necessary and appropriate to
10 consummate this Settlement and to dismiss this case with prejudice. The Parties agree that all
11 claims alleged in the Action shall be dismissed to the fullest extent permitted by law.

12 **i.** The maximum total payment under the Settlement, including all Individual
13 Settlement Payments, attorneys' fees and costs, the Enhancement Award to the Named Plaintiff,
14 the PAGA Payment, and any other payments provided by this Settlement, is Two Hundred Twenty
15 Five Thousand Dollars (\$225,000.00). Additionally, Defendants shall be responsible for paying the
16 employer's portion of payroll taxes on the wage portion of each Individual Settlement Payment. It
17 is understood and agreed that other than the employer's portion of payroll taxes on the wage
18 portion of each Individual Settlement Payment, Defendants' maximum total liability under this
19 Settlement shall not exceed Two Hundred Twenty Five Thousand Dollars (\$225,000.00).

20 **j.** It is understood that the Gross Settlement Fund of Two Hundred Twenty Five
21 Thousand Dollars (\$225,000.00) is non-reversionary. To the extent that a Notice and/or an
22 Individual Settlement Payment check is (1) undeliverable, after skip tracing performed by the
23 Settlement Administrator as provided in paragraph 3.03 below, or (2) uncashed 180 days after the
24 date listed on the check, the amount of those checks shall be directed to the California State
25 Controller for deposit in the Unclaimed Property Fund in the name of the employee.

26 **k.** It is further understood and agreed that Named Plaintiff and/or Class Counsel shall
27 not issue any public statement to the media, press, or otherwise concerning this Action and/or any
28 business practice, procedure, or policy of Defendants, except as specified in Section 6.25 of this

1 | Agreement.

2 I. The Settlement embodied in this Agreement contemplates the (i) entry of an order
3 approving certification of a Class for settlement purposes only, (ii) entry of a Final Order
4 Approving Settlement of this Action, (iii) entry of Disposition enforcing the terms of the
5 Settlement and retaining jurisdiction, (iv) discharge of Defendants from liability for any and all
6 Claims relating to this Action, (v) release, as set forth below in Section 5.01 below, by all
7 Settlement Class Members, including Named Plaintiff of all claims based on or arising from the
8 alleged wrongdoing set forth in this Action, and (vi) a general release by Named Plaintiff of all
9 known and unknown claims against Defendants, their parents, subsidiaries, affiliates, agents,
10 attorneys, officers, directors, successors, and/or assigns pursuant to California *Civil Code* section
11 1542.

ARTICLE III.

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

14 Because the Parties have stipulated to the certification of the Class with respect to all causes
15 of action alleged in the Operative Complaint in this Action for settlement purposes only, this
16 Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter
17 into this Agreement on a conditional basis. This Agreement is contingent upon the approval and
18 certification of a settlement Class by the Court. If the Effective Date does not occur, this
19 Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not
20 be referred to or used for any purpose whatsoever.

21 The Parties and their respective counsel shall take all reasonable steps that may be
22 requested by the Court relating to the approval and implementation of this Agreement and shall
23 otherwise use their respective best efforts to obtain Court approval and implement this Agreement.
24 If the Court does not grant the motion for Preliminary Approval and/or the motion for Final
25 Approval, the Parties agree to meet and confer to address the Court's concerns.

26 The procedure for obtaining Court approval of and implementing this Agreement shall be as
27 follows:

Section 3.01 Motion for Conditional Class Certification and Preliminary Approval

Promptly upon execution of this Agreement, the Parties shall submit this Agreement to the Court and request preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Class Counsel will prepare and file the motion for preliminary approval of settlement. Upon receipt of the motion for preliminary approval and all supporting documents, Defendants shall have a minimum of three (3) business days to review the motion for preliminary approval of settlement before Class Counsel files the motion for preliminary approval with the Court.

Pursuant to Labor Code section 2699(1)(2), Plaintiff will file this Joint Stipulation of Settlement with the LWDA using the appropriate website and intake forms located at: <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

In seeking preliminary approval of this Agreement, the Parties shall apply to the Court for the entry of a preliminary order seeking certification of this Action under section 382 of the California *Code of Civil Procedure* and Rules 3.760 *et seq.* of the California Rules of Court as a class action for purposes of settlement only with respect to the Class; approving the proposed Notice as to form and content; directing the mailing of the notice to the Class Members; preliminarily approving the settlement subject only to the objections of Class Members and final review by the Court; preliminarily approving Class Counsel's request for attorneys' fees and costs subject to final review by the Court; preliminarily approving estimated costs of administration payable to the Settlement Administrator; and preliminarily approving Named Plaintiff's Enhancement Award.

Section 3.02 The Settlement Administrator

The Parties have chosen ILYM Group, Inc. to administer this Settlement and to act as the Settlement Administrator, including, but not limited to, distributing any notices that must be provided to the Settlement Class Members, performing address updates and verifications as necessary prior to the first mailing, performing a single address follow-up on any returned mail, responding to inquiries about the Notice of Proposed Class Action Settlement, determining the validity of all Opt-Out Requests, calculating the Net Settlement Amount and the Individual Settlement Payments, calculating employer payroll taxes, preparing tax statements and/or reports

1 and remitting the necessary tax payments, providing necessary progress reports, preparing
2 declarations required by the Court, preparing a detailed declaration for Defendants that sets forth
3 each of Class Members who did not submit valid Opt-Out Requests, and, with notice and consent
4 of the Parties, generating and issuing the Individual Settlement Payment checks and distributing
5 them to Verified Class Members, and issuing the payments to Class Counsel for attorneys' fees and
6 costs, the Enhancement Award check to the Named Plaintiff, processing and returning uncashed
7 checks (if any) to Defendants, and any other actions of the Settlement Administrator as set forth in
8 this Agreement, all pursuant to the terms of this Agreement.

9 The Settlement Administrator shall expressly agree to all of the terms and conditions of this
10 Agreement relating to the administration of the Settlement. The Parties each represent that they do
11 not have any financial interest in the Settlement Administrator or otherwise have a relationship
12 with the Settlement Administrator that could create a conflict of interest.

13 The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly
14 report that certifies: (i) the number of Settlement Class Members to whom the Settlement
15 Administrator has mailed the Notice Packet; (ii) the number of Notice Packets that were returned as
16 undeliverable; (iii) the number of Class Members who have submitted valid Opt Out Requests; (iv)
17 the number of Class Members who have submitted challenges or objections to any information
18 contained in the Notice Packet; and (v) the number of Settlement Class Members who have
19 submitted objections to the Settlement. Additionally, the Settlement Administrator will provide to
20 Defense Counsel and Class Counsel any updated reports regarding the administration of the
21 Settlement Agreement.

22 The Settlement Administrator shall maintain throughout the administration of the
23 Settlement all of the Opt-Out Requests that it receives. At the conclusion of the administration of
24 the Settlement, the Settlement Administrator shall retain all Opt-Out Requests for an additional
25 four years. The Settlement Administrator shall provide to Defense Counsel all Opt-Out Requests.

26 All costs of administering the Settlement, including, but not limited to, all costs and fees
27 associated with preparing, issuing, and mailing any and all notices to Settlement Class Members
28 and/or Verified Class Members, all costs and fees associated with computing, processing,

1 reviewing, and mailing the Individual Settlement Payments, all costs and fees associated with
2 preparing any tax returns and any other filings required by any governmental taxing authority or
3 agency, all costs and fees associated with preparing any other checks, notices, reports, or filings to
4 be prepared in the course of administering disbursements from the Net Settlement Amount, and any
5 other costs and fees incurred and/or charged by the Settlement Administrator in connection with the
6 carrying out of its duties under this Agreement, shall be deducted from the Gross Settlement Fund.

7 The Settlement Administrator shall be required to acknowledge that in its role as Settlement
8 Administrator it owes fiduciary obligations to the Named Plaintiff and Settlement Class Members
9 and will be required to attest that it will make payments consistent only with the terms of this
10 Agreement, including the allocation instructions set forth in this Agreement, or as ordered by the
11 Court. In no event shall the Settlement Administrator permit the disbursement of any portion of the
12 Gross Settlement Fund before the Effective Date. The obligations of the Settlement Administrator
13 are released upon all funds being disbursed by the Settlement Administrator pursuant to this
14 Agreement and/or order(s) of the Court.

15 **Section 3.03 Notice to the Settlement Class**

16 Notice of the Settlement shall be provided to the Settlement Class Members, and the Class
17 Members may submit objections to the Settlement and/or requests for exclusion from the Class
18 Members by using the following procedures:

19 Within twenty one (21) days after the Court preliminarily approves the Settlement, Defense
20 Counsel will provide the Class List to the Settlement Administrator.

21 Within thirty (30) days after the Preliminary Approval Date, the Settlement Administrator
22 shall update the addresses using the United States Postal Service's NCOALink system and mail the
23 Notice Packet by first-class United States mail to each Settlement Class Member. Any Notice
24 returned to the Settlement Administrator as non-delivered on or before the Dispute Deadline Date
25 shall be re-mailed once to the forwarding address affixed thereto. If no forwarding address is
26 provided, the Settlement Administrator shall promptly attempt to determine a correct address by use
27 of telephonic inquiry, skip-tracing, or other search using the name, address and/or Social Security
28 number of the Settlement Class Members involved, and shall then perform one re-mailing, if another

1 mailing address is identified by the Settlement Administrator. The Settlement Administrator shall
2 promptly notify Class Counsel and Defense Counsel if any Notice Packets are returned as
3 undeliverable and no forwarding address is available. Settlement Class Members who receive a re-
4 mailed Notice within ten business (10) days of the Dispute Deadline Date and Objection/Exclusion
5 Deadline Date, as set forth in Sections 3.04(a) and (b) below, shall have their Dispute Deadline Date
6 and Objection/Exclusion Deadline Date extended ten business (10) days from the original Dispute
7 Deadline Date and Objection/Exclusion Deadline Date.

8 No later than twenty-one (21) days prior to the Final Approval Hearing, or seven (7) days
9 prior to Plaintiff's submission of the motions for final approval and for approval of fees and costs,
10 whichever is earlier, the Settlement Administrator shall provide Class Counsel and Defense
11 Counsel with a declaration attesting to completion of the notice process, including any attempts to
12 obtain valid mailing addresses for Settlement Class Members and re-sending any returned Notice
13 Packets, as well as the number of Opt Out Requests or objections that the Settlement Administrator
14 received and the dates that the Settlement Administrator received those Opt Out Requests and/or
15 objections.

16 Compliance with the procedures described in this Section shall constitute due and sufficient
17 notice to Settlement Class Members of this proposed Settlement and the Final Approval Hearing,
18 and shall satisfy the requirements of due process. Nothing else shall be required of, or done by, the
19 Parties, Class Counsel, Defense Counsel, or the Settlement Administrator to provide notice of the
20 proposed Settlement and the Final Approval Hearing.

21 **Section 3.04 Responses to Notice**

22 **a. No Claim Forms**

23 Settlement Class Members are not required to submit claim forms for their share of the Net
24 Settlement Amount.

25 Any Verified Class Member who disagrees with the data used to calculate his or her claim
26 as reflected on the Notice shall be allowed to indicate and explain such disagreement. Such written
27 dispute must be postmarked or faxed to the Settlement Administrator no later than forty-five (45)
28 days after the date the Notice is first mailed (the "**Dispute Deadline Date**"). The Settlement

1 Administrator shall resolve the disagreement with the Verified Class Member using the employee
2 records provided by Defendants and the Settlement Class Member, in consultation with Class
3 Counsel and Defense Counsel. Any disputes not otherwise resolved by the Settlement
4 Administrator and Class Counsel and Defense Counsel concerning administration of the Settlement
5 shall be resolved by the Court, under the laws of the State of California. Prior to any such
6 involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes
7 without necessity of involving the Court. The date of the postmark on the return envelope or the
8 fax confirmation of the Settlement Administrator shall be the exclusive means used to determine
9 whether a Class Member has “timely” disputed the calculation or application of the formula for
10 determining Individual Settlement Payments.

11 **b. Request for Exclusion from Class**

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

14 The Notice shall provide that Class Members who wish to exclude themselves from the
15 Class must submit a written Opt-Out Request to the Settlement Administrator requesting exclusion
16 from the Class on or before forty-five (45) days from the date the Notice is first mailed (the
17 “**Objection/Exclusion Deadline Date**”). Such Opt-Out Request must contain the name, address,
18 telephone number, and last four digits of the Social Security number of the person requesting
19 exclusion, must be signed by the Class Member requesting exclusion; must be returned by mail to
20 the Settlement Administrator at a specified address; and must be postmarked on or before the
21 Objection/Exclusion Deadline Date, and must contain any other language as set forth in the Notice.
22 Class Members will also be able to opt out of the Settlement via facsimile or e-mail, on or before
23 the Objection/Exclusion Deadline Date, as provided in this paragraph. The date of the postmark on
24 the return mailing envelope shall be the exclusive means used to determine whether an Opt-Out
25 Request has been timely submitted. Any Class Member who opts out of the Class will not be
26 entitled to any recovery under the Class Settlement and will not be bound by the Settlement or any
27 release of claims in the Action or have any right to object, appeal, or comment on the Settlement.
28 This will not affect a Settlement Class Member’s entitlement to recovery under the PAGA

1 Settlement Amount and Settlement Class Members will still be bound by the release of PAGA
2 claims regardless of whether they opt-out of the Class Settlement. Class Members who fail to
3 submit a valid and timely Opt-Out Request on or before the Objection/Exclusion Deadline Date
4 shall be bound by all terms of the Settlement and any Final Judgment entered in this Class Action if
5 the Settlement is approved by the Court, including a full and final release of all claims set forth in
6 the Action, regardless of whether they have requested exclusion from the Settlement. No later than
7 five (5) days after the exclusion deadline, the Settlement Administrator shall provide Defense
8 Counsel with a complete list of all Class Members who have timely and properly requested
9 exclusion from the Class.

10 **c. Objections to Settlement**

11 The Notice shall provide that Class Members who wish to object to the Settlement must
12 either submit a written statement to the Court objecting to the Settlement or appear at the Final
13 Approval Hearing and make an oral objection. Any written statement of objection must be filed
14 with the Court and served on Class Counsel and Defense Counsel on or before the
15 Objection/Exclusion Deadline Date, unless extended by re-mailing by ten (10) business days, as
16 provided in section 3.03, above. All objections in writing must include the Class Member's name,
17 address, telephone number, and last four digits of his or her Social Security number, and must state
18 the basis on which the objections are asserted and whether the Class Member intends to appear at
19 the Final Approval Hearing. The Parties will be permitted to respond in writing to such objections
20 before the Final Approval Hearing or within the time period set by the Court. Class Members who
21 fail to make objections in the manner specified above shall be deemed to have waived any
22 objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to
23 the Settlement.

24 **d. No Solicitation of Settlement Objections or Exclusions**

25 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
26 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
27 to submit oral or written objections to the Settlement or Opt-Out Requests, appeal from the Court's
28 Final Judgment or seek to vacate or set aside the final judgment. Further, at no time shall any of

1 the Parties or their counsel discourage any Class Members from participating in the Settlement.

2 **e. Failure to Object**

3 Any Class Member who fails to timely submit a written statement of his or her intention to
4 object to the Settlement and Agreement shall be foreclosed from making any objection to this
5 Settlement and Agreement, unless otherwise ordered by the Court, except that any Class Member
6 may appear at the Final Approval Hearing and make an oral objection, as provided in subsection
7 (c), above.

8 **f. Right of Defendants to Void Agreement**

9 If five percent (5%) or more of the Class Members submit timely and valid Opt-Out
10 Requests as described in Section 3.04(b) above and thus become Non-Verified Class Members,
11 Defendants will have the right, but not the obligation, to revoke and void this Agreement at their
12 discretion. Defendants must exercise their right to revoke this Agreement within fourteen (14)
13 days of being informed by the Settlement Administrator that more than five percent (5%) of the
14 Class Members opted out of this Agreement. If Defendants exercise their right to void the
15 Agreement, then the Parties will have no further obligations under the Agreement, including,
16 without limitation, any obligation by Defendants to pay the Gross Settlement Fund, or any amounts
17 that otherwise would have been owed under this Agreement.

18 **Section 3.05 Final Approval Hearing**

19 A Final Approval Hearing shall be held before the Court on the date set forth in the Order
20 for Preliminary Approval and Notice of Proposed Class Action and PAGA Settlement, which shall
21 be eighty (80) days after the initial mailing of the Notice of Proposed Class and PAGA Action
22 Settlement, subject to the Court's calendar. At the Final Approval Hearing, the Court shall (1)
23 review this Agreement and determine whether the Court should give it final approval, (2) set the
24 amounts of the Enhancement Award and Class Counsel award of attorneys' fees and
25 reimbursement of costs, and (3) consider any timely objections made pursuant to Section 3.04(c)
26 above and all responses by the Parties to such objections. At the Final Approval Hearing, the
27 Parties shall ask the Court to give final approval to this Settlement Agreement and shall submit to
28 the Court a Proposed Final Order Approving Settlement of Class and PAGA Action, which the

1 Parties shall jointly agree upon in advance and which shall be entered in the Action.

2 After entry of the Final Judgment, the Court shall have continuing jurisdiction with respect
3 to the interpretation, implementation, and enforcement of the terms of this Agreement and all
4 orders and judgments entered in connection with this Agreement, and the Parties and their counsel
5 submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the
6 settlement embodied in this Agreement, and all orders and judgments entered in connection with
7 this Agreement.

8 Within three (3) business days of the Court's entry of the Final Judgment, Class Counsel
9 shall submit the Final Judgment to the LWDA using the appropriate website and intake forms
10 located at: [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
11 [Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html).

12 **a. Waiver of Right to Appeal**

13 Provided that the Final Order is consistent with the terms and conditions of this Agreement,
14 Named Plaintiff, as well as any Class Members who did not timely submit an objection to the
15 Settlement and/or appear at the Final Approval Hearing, hereby waive any and all rights to appeal
16 from the Final Order, including all rights to any post-judgment proceeding and appellate
17 proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and any
18 extraordinary writ, and the Final Order therefore will become final and non-appealable at the time
19 it is entered. This waiver does not include any waiver of the right to oppose any appeal, appellate
20 proceedings, or post-judgment proceedings nor does this waiver preclude Plaintiff and/or Class
21 Counsel from appealing any award of an Enhancement or attorneys' fees and costs of suit.

22 **b. Vacating, Reversal, or Material Modification on Appeal or Review**

23 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
24 or application, the reviewing court vacates, reverses, or modifies the Final Order such that there is a
25 material modification to the Settlement and Agreement, and that court's decision is not completely
26 reversed and the Final Order is not fully affirmed on review by a higher court, then Named Plaintiff
27 and Defendants will each have the right to void the Settlement and Agreement, which the Parties
28 must do by giving written notice to the other Parties, the reviewing court, and the Court not later

1 than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially
2 modifying the Final Order becomes final. A vacation, reversal, or modification of the Court's
3 award of an Enhancement or Class Counsel's fees or costs will not constitute a vacation, reversal,
4 or material modification of the Final Order within the meaning of this paragraph, provided that
5 Defendants' obligation to make payments remains limited as set forth in this Agreement.

6 **c. Rendering the Settlement Null and Void**

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

18 **d. Administration of the Settlement with Appeal Pending**

19 In the event an appeal is filed from the Court's Final Judgment, or any other appellate
20 review is sought prior to the Date of Finality, administration of the Settlement shall be stayed
21 pending final resolution of the appeal or other appellate review.

22 **Section 3.06 Settlement Payment Procedures**

23 **a. Settlement Sum**

24 The Gross Settlement Fund of Two Hundred Twenty Five Thousand Dollars (\$225,000.00)
25 includes the following: (a) Enhancement Award to Plaintiff Fuentes not to exceed Six Thousand
26 Dollars (\$6,000.00); (b) an award of attorneys' fees to Class Counsel in an amount not to exceed
27 Seventy Five Thousand Dollars (\$75,000); (c) documented costs of Class Counsel in an amount not
28 to exceed Eighteen Thousand Dollars (\$18,000.00); (d) the Settlement Administration Costs; and

1 (e) the PAGA Settlement amount of Thirty Thousand Dollars (\$30,000) paid to the LWDA and
2 PAGA Group Members.

3 The Gross Settlement Fund has a maximum value of Two Hundred Twenty-Five Thousand
4 Dollars (\$225,000.00). Under no circumstances will Defendants be required to pay more than Two
5 Hundred Twenty Five Thousand Dollars (\$225,000.00), pursuant to the terms set forth in this
6 Agreement, except that Defendants shall pay for the employer's portion of any payroll taxes due on
7 the wage portion of each Individual Settlement Payment.

8 **b. Payment of Attorneys' Fees and Costs**

9 Class Counsel may request that the Court approve, and Defendants will not oppose, an
10 award of up to Seventy Five Thousand Dollars (\$75,000.00) in attorneys' fees and up to Eighteen
11 Thousand Dollars (\$18,000.00) in documented litigation costs per Class Counsel's billing records
12 ("**Fees and Costs Award**"). The Fees and Costs Award will cover: all work performed and all fees
13 and costs incurred to date and all work to be performed and all fees and costs to be incurred in
14 connection with the approval by the Court of this Settlement, the administration of the Settlement,
15 and obtaining final approval of this Settlement and entry of judgment. Plaintiff's Counsel shall not
16 be permitted to petition the Court for, or accept, any additional payments for attorneys' fees or
17 costs. Plaintiff's Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the
18 Fees and Costs Award. The Settlement shall not be contingent upon the Court awarding Class
19 Counsel any particular amount for attorneys' fees and costs. The Parties agree that any reduction
20 in the amount of attorney's fees and costs awarded by the Court is not a basis to void the
21 Agreement and Plaintiff's Counsel has the right to appeal the Court's ruling regarding the fees. If
22 Plaintiff's Counsel appeals an adverse ruling of the Court regarding its fee and cost application, the
23 ruling of the appellate court (regardless of its substance) shall not constitute a material alteration of
24 a term of this Agreement. The Fees and Costs Award shall be paid by the Settlement Administrator
25 to Class Counsel no later than thirty (30) calendar days after the Effective Date.

26 The Settlement Administrator's payment of the Fees and Costs Award to Class Counsel
27 shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law
28 firm for attorneys' fees or costs in the Action incurred by any attorney on behalf of the Named

1 Plaintiffs, and Class Members, and shall relieve Defendants, the Settlement Administrator, and
2 Defense Counsel of any other claims or liability to any other attorney or law firm for any attorneys'
3 fees or costs to which any of them may claim to be entitled on behalf of the Named Plaintiff and
4 Class Members.

5 **c. Payment of Enhancement Award to Named Plaintiff**

6 Class Counsel may request that the Court approve, and Defendants will not oppose, an
7 Enhancement Award to the Named Plaintiff in an amount not to exceed Six Thousand Dollars
8 (\$6,000.00) to be paid to the Named Plaintiff for his time and effort spent pursuing the Action.
9 Defendants agree not to oppose such an application, so long as it is consistent with the provisions
10 of this Agreement. The Settlement Administrator shall deliver any Enhancement Award to Named
11 Plaintiff within eighty (80) calendar days after the Effective Date. The Named Plaintiff will also be
12 entitled to receive an Individual Settlement Payment pursuant to this Agreement in addition to this
13 Enhancement Award. The Settlement shall not be contingent upon the Court awarding Named
14 Plaintiff any particular amount for the enhancement award or service award. Class Counsel and
15 Named Plaintiff shall have no right or ability to nullify the Settlement in the event that the Court
16 awards an amount less than the Enhancement Award described in this Agreement.

17 Because it is the intent of the Parties that the Enhancement Award represents payment to
18 the Named Plaintiff for his services to the Class Members, and not wages, the Settlement
19 Administrator will not withhold any taxes from the Enhancement Award. The Enhancement
20 Award will be reported on a Form 1099 to Named Plaintiff. Although it is the contemplation of the
21 Parties that the Enhancement Award does not represent wages, the Internal Revenue Service, the
22 California Franchise Tax Board, or some other taxing authority may take the position that the
23 Enhancement Award constitutes compensation for income tax and withholding purposes. Named
24 Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the
25 California Franchise Tax Board, and any other relevant taxing authority the amounts required by
26 law, if any, to be withheld by Defendants from the Enhancement Award paid under this
27 Agreement. In addition, Named Plaintiff shall hold Defendants harmless and indemnify
28 Defendants for all taxes, interest, penalties, and costs, excluding attorneys' fees, incurred by

Defendants by reason of any claims relating to the non-withholding of taxes from the Enhancement Award. The Settlement Administrator will issue a Form 1099 to the Named Plaintiff with regard to the Enhancement Award payment. The Settlement Administrator will provide a copy of these Form 1099s issued to counsel for Defendant.

d. Payment of Settlement Administration Costs

The Settlement Administration Costs shall be deducted from the Gross Settlement Fund. All disputes relating to the Settlement Administrator's performance of its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out.

e. Payment of Individual Settlement Payments to Verified Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Verified Class Members based on the number of Workweeks for which they were employed by Defendants in California during the Class Period. The maximum amount that each Verified Class Member is entitled to receive is determined by multiplying Net Settlement Amount by a ratio that is determined by dividing a Verified Class Member's total Workweeks worked during the Class Period in California by the total number of Workweeks worked during the Class Period by all Class Members employed by Defendants in California, as expressed in the following formula:

$$\begin{array}{rcccl} \text{Individual} & & \text{Net} & & \text{Verified Class Member's} \\ \text{Settlement} & = & \text{Settlement} & \times & \text{Total Number of Workweeks} \\ \text{Payment} & & \text{Amount} & & \text{Total Number of Workweeks of} \\ & & & & \text{Settlement Class} \end{array}$$

If a Verified Class Member worked any day during Workweek, it will be counted as a Workweek for purposes of calculating the Individual Settlement Payment.

It is the intent of the Parties that the Net Settlement Amount shall be sufficient to pay Verified Class Members in accordance with the formula set forth above. Accordingly, if for any reason the total value of all claims made by Verified Class 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 Verified Class Members does not exceed the Net Settlement Amount.

1 Each Individual Settlement Payment will be allocated as twenty percent (20%) to wages,
2 thirty percent (30%) to interest, and fifty percent (50%) to penalties. The Settlement Administrator
3 shall calculate, withhold, and remit to applicable governmental agencies sufficient amounts as may
4 be owed for Verified Class Members' taxes due on the portion of the Individual Settlement
5 Payment allocated to wages that will be reported on an IRS Form W2 basis. These amounts shall
6 be paid from the Net Settlement Amount.

7 The Settlement Administrator shall also report those portions of the Individual Settlement
8 Payments allocated to penalties on an IRS Form 1099 basis as required by law.

9 The Settlement Administrator shall also calculate, and remit to the applicable government
10 agencies such amount as may be owed by Defendants as an employer for payroll taxes on a
11 maximum wage allocation of twenty percent (20%) of the Net Settlement Amount that will be
12 reported on an IRS Form W2 basis. These employer payroll taxes allocated to the wage portion of
13 the Individual Settlement Payments shall be paid by Defendants in addition to the Gross Settlement
14 Fund.

15 No later than fifteen (15) calendar days after the Effective Date, Defendants will pay the
16 Gross Settlement Fund to the Settlement Administrator, who shall segregate and secure such funds
17 in an interest bearing account with all interest accruing for the benefit of Defendants. No later than
18 thirty (30) calendar days after the Effective Date, the Settlement Administrator shall prepare and
19 mail the checks for the Individual Settlement Payments, minus applicable withholdings, to Verified
20 Class Members.

21 To the extent that a Notice or an Individual Settlement Payment check is (1) undeliverable,
22 or (2) uncashed 180 days after the date listed on the check, the Individual Settlement Payment
23 check shall be directed to the California State Controller for deposit in the Unclaimed Property
24 Fund in the name of the employee.

25 **f. Payment to the LWDA**

26 No later than thirty (30) calendar days after the Effective Date, the Settlement
27 Administrator shall deliver to the LWDA a payment in the amount of Twenty Two Thousand and
28 Five Hundred Dollars (\$22,500) as the LWDA's share of the settlement of the PAGA penalties,

1 which the Parties believe in good faith is a fair and reasonable apportionment.

2 **g. Payment to the PAGA Group Members**

3 No later than thirty (30) calendar days after the Effective Date, the Settlement
4 Administrator shall prepare and mail the checks for the Individual PAGA Payments in the total
5 amount of seven thousand five hundred dollars (\$7,500.00) which shall be allocated to the PAGA
6 Group Members based on each PAGA Group Member's pro rata share of the total pay periods .

7 **h. No Additional Contribution by Defendants**

8 Defendants' monetary obligation under this Settlement and Agreement is limited to the
9 Gross Settlement Fund, the employer's portion of payroll taxes and the Settlement Administrator's
10 fees. Defendants shall not be called upon or required to contribute additional monies above the
11 Gross Settlement Fund under any circumstances whatsoever, except as to Defendants' share of the
12 employer payroll taxes. All costs, fees, and expenses arising out of or in connection with the
13 performance of this Agreement shall be paid from the Gross Settlement Fund, but shall not include
14 attorneys' fees incurred (if any) in enforcing the Settlement Agreement caused by a breach of the
15 Settlement Agreement by Defendants.

16 If, for whatever reason and however it may occur, this Agreement is canceled, rescinded,
17 terminated, voided, or nullified or the Settlement is barred by operation of law, or invalidated, or
18 ordered not to be carried out by a court of competent jurisdiction, Defendants shall cease to have
19 any obligation to pay any portion of the Gross Settlement Fund to anyone under the terms of this
20 Agreement, and all previous disbursements from the Gross Settlement Fund will immediately be
21 paid back to Defendants by the person or entity who received such disbursement. Any unpaid costs
22 already incurred by the Settlement Administrator shall be split by the Parties.

23 **i. No Claims Resulting from Payments**

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

27 **j. No Effect on Employee Benefit Plans**

28 The payment to any Class Member or PAGA Group Member as provided for in this

1 Agreement (including, without limitation, any Individual Settlement Payment, any Individual
2 PAGA Payments and any Enhancement Award paid to Named Plaintiff) is not and shall not be
3 deemed to constitute an addition to, a modification of, or a change in any previously credited hours
4 of service, compensation and/or wages under any collective bargaining agreement, employee
5 benefit plan, employment policy, or stock option plan of or sponsored by Defendants or any of its
6 present or former parent corporations or affiliates or any jointly trusted benefit plans. Any such
7 payment to any Class Member shall not form the basis for additional contributions to, additional
8 benefits under, or any other additional entitlements under any collective bargaining agreement,
9 employee benefit plan, employment policy, or stock option plan of or sponsored by Defendant or
10 any of its present or former parent corporations or affiliates or any jointly trusted benefit plans.
11 Defendant and each of its present and former parent corporations and affiliates retain the right to
12 modify and/or amend the language of their employee benefit plans, employment policies, and stock
13 option plans, and to seek to have modified and/or amended the language of any collective
14 bargaining agreement, jointly trusted benefit plans, to make clear that any amounts paid as a result
15 of this Agreement are not compensation or wages, or payments for “hours worked,” as defined by
16 the applicable agreement(s), plans and policies, and that no additional contributions or benefits are
17 required by reason of the Settlement and this Agreement.

18 **k. Notice of the Order and Judgment Granting Final Approval**

19 The Parties shall request that pursuant to California Rule of Court 3.771(b), the Court
20 approve that Notice of Entry of Judgment and the Order and Judgment granting final approval of
21 this Settlement will be mailed by the Settlement Administrator within three (3) days of Entry of
22 Judgment and the Order and Judgment granting final approval.

23 **ARTICLE IV**

24 **LIMITATIONS ON USE OF THIS SETTLEMENT**

25 **Section 4.01: No Admission**

26 Defendants vigorously dispute the allegations in the Action. This Agreement is entered into
27 solely for the purpose of compromising claims that are highly disputed by the Parties. Nothing in
28 this Agreement is intended to be or will be construed as an admission of liability or wrongdoing by

1 Defendants and/or any of the Released Parties.

2 **Section 4.02: Non-Evidentiary Use**

3 Whether or not the Effective Date occurs, neither this Agreement nor any of its terms will
4 be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for
5 any purpose adverse to Defendants or any of the Released Parties, including, but not limited to,
6 evidence of a presumption, concession, indication, or admission by Defendants or any of the
7 Released Parties of any liability, fault, wrongdoing, omission, concession, or damage;
8 (b) disclosed, referred to, or offered in evidence against any of the Defendants or Released Parties
9 in any further proceeding in the Action, or any other civil, criminal, or administrative action or
10 proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for
11 Defendants to establish that a Class Member or PAGA Group Member has resolved any of his/her
12 claims released through this Agreement, (c) but may be used as evidence in any subsequent action
13 for breach or enforcement of this Agreement.

14 **Section 4.03: Nullification**

15 The Parties have agreed to the certification of the Class encompassing all causes of action
16 pled in the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for
17 any reason fail to certify the Class for settlement, or (b) the Court should for any reason fail to
18 approve this Settlement in the form agreed to by the Parties, or (c) the Court should for any reason
19 fail to enter the Final Order, or (d) the Final Order is reversed, modified, or declared or rendered
20 void, or (e) the Court should for any reason fail to dispose of the Action in its entirety, with the
21 exception of the Court's retention of exclusive and continuing jurisdiction of this Action over all
22 Parties and Class Members to interpret and enforce the terms, conditions, and obligations of the
23 Settlement, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement
24 nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all Parties to
25 this Agreement shall stand in the same position, without prejudice, as they were at the time
26 immediately prior to the execution of the Settlement Agreement and if the Settlement Agreement
27 had been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing
28 to stipulate to class certification of all causes of action pled in the Action as part of the Settlement

for settlement purposes only will not have any bearing whatsoever on the remainder of the litigation of the Action.

Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the Gross Settlement Fund shall not be distributed pending the completion and results of the appeal.

ARTICLE V

RELEASES

Section 5.01: Release of Claims As To All Class Members.

Any Verified Class Member, including the Named Plaintiff, who does not timely opt out of the settlement as described in Section 3.04(b) shall be bound by this Agreement and shall be deemed to have fully and finally released all claims that were set forth, or that reasonably arise facts alleged in the Action. If a Non-Verified Class Member receives an Individual Settlement Payment check notwithstanding his or her submission of an Opt-Out Request, such person shall be deemed a Verified Class Member and shall be bound by the terms of this Agreement if such person cashes the Individual Settlement Payment check.

Upon the Court's Final Order of this Stipulation of Settlement, and except as to such rights or claims as may be created by this Agreement, the Verified Class Members, comprised of each member of the Class who has not submitted a valid Opt Out Request, fully and finally release and discharge Defendants and each of their past, present, and future parent companies, subsidiaries, successors, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, investors, successors and assigns, owners, partners, units, assigns, principals, heirs, representatives, accountants, auditors, consultants, reinsurers, predecessors in interest, beneficiaries, executors, members, privies, administrators, fiduciaries, and trustees and any individual or entity which could be jointly liable with Defendants, and each of them (collectively, the "**Released Parties**"), from any and all applicable state law wage-and-hour claims, rights, demands, liabilities, and causes of action of every nature and description, arising during the Class

1 Period, including without limitation, statutory, constitutional, contractual or common law claims
2 for wages, damages, unpaid costs, civil or statutory penalties, liquidated damages, punitive
3 damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, based on the
4 following categories of allegations: failure to pay overtime, failure to provide rest periods, failure
5 to provide meal periods, failure to pay minimum wages, wage statement violations, waiting time
6 penalties, failure to indemnify, failure to pay COVID-19 supplemental sick leave and/or include
7 COVID-19 supplemental sick leave on wage statements, and unfair competition (Business &
8 Professions Code § 17200 et seq.) based on Labor Code sections 200, 210, 218.6, 226(e), 227.3,
9 1194.2, and 1199; Code Civil Procedure sections 1021.5 and 1032; and Civil Code section 3287
10 (collectively, "**Class Members' Released Claims**"). The Class Members' Released Claims
11 include claims meeting the above definition under any and all applicable California laws, statutes,
12 regulations, and Wage Orders.

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

20 **Section 5.02: Release of Claims As To All PAGA Group Members.**

21 Any PAGA Group Member, including the Named Plaintiff, shall be bound by this
22 Agreement and shall be deemed to have fully and finally released all PAGA claims that were set
23 forth, or reasonably arise from the facts alleged in the Action.

24 Upon the Court's Final Order of this Stipulation of Settlement, and except as to such rights
25 or claims as may be created by this Agreement, the PAGA Group Members, fully and finally
26 release and discharge Released parties for theories of liability under PAGA for failure to pay
27 overtime (including off the clock work, failing to pay for travel time, not paying at regular rate,
28 failing to pay for training time, rounding, editing/manipulating time entries, pre-and post-shift work

(including COVID screenings and donning and doffing uniforms and safety equipment), failure to pay rest period premiums at regular rate, failing to provide meal premiums at regular rate, failure to provide meal periods (including requiring employees to carry cell phones and walkie-talkies during meal periods, auto-deducting meal periods, and not permitting employees to leave the premises), failure to keep accurate time records, wage statements and personnel records, failure to provide COVID sick pay and supplemental sick leave and/or failure to permit use upon request and/or include used or available COVID sick pay and supplemental sick pay on wage statements in violation of Labor Code sections 246, 248.1, 248.6, failure to provide proper notice of COVID exposure in violation of Labor Code sections 6409.6 and 6432, failure to provide sick leave, unlawful background checks and inquiry into salary history, failure to comply with Labor Code section 2810.5 by failing to provide rates of pay and overtime rates applicable to employment, allowances claimed as part of minimum wage, information regarding paid sick leave and other information required by Labor Code 2810.5, failure to furnish employees with documents signed or obtained to hold employment under Labor Code section 432, personnel records under Labor Code 1198.5, and payroll records under Labor Code sections 226 et seq. and 1174 et seq., as well as liability under Labor Code section 558.

Section 5.03: General Release by Named Plaintiff.

Plaintiff Erick Fuentes agrees to release all claims known or unknown, accrued or unaccrued, he has or may have against Defendants and the Released Parties, including execution of a California *Civil Code* section 1542 release and waiver.

In consideration of the monetary sum provided to them by Defendants, subject to Court approval, the Named Plaintiff fully releases and forever discharges the Released Parties from any and all actions, causes of action, claims, charges, complaints, liabilities, obligations, promises, agreements, controversies, damages, actions, suits, rights, demands, liens, costs, losses, debts, penalties, fines, wages, liquidated damages, restitutionary amounts, attorneys' fees and costs, interest, punitive damages and expenses (including, without limitation, back wages, penalties, liquidated damages, and attorneys' fees and costs actually incurred) or liabilities of any kind which have been or could have been asserted against the Released Parties arising out of or relating to

1 Plaintiff's employment with Defendants, and/or any other occurrence taking place on or before the
2 effective date of this Agreement, known or unknown, suspected or unsuspected, including but not
3 limited to claims arising out of, based upon, or relating to Plaintiff's employment with the
4 Defendants, or the remuneration for such employment, and the matters referred to herein, whether
5 or not known or suspected to exist, and whether or not specifically or particularly described herein.
6 Without limiting the generality of the foregoing, Plaintiff expressly releases all claims or rights that
7 exist at the time of the execution of this Agreement arising out of alleged violations of any
8 contracts, express or implied (including but not limited to any contract of employment); any
9 contract or covenant of good faith or fair dealing (express or implied); any tort, including, without
10 limitation, negligence, fraud, misrepresentation under California Labor Code § 970, negligent
11 infliction of emotional distress, intentional infliction of emotional distress, slander and defamation;
12 wrongful or constructive termination; any "retaliation" claims; any claims relating to any breach of
13 public policy; any legal restrictions on Defendants' right to discharge employees or refuse to hire
14 applicants; and any federal, state, or other governmental statute, regulation, order or ordinance,
15 including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion,
16 sex, and national origin discrimination or harassment, including retaliation for reporting
17 discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) sections 503 and 504 of
18 the Rehabilitation Act of 1973 (handicap discrimination); (4) Equal Pay Act, 29 U.S.C. § 209(4)(1)
19 (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability
20 discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical
21 leave); (7) California Fair Employment and Housing Act, Cal. Gov't Code § 12900 *et seq.*
22 (discrimination or harassment in employment and/or housing, including discrimination or
23 harassment based on race, religious creed, color, national origin, ancestry, disability, marital status,
24 sex (including pregnancy), sexual orientation, or age, including, without limitation, retaliation for
25 reporting discrimination or harassment); (8) California Family Rights Act, Cal. Gov't Code
26 § 12945.1 *et seq.* (family/medical leave); (9) California Labor Code, or any Industrial Welfare
27 Commission Wage Order; (10) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; (11)
28 Executive Order 11246 (race, color, religion, sex, and national origin discrimination or

1 harassment); (12) Executive Order 11141 (age discrimination); (13) California Business and
2 Professions Code Section 17200, *et. seq.*, and (14) Employee Retirement Income Security Act, 29
3 U.S.C. § 1000 *et seq.* (employee benefits).

4 **Section 5.04: Named Plaintiff's Release of Unknown Claims**

5 Named Plaintiff expressly waives any right or claim of right to assert hereafter that any
6 claim, demand, obligation, and/or cause of action, existing at the time of the execution of this
7 Agreement, has, through ignorance, oversight, or error, been omitted from the terms of this
8 Agreement. Named Plaintiff agrees there is a risk that each and every injury he may have suffered
9 by reason of the Released Parties' relationship with him might not now be known, and there is
10 further risk that said injuries, whether known or unknown at the date of this Agreement, might
11 possibly become progressively worse, and that as a result thereof further damages may be sustained
12 by them. Nevertheless, Named Plaintiff desires to forever and fully release and discharge the
13 Released Parties, and each of them, and understands that by the execution of this Agreement no
14 further claims for any such injuries that existed at the time of the execution of this Agreement may
15 ever be asserted by him. Named Plaintiff expressly waives and relinquishes all rights and benefits
16 afforded by section 1542 of the Civil Code of the State of California and does so understanding and
17 acknowledging the significance of such specific waiver of section 1542. Specifically, Named
18 Plaintiff waives his rights under Section 1542 of the Civil Code, which states:

19 **A general release does not extend to claims that the creditor or**
20 **releasing party does not know or suspect to exist in his or her**
21 **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.

22 Named Plaintiff makes this waiver with full knowledge of his rights and with the specific
23 intent to release all known and unknown claims arising on or before the effective date of this
24 Agreement, and therefore specifically waives the provisions of any statute in any state of the
25 United States which prevents release of unknown claims. Thus, subject to and in accordance with
26 this Agreement, even if Named Plaintiff may hereafter discover facts in addition to or different
27 from those he now knows or believes to be true, Named Plaintiff, upon the Effective Date, shall be
28 deemed to have fully, finally, and forever settled and released any and all claims against the

Released Parties that were alleged or could have been alleged in the Action, as well as any other claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that now exist, upon any theory of law or equity, including, without limitation, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

Section 5.05: Inapplicability of California Labor Code Section 206.5

The Verified Class Members, including, without limitation, Named Plaintiff, shall be deemed to have acknowledged and agreed that their claims for wages and/or penalties and/or any other recovery solely in connection with this Action are disputed, and that the payments to them set forth in this Agreement constitute payment of all sums allegedly due to them solely from the claims alleged in the Action. The Verified Class Members, including, without limitation, Named Plaintiffs, shall be deemed to have acknowledged and agreed that California Labor Code section 206.5 does not apply to any such payments. That section provides in pertinent part as follows: “**No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.**” Each Verified Class Member shall be deemed to have made the foregoing Release as if by manually signing it. This section in no way limits the releases set forth above in Sections 5.01 through 5.04, inclusive.

Section 5.06: No Additional Attorneys’ Fees or Costs

Except for the attorneys’ fees and costs set forth in this Agreement, the Parties agree to bear their own attorneys’ fees and costs related to this Action.

Section 5.07: Escalator Clause

It is currently estimated that there are 176,771 Work Weeks in the Class Period as of the date of mediation on October 26, 2023 ("Class Period Total"). If, as of October 26, 2023, the Class Period Total has increased by more than fifteen percent (15%) percent, Defendants will have the choice of (a) increasing the Gross Settlement Amount on a pro rata basis according to the number of additional compensable workweeks/pay periods worked by all Class Members in excess of fifteen (15%) percent, i.e. 26,516; or (b) ending the Class Period on the last day before the fifteen percent (15%) threshold is exceeded.

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ARTICLE VI

MISCELLANEOUS

Section 6.01: Amendments, Modification or Rescission

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel. In the event that the Court requires that certain changes be made to this Agreement or to the Settlement Class Notice as a condition of preliminary approval, then a signed stipulation by counsel for the Parties shall be sufficient to Amend or Modify this Agreement or the Settlement Class Notice without additional signatures from the Named Plaintiff or Defendants. In the event any party is entitled to and elects to revoke or rescind this Agreement, such revocation or rescission must be in writing.

Section 6.02: Additional Representations and Warranties

Class Counsel and Named Plaintiff jointly and severally represent and warrant to Defendants that they are not aware of any attorneys beyond those named as Class Counsel who have claims for fees or costs arising out of the Action or the Settlement contemplated hereby.

Class Counsel certifies that it is not soliciting any individuals for the purpose of pursuing an individual, class, representative or mass action against Defendants, other than for the claims alleged in the Action.

This Agreement is contingent upon Defendants paying a maximum of Two Hundred Twenty Five Thousand Dollars (\$225,000.00) for a complete resolution of the claims at issue in the Action, including, without limitation, attorneys' fees and costs, but excluding any employer's payroll taxes.

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Section 6.03: Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Settlement Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and its or their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the

Parties, the Class Members, the PAGA Group Members, and the Released Parties, and shall not be construed to confer any right or to avail any remedy to any other person or entity.

Section 6.04: Entire Agreement

This Agreement, including, without limitation, the Exhibit referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto with respect to the subject matter contained herein. In case of any conflict between text contained in Articles I through VI of this Agreement and text contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be controlling. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. Upon its full execution, this Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the Settlement, including, without limitation, correspondence between Class Counsel and Defense Counsel, and drafts of prior agreements or proposals.

Section 6.05: Waiver of Compliance

Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.06: Counterparts and Fax/PDF Signatures

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one instrument. A fax, electronic, DocuSign or PDF signature on this Agreement shall be as valid as an original signature.

Section 6.07: Attorneys' Fees and Costs

No Settlement Class Member or Class Counsel or any other attorney acting for any

1 Settlement Class Member may recover or seek to recover any amounts for fees, costs, or
2 disbursements from the Defendants and/or the Released Parties or the Gross Settlement Fund
3 except as expressly provided herein.

4 **Section 6.08: Meet and Confer Regarding Disputes**

5 If any dispute arises among the Parties or their respective counsel regarding the
6 implementation or interpretation of this Agreement, Class Counsel, and Defendants' counsel shall
7 meet and confer in an attempt to resolve such dispute prior to submitting it to the Court.

8 **Section 6.09: Administration Costs**

9 The Parties agree to cooperate in the Settlement administration process and to make all
10 reasonable efforts to control and minimize the costs and expenses incurred in administration of the
11 Settlement.

12 **Section 6.10: Circular 230 Disclaimer**

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

27 **Section 6.11: Privacy of Documents and Information**

28 The Named Plaintiff and Class Counsel agree that none of the documents and information

provided to them by Defendants shall be used for any purpose other than prosecution of this Action.

Section 6.12: No Admission by the Parties

Defendants and the Released Parties deny any and all claims alleged in this Action and deny all wrongdoing whatsoever. The Parties have stipulated to class certification as set forth herein for settlement purposes only. This Agreement is not a concession or admission, and shall not be used against Defendants or any of the Released Parties as an admission or indication with respect to any claim of any fault, concession, or omission by Defendants or any of the Released Parties. Whether the Settlement is finally approved, the Settlement, any document, statement, proceeding or conduct related to this Agreement, and/or any reports or accounts of this Agreement, shall not in any event be:

a. construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; or,

b. disclosed, referred to, or offered or received in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for purposes of settling this Action pursuant to this Agreement.

Section 6.13: Exhibit and Headings

The terms of this Agreement include the terms set forth in any attached Exhibit, which are incorporated by this reference as though fully set forth in this Agreement. Any Exhibit to this Agreement is an integral part of the Settlement. The descriptive headings of any paragraphs or

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sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

Section 6.14: Interim Stay of Proceedings

The Parties agree that all orders and deadlines in the litigation are stayed, except such proceedings necessary to implement and complete the Settlement. If the Settlement is approved by

1 the Court, the sanctions are waived by Plaintiff. In the event the Settlement is not approved by the
2 Court, the Parties shall return to the current status of the litigation.

3 **Section 6.15: Amendment or Modification**

4 Except as otherwise stated herein, this Agreement may be amended or modified only by a
5 written instrument signed by the Parties and counsel for all Parties or their successors-in-interest.

6 **Section 6.16: Authorization to Enter Into Settlement Agreement**

7 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
8 whom they represent to negotiate this Agreement and to take all appropriate action required or
9 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
10 execute any other documents required to effectuate the terms of this Agreement. The Parties and
11 their counsel will cooperate with each other and use their best efforts to effect the implementation
12 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
13 any document needed to implement the Settlement, or on any supplemental provisions that may
14 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
15 the Court to resolve such disagreement. The persons signing this Agreement on behalf of
16 Defendants represent and warrant that he/she is authorized to sign this Agreement on behalf of
17 Defendants.

18 **Section 6.17: Binding on Successors and Assigns**

19 This Agreement shall be binding upon, and inure to the benefit of, the Parties, the Released
20 Parties, and their respective successors or assigns.

21 **Section 6.18: California Law Governs**

22 All terms of this Agreement and the attached Exhibit A shall be governed by and
23 interpreted according to the laws of the State of California and the procedures of the Court.

24 **Section 6.19: This Settlement is Fair, Adequate, and Reasonable**

25 The Parties believe this Settlement is a fair, adequate, and reasonable settlement of this
26 Action and have arrived at this Settlement in arm's length negotiations, taking into account all
27 relevant factors, present and potential. This Settlement was reached after extensive negotiations,
28 including an arms' length negotiation at mediation before respected mediator Honorable Glenda

Sanders (Ret.) on or about October 26, 2023.

Section 6.20: Cooperation and Drafting

Each of the parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the Parties.

Section 6.21: 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. The provisions of this Agreement are severable. To the extent any provision is deemed unlawful, to the extent possible, such provision shall be severed and the remainder of the Agreement shall remain valid and enforceable.

Section 6.22: Defense

To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted with respect to the Released Claims in breach of or contrary to this Settlement.

Section 6.23: Named Plaintiff's Waiver of Right to be Excluded

The Named Plaintiff agrees to sign this Agreement and, by signing this Agreement, he agrees: (1) to be bound by its terms, (2) not to request to be excluded from the Class, and (3) represents that he has no objection to any of the terms of this Agreement. Non-compliance by the Named Plaintiff with this paragraph shall be void and of no force or effect. Any such request for exclusion or objection shall therefore be void and of no force or effect.

Section 6.24: Public Statements

Named Plaintiff, Defendants, Defense Counsel, and Class Counsel agree to limit public comment on this Settlement and Agreement, the Action, and the claims asserted in the Action, to stating that the matter has been resolved to the satisfaction of the Parties. Named Plaintiff, Defendants, Defense Counsel, and Class Counsel shall not initiate public comment on this

1 Settlement and Agreement, the Action and the claims asserted in the Action with the exception that
2 Class Counsel shall not be precluded from communicating with Class Members. Defendants
3 and/or the Released Parties can communicate the existence of and/or use the Agreement as a
4 defense to any claim(s) covered by the releases in this Agreement.

5 **Section 6.25: Enforcement**

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

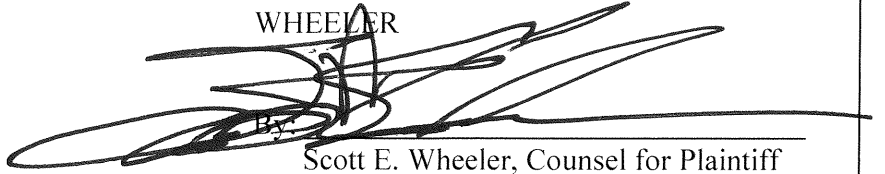
14 IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Joint
15 Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set forth
16 below:

17 [signature page follows]
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January 31, 2024

LAW OFFICE OF SCOTT EARNEST
WHEELER



By: _____
Scott E. Wheeler, Counsel for Plaintiff
Erick Fuentes

1/31/2024

January __, 2024

DocuSigned by:

Erick Fuentes

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By: _____
Erick Fuentes
Named Plaintiff

January __, 2024

CDF Labor Law LLP

By: _____
Garrett V. Jensen, Counsel for
Dirt Cheap, Inc. dba DCG Fulfillment

January __, 2024

By: _____,
on behalf of Dirt Cheap, Inc. dba DCG
Fulfillment

January __, 2024

KOREY RICHARDSON LLP

By: _____
Ron Gomez, Counsel for Defendant
Employer's Outsourcing, Inc.

January __, 2024

By: _____,
on behalf of Employer's Outsourcing, Inc.

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January __, 2024

LAW OFFICE OF SCOTT EARNEST
WHEELER

By: _____
Scott E. Wheeler, Counsel for Plaintiff
Erick Fuentes

January __, 2024

By: _____
Erick Fuentes
Named Plaintiff

January 31, 2024

CDF Labor Law LLP

By:  _____
Ashley A. Halberda, Counsel for
Dirt Cheap, Inc. dba DCG Fulfillment

January __, 2024

By: _____,
on behalf of Dirt Cheap, Inc. dba DCG
Fulfillment

January __, 2024

KOREY RICHARDSON LLP

By: _____
Ron Gomez, Counsel for Defendant
Employer's Outsourcing, Inc.

January __, 2024

By: _____,
on behalf of Employer's Outsourcing, Inc.

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January __, 2024

LAW OFFICE OF SCOTT EARNEST
WHEELER

By: _____
Scott E. Wheeler, Counsel for Plaintiff
Erick Fuentes

January __, 2024

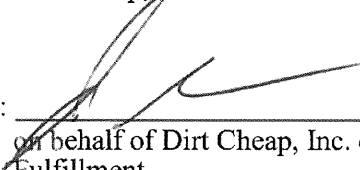
By: _____
Erick Fuentes
Named Plaintiff

January 31, 2024

CDF Labor Law LLP

By:  _____
Ashley A. Halberda, Counsel for
Dirt Cheap, Inc. dba DCG Fulfillment

January 31, 2024

By:  _____
on behalf of Dirt Cheap, Inc. dba DCG
Fulfillment

January __, 2024

KOREY RICHARDSON LLP

By: _____
Ron Gomez, Counsel for Defendant
Employer's Outsourcing, Inc.

January __, 2024

By: _____
on behalf of Employer's Outsourcing, Inc.

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January __, 2024

LAW OFFICE OF SCOTT EARNEST
WHEELER

By: _____
Scott E. Wheeler, Counsel for Plaintiff
Erick Fuentes

January __, 2024

By: _____
Erick Fuentes
Named Plaintiff

January __, 2024

CDF Labor Law LLP

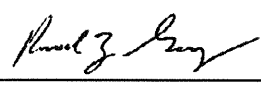
By: _____
Garrett V. Jensen, Counsel for
Dirt Cheap, Inc. dba DCG Fulfillment

January __, 2024

By: _____,
on behalf of Dirt Cheap, Inc. dba DCG
Fulfillment

January 31 2024

KOREY RICHARDSON LLP

By:  _____
Ron Gomez, Counsel for Defendant
Employer's Outsourcing, Inc.

January 31, 2024

By:  _____,
on behalf of Employer's Outsourcing, Inc.