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Attorneys for Plaintiffs, JENNIFER MONTOYA
And JUAN MANZO GONTEZ, on behalf of themselves
and all others similarly situated

[Additional Counsel listed on the next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JENNIFER MONTOYA and JUAN MANZO
GONTEZ, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

v.

FPR II, L.L.C., dba LEADPOINT
BUSINESS SERVICES, an Oregon limited
liability company; MARBORG
INDUSTRIES, a California corporation;
MARBORG RECOVERY MANAGEMENT,
LLC, a California limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 22CV404499

[Assigned for all purposes to the Hon.
Theodore C. Zayner in Dept. 19]

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

ACTION FILED: October 13, 2022
TRIAL DATE: None set

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1 This Joint Stipulation Re: Class Action and Representative Action Settlement
2 (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiffs
3 JENNIFER MONTOYA and JUAN MANSO GONTEZ (“Plaintiffs”), on behalf of themselves
4 and all others similarly situated and aggrieved, on one hand; and defendant FPR II, LLC, dba
5 LEADPOINT BUSINESS SERVICES (“Leadpoint” or “Defendant”), on the other hand, in the
6 lawsuits entitled *Montoya v. FPR II, LLC, et al.*, filed in Santa Clara County Superior Court, Case
7 Number 22CV404499; *Montoya v. FPR II, LLC, et al.*, filed in Santa Clara County Superior
8 Court, Case Number 22CV408517; *Gontez v. Marborg Industries, et al.*, filed in Santa Barbara
9 Superior Court, Case Number 22CV408517; and *Gontez v. Marborg Industries, et al.*, filed in
10 Santa Barbara, Superior Court, Case Number 23CV00298. Plaintiffs and Defendant shall be, at
11 times, collectively referred to as the “Parties.” This Agreement is intended by the Parties to fully,
12 finally and forever resolve the claims as set forth herein, based upon and subject to the terms and
13 conditions of this Agreement.

14 **1. DEFINITIONS**

15 **A. “Actions”** means the actions entitled *Montoya v. FPR II, LLC, et al.*, filed in Santa
16 Clara County Superior Court, Case Number 22CV404499 (the “Montoya Class Action”); and
17 *Montoya v. FPR II, LLC, et al.*, filed in Santa Clara County Superior Court, Case Number
18 22CV408517 (the “Montoya PAGA Action”); *Gontez v. Marborg Industries, et al.*, filed in Santa
19 Barbara Superior Court, Case Number 22CV408517 (the “Gontez Class Action”); and *Gontez v.*
20 *Marborg Industries, et al.*, filed in Santa Barbara, Superior Court, Case Number 23CV00298 (the
21 “Gontez PAGA Action), to be consolidated by a first amended complaint to be filed in the
22 Montoya Class Action.

23 **B. “Aggrieved Employees”** means all persons currently or formerly employed by
24 Leadpoint, as non-exempt, hourly-paid employees during the PAGA Period in the State of
25 California. The definition for “Aggrieved Employees” does not include any current or former
26 employees directly hired and employed by MarBorg Industries, Inc. and/or MarBorg Recovery
27 Management, LLC (collectively, “MarBorg”) during the PAGA Period, except to the extent
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claims by the “Aggrieved Employees” are released as against Leadpoint and/or MarBorg as set forth herein.

C. “Class Counsel” means David D. Bibiyan, Jeffrey D. Klein and Vedang J. Patel of Bibiyan Law Group, P.C. (“BLG”), and Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik and Nicholas J. De Blouw of Blumenthal Nordrehaug Bhowmik De Blouw LLP (“BNBD”). The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

D. “Class Members,” “Settlement Class” or “Settlement Class Members” means all persons currently or formerly employed by Leadpoint as nonexempt, hourly-paid employees during the Class Period in the State of California. The definition for “Class Members,” “Settlement Class” or “Settlement Class Members” does not include any current or former employees directly hired or employed by MarBorg during the Class Period, except to the extent claims by the “Class Members,” “Settlement Class” or “Settlement Class Members” are released as against Leadpoint and/or MarBorg as set forth herein.

E. “Class Period” means the period from October 13, 2018, through January 25, 2024.

F. “Class Notice” means and refers to the notice sent to Class Members after preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this Agreement.

G. “Court” means the Superior Court of the State of California for the County of Santa Clara.

H. “Defendant” means defendant FPR II, LLC, dba Leadpoint Business Services.

I. “Effective Date” means the later of the following events: (a) five (5) calendar days after the period for filing any appeal, writ, or other appellate proceeding opposing Final Approval and judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed, i.e., 65 days from the date the court grants final approval and enters judgment; or (b) if any appeal, writ, or other appellate proceeding opposing Final Approval has been filed

1 within that timeframe, five (5) business days after any appeal, writ, or other appellate proceedings
2 opposing the Settlement has finally and conclusively dismissed with no right to pursue further
3 remedies or relief.

4 **J. “Employer Taxes”** means employer-funded taxes and contributions imposed on
5 the wage portions of the Individual Settlement Payments under the Federal Insurance
6 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
7 and contributions required of employers, such as for unemployment insurance.

8 **K. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
9 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
10 objector, 60 days from the date of the Final Approval and Judgment; or (3) to the extent any
11 appeals have been filed, the date on which they have been resolved or exhausted.

12 **L. “General Release”** means the broader release of claims by Plaintiffs, which is in
13 addition to Plaintiff’s limited release of claims as a Participating Class Member.

14 **M. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
15 Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00),¹ which shall be paid
16 by Leadpoint, from which all payments for the Individual Settlement Payments to Participating
17 Class Members, the Court-approved amounts for attorneys’ fees and reimbursement of litigation
18 costs and expenses to Class Counsel, Settlement Administration Costs, the Service Awards, the
19 PAGA Payment and the LWDA Payment shall be paid. It expressly excludes Employer Taxes,
20 which shall be paid by Leadpoint, separate, apart and in addition to the Gross Settlement Amount.

21 **N. “Individual PAGA Payment”** means a payment made to an Aggrieved Employee
22 for his or her share of the PAGA Payment, which may be in addition to his or her Individual
23 Settlement Share if he or she is also a Participating Class Member.

24 **O. “Individual Settlement Payment”** means a payment to a Participating Class
25 Member of his or her net share of the Net Settlement Amount.

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28 ¹ As may be increased in accordance with Paragraph 17 below.

1 **P. “Individual Settlement Share”** means the gross amount of the Net Settlement
2 Amount that a Participating Class Member is projected to receive based on the number of
3 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
4 shall be reflected in his or her Class Notice.

5 **Q. “LWDA Payment”** means the payment to the State of California Labor and
6 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
7 amount allocated toward penalties under the PAGA, all of which is to be paid from the Gross
8 Settlement Amount. The Parties have agreed that Seventy-Five Thousand Dollars and Zero Cents
9 (\$75,000.00) shall be allocated toward PAGA penalties, of which Fifty-Six Thousand Two
10 Hundred Fifty Dollars and Zero Cents (\$56,250.00) will be paid to the LWDA (*i.e.*, the LWDA
11 Payment) and Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (\$18,750.00) will
12 be paid to Aggrieved Employees on a *pro rata* basis based on the Pay Periods worked in the
13 PAGA Period, as further set out herein (*i.e.* the PAGA Payment).

14 **R. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
15 that is available for distribution to the Participating Class Members after deductions for the Court-
16 approved allocations for Settlement Administration Costs, Service Award to Plaintiff, an award
17 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
18 Payment and the PAGA Payment.

19 **S. “Operative Complaint”** means the First Amended Complaint to be filed in the
20 Montoya Class Action.

21 **T. “PAGA Payment”** is the 25% portion of the Seventy-Five Thousand Dollars and
22 Zero Cents (\$75,000.00) that is allocated toward PAGA penalties (Eighteen Thousand Seven
23 Hundred Fifty Dollars and Zero Cents (\$18,750.00)) that will be paid to Aggrieved Employees
24 on a *pro rata* basis based on the Pay Periods worked as non-exempt, hourly-paid employees in
25 California in the PAGA Period, which would be in addition to their Individual Settlement
26 Payment if they are Participating Class Members, as well.

27 **U. “PAGA Period”** means the period from July 12, 2021, through January 25, 2024.
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1 **T. “Participating Class Members”** means all Settlement Class Members who do
2 not submit a timely and valid Request for Exclusion.

3 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
4 Settlement Amount that a Participating Class Member is eligible to receive based on the number
5 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
6 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
7 may be entitled if he or she is also an Aggrieved Employee.

8 **V. “Pay Period”** means any pay period during which an Aggrieved Employee
9 worked for Defendant for at least one day during the PAGA Period, based on dates of
10 employment (*i.e.* hire dates, re-hire dates (as applicable), and termination dates (as applicable)).

11 **W. “Plaintiff,” “Named Plaintiff” or “Class Representative”** shall refer to plaintiff
12 Jennifer Montoya and Juan Manso Gontez.

13 **W. “Preliminary Approval Date”** means the date on which the Court enters an Order
14 granting preliminary approval of the Settlement.

15 **X. “Released Parties”** shall mean Defendant, MarBorg Industries, Inc., MarBorg
16 Recovery Management, LLC, Waste Management, Inc., Republic Services, Inc., FCC
17 Environmental Services, LLC, and any of their past, present, and future direct or indirect parents,
18 subsidiaries, predecessors, successors, and affiliates, as well as each of their past, present, and
19 future officers, directors, employees, partners, members, owners, shareholders, agents, attorneys,
20 insurers, reinsurers, and any individual or entity which was alleged or could have been alleged
21 as jointly liable with Leadpoint and/or MarBorg as an employer of the Class Members.

22 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
23 any Requests for Exclusion, Objections or Workweek Disputes to the Settlement Administrator,
24 which is sixty (60) calendar days from the date that the Class Notice is first mailed in English
25 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
26 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing
27 or sixty (60) calendar days from the date of the initial mailing, whichever is later, in which to
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1 postmark a Request for Exclusion, Workweek Dispute, or Objection. The date of the postmark
2 shall be the exclusive means for determining whether a Request for Exclusion, Objection or
3 Workweek Dispute was submitted by the Response Deadline.

4 **Z. “Request for Exclusion”** means a written request to be excluded from the
5 Settlement Class pursuant to Paragraph 9(C) below.

6 **AA. “Service Awards”** means monetary amounts to be paid to Plaintiffs of up to
7 Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) to each plaintiff, for a total
8 of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to Plaintiffs, which, subject to
9 Court approval, will be paid out of the Gross Settlement Amount.

10 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
11 Administrator in administration of the Settlement, including, but not limited to, translating the
12 Class Notice to Spanish, distribution of the Class Notice to the Settlement Class in English and
13 Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual
14 PAGA Payments and Participating Individual Settlement Shares, as well as associated taxes and
15 withholdings, providing declarations, generating Individual Settlement Payment checks and
16 related tax reporting forms, doing administrative work related to unclaimed checks, transmitting
17 payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement
18 of litigation costs and expenses, to Plaintiffs for their Service Awards and to the LWDA for the
19 LWDA Payment, providing weekly reports of opt-outs, objections and related information, and
20 any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to
21 the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed
22 \$15,000. If the actual amount of the Settlement Administration Costs is less than \$15,000, the
23 difference between \$15,000 and the actual Settlement Administration Costs shall be a part of the
24 Net Settlement Amount. If the Settlement Administration Costs exceed \$15,000, then such excess
25 will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for
26 paying any additional funds in order to pay these additional costs.

1 **CC.** “**Settlement Administrator**” means the Third-Party Administrator selected by
2 Plaintiffs that will be responsible for the administration of the Settlement including, without
3 limitation, translating the Class Notice in Spanish, distribution of the Individual Settlement
4 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
5 this Agreement.

6 **DD.** “**Workweeks**” shall be defined based on hire dates, termination dates, and re-hire
7 dates (as applicable). To qualify as a Workweek, a Class Member must have worked at least one
8 day in a week during the Class Period.

9 **2. BACKGROUND**

10 **A.** On July 13, 2022, plaintiff Jennifer Montoya filed with the LWDA and served on
11 defendant FPR II, LLC, dba Leadpoint Business Services (“Defendant”), a notice under Labor
12 Code section 2699.3, stating that she intended to serve as a proxy of the LWDA to recover civil
13 penalties on behalf of Aggrieved Employees for alleged Labor Code violations (the “Montoya
14 PAGA Notice”).

15 **B.** On October 13, 2022, plaintiff Jennifer Montoya filed a putative wage-and-hour
16 class action, captioned *Montoya v. FPR II, LLC, et al.*, in the Santa Clara County Superior Court,
17 Case Number 22CV404499, alleging causes of action against Defendant, for: (1) Violation of
18 California Business and Professions Code §§ 17200, *et seq*; (2) Violation of California Labor
19 Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (3) Violation of California Labor
20 Code §§ 510 and 1198 (Unpaid Overtime Wages); (4) Violation of California Labor Code §§
21 226.7 and 512(a) (Unpaid Meal Period Premiums); (5) Violation of California Labor Code §§
22 226.7 and 512(a) (Unpaid Rest Period Premiums); (6) Violation of California Labor Code §
23 226(a) (Failure to Issue Accurate Wage Statements); (7) Violation of California Labor Code §§
24 2800 and 2802 (Unreimbursed Business Expenses); (8) Failure to Provide Wages When Due in
25 Violation of California Labor Code §§ 201-203 (Waiting Time Penalties); and (9) Failure to Pay
26 Sick Wages In Violation of California Labor Code §§201-204, 233 and 246. (the “Montoya
27 Class Action”).
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1 **C.** On October 18, 2022, plaintiff Juan Manso Gontez filed with the LWDA and
2 served on MarBorg Industries and Leadpoint a notice under Labor Code section 2699.3, stating
3 that he intended to serve as a proxy of the LWDA to recover civil penalties on behalf of
4 Aggrieved Employees for alleged Labor Code violations (the “Gontez PAGA Notice”).

5 **D.** On October 20, 2022, plaintiff Juan Manso Gontez filed a putative wage-and-hour
6 class action, captioned *Gontez v. Marborg Industries, et al.*, in the Santa Barbara Superior Court,
7 Case Number 22CV408517, alleging causes of action against MarBorg Industries and Defendant
8 for: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to
9 Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Waiting Time Penalties; (6) Failure
10 to Timely Furnish Accurate Itemized Wage Statements; (7) Failure to Timely Pay Wages During
11 Employment; (7) Failure to Indemnify Business Expenses; and (8) Unfair Competition and
12 Business Practices. (the “Gontez Class Action”).

13 **E.** On December 16, 2022, after sixty-five (65) days had passed without any action
14 by the LWDA with respect to the alleged Labor Code violations, plaintiff Jennifer Montoya filed
15 a separate representative action under PAGA, captioned *Montoya v. FPR II, LLC, et al.*, in the
16 Santa Clara County Superior Court, Case Number 22CV408517, seeking civil penalties pursuant
17 to Labor Code § 2699, et seq. for Violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210,
18 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
19 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
20 Order(s).

21 **F.** On December 19, 2022, plaintiff Juan Manso Gontez filed an amended PAGA
22 notice, adding MarBorg Recovery Management, LLC, as respondent (the “Gontez Amended
23 PAGA Notice,” collectively with the Montoya PAGA Notice and the Gontez PAGA Notice, the
24 “PAGA Notices”).

25 **G.** On December 25, 2023, after sixty-five (65) days had passed without any action
26 by the LWDA with respect to the alleged Labor Code violations, plaintiff Juan Manso Gontez
27 filed a separate representative action under PAGA, captioned *Gontez v. Marborg Industries, et*
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1 *al.* in the Superior Court of the State of California for the County of Santa Barbara, Case No.
2 23CV00298, seeking civil penalties under California Labor Code sections 210, 226.3, 558,
3 1174.5, 1197.1 and 2699.

4 **H.** Counsel for plaintiff Jennifer Montoya and counsel for Juan Manso Gontez
5 entered into a joint prosecution agreement.

6 **I.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
7 mediation, in which Plaintiffs were provided with, among other things: (1) time and payroll
8 records for the putative class members; (2) putative class data points, including the number of
9 putative class members from October 13, 2018 through January 17, 2024, the number of
10 Aggrieved Employees from July 12, 2021 through January 17, 2024, Workweeks worked by
11 putative class members from October 13, 2019 through January 17, 2024, Workweeks worked
12 by Aggrieved Employees from January 12, 2021 through January 17, 2024, the total number of
13 Pay Periods from October 13, 2018 through January 17, 2024, and Pay Periods during the PAGA
14 Period; (3) Leadpoint's Talent Handbook; and (4) Plaintiffs' personnel records.

15 **J.** On January 25, 2024, the Parties participated in a full-day mediation with Mark
16 S. Rudy, Esq., a well-regarded mediator, experienced in mediating complex labor and
17 employment matters. With the aid of the mediator's evaluation, the Parties reached the Settlement
18 to resolve the Action. As part of this Agreement, the Parties agree to stipulate to plaintiff Jennifer
19 Montoya's filing of a First Amended Complaint in the Montoya Class Action, adding claims in
20 the Montoya PAGA Action, Gontez Class Action and Gontez PAGA Action as against
21 Leadpoint, and plaintiff Juan Manso Gontez as a named plaintiff, and filing of requests for
22 dismissal without prejudice as to Leadpoint of the Montoya PAGA Action, Gontez Class Action
23 and Gontez PAGA Action, and without prejudice as to MarBorg of the Gontez Class Action and
24 Gontez PAGA Action, within five (5) business days of filing of the First Amended Complaint,
25 thereby effectively consolidating these actions with the Montoya Class Action, for purposes of
26 this Settlement. The First Amended Complaint in the Montoya Class Action is the "Operative
27 Complaint."
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1 **K.** Class Counsel have conducted significant investigation of the law and facts
2 relating to the claims asserted in the Action and the PAGA Notice, and have concluded that the
3 Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Settlement
4 Class, taking into account the sharply contested issues involved, the expense and time necessary
5 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
6 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
7 learned through discovery regarding Plaintiffs' allegations, and the substantial benefits to be
8 received by Settlement Class Members.

9 **L.** Leadpoint and MarBorg expressly deny any liability or wrongdoing of any kind
10 associated with the claims alleged in the Operative Complaint, Actions, and/or PAGA Notices.
11 Defendant and MarBorg further deny all material allegations set forth in Operative Complaint,
12 Actions, and/or PAGA Notices and have asserted numerous affirmative defenses thereto.
13 Leadpoint and MarBorg maintain, among other things, that they have complied with federal and
14 California law in all respects. Nothing in this Settlement Agreement shall be construed or deemed
15 an admission of liability, culpability, negligence, or wrongdoing on the part of the Released
16 Parties. Notwithstanding, Defendant has concluded that, because of the substantial expense of
17 defending against the Action, the length of time necessary to resolve the issues presented herein,
18 the inconvenience involved and the concomitant disruption to its business operations, it is in its
19 best interest to accept the terms of this Agreement. Defendant desires to settle the Actions for the
20 purpose of avoiding the burden, expense and uncertainty of continuing litigation, and for the
21 purpose of putting to rest the controversies engendered by the Action.

22 **M.** This Agreement is intended to and does effectuate the full, final, and complete
23 resolution of all Class Released Claims of Plaintiffs and Participating Class Members, and all
24 PAGA Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California
25 and Aggrieved Employees.

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1 **3. JURISDICTION**

2 The Court has jurisdiction over the Parties and the subject matter of the Actions. The
3 Actions include claims that, if proven, would authorize the Court to grant relief pursuant to the
4 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
5 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
6 pursuant to California Rules of Court, rule 3.769, subdivision (h).

7 **4. STIPULATION OF CLASS CERTIFICATION**

8 The Parties stipulate to the certification of the Settlement Class under this Agreement for
9 purposes of settlement only.

10 **5. AMENDED COMPLAINT, STIPULATIONS, AND MOTIONS FOR**
11 **APPROVAL OF SETTLEMENT**

12 The Parties hereby stipulate to plaintiff Jennifer Montoya’s filing of a First Amended
13 Complaint in the Montoya Class Action to: (1) add all the claims set forth in the Montoya PAGA
14 Action, Gontez Class Action, and Gontez PAGA Action as against Leadpoint; (2) to add plaintiff
15 Juan Manso Gontez as a named plaintiff; and (3) to allow filing of requests for dismissal without
16 prejudice as to Leadpoint of the Montoya PAGA Action, Gontez Class Action and Gontez PAGA
17 Action, and without prejudice as to MarBorg of the Gontez Class Action and Gontez PAGA
18 Action, thereby effectively consolidating these actions with the Montoya Class Action, for
19 purposes of this Settlement.

20 If required, the Parties will mutually stipulate and agree to stay all pending deadlines
21 including but not limited to responses to discovery or depositions or any trial dates, indefinitely.

22 Within 30 days of the full execution of this Agreement, Plaintiffs will move for an order
23 granting preliminary approval of the Settlement, approving and directing the mailing of the
24 proposed Notice of Proposed Class Action Settlement and Date for Final Approval Hearing
25 (“Class Notice”) attached hereto as **Exhibit “A,”** conditionally certifying the Settlement Class
26 for settlement purposes only, and approving the deadlines proposed by the Parties for the
27 submission of Requests for Exclusion, Workweek Disputes and Objections. If and when the
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1 Court preliminarily approves the Settlement, and within 30 days of the administration of the Class
2 Notice in a manner consistent with the Court's Preliminary Approval Order, Plaintiff will move
3 for an order finally approving the Settlement and seek entry of a Judgment in line with this
4 Settlement. The Parties may both respond to any Objections lodged to final approval of the
5 Settlement up to five (5) court days before the Final Approval Hearing.

6 **6. STATEMENT OF NO ADMISSION**

7 Leadpoint and MarBorg deny any wrongdoing of any sort and further deny any liability
8 to Plaintiffs and the Settlement Class with respect to any claims or allegations asserted in the
9 Operative Complaint, the Actions, and the PAGA Notices. This Agreement shall not be deemed
10 an admission by Leadpoint and/or MarBorg of any claims or allegations asserted in the Operative
11 Complaint, the Actions, and/or the PAGA Notices. Except as set forth elsewhere herein, in the
12 event that this Agreement is not approved by the Court or any appellate court, is terminated, or
13 otherwise fails to be enforceable, Plaintiffs will not be deemed to have waived, limited or affected
14 in any way any claims, rights or remedies, or defenses in in the Operative Complaint, the Actions,
15 and/or the PAGA Notices, and Leadpoint and MarBorg will not be deemed to have waived,
16 limited or affected in any way any of their objections or defenses in the Operative Complaint, the
17 Actions, and/or the PAGA Notices. The Parties shall not stipulate to class certification and shall
18 be restored to their respective positions in the Operative Complaint, the Actions, and the PAGA
19 Notices prior to the entry of this Settlement. Payment of wages under this Settlement neither
20 extends nor alters the Class Members' period of employment with Defendant for any purpose.

21 **7. RELEASE OF CLAIMS**

22 **A. Release by All Participating Class Members**

23 Upon the Effective Date and payment by Defendant to the Settlement Administrator of
24 the full Gross Settlement Amount and Employer's Taxes necessary to effectuate the Settlement,
25 Plaintiffs and all Participating Class Members, will release Defendant and the Released Parties
26 from all class claims that occurred during the Class Period that were alleged, or reasonably could
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1 have been alleged based upon the facts alleged in the Operative Complaint, including any
2 attached Exhibits, including the following:

3 (1) Unfair competition in violation of California Business and Professions
4 Code §§ 17200, *et seq.*; failure to pay minimum wages in violation of California Labor Code §§
5 1194, 1197 & 1197.1; failure to pay overtime wages in violation of California Labor Code § 510;
6 failure to provide request meal periods in violation of California Labor Code §§ 226.7 & 512 and
7 the applicable IWC Wage Order; failure to provide request rest periods in violation of California
8 Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; failure to provide accurate
9 itemized wage statements in violation of California Labor Code § 226; failure to reimburse
10 employees for required expenses in violation of California Labor Code § 2802 (including
11 mandatory safety uniforms, gear required to perform job duties, cell phones, and personal
12 vehicles or mileage reimbursement); failure to provide wages when due in violation of California
13 Labor Code §§ 201, 202 and 203; and failure to pay sick wages in violation of California Labor
14 Code §§201-204, 233, 246;

15 (2) Any claims for injunctive relief, declaratory relief, restitution, fraudulent
16 business practices or punitive damages alleged or which could have been alleged under the facts
17 pleaded in the complaints; and

18 (3) Any and all other claims under California common law, the California
19 Labor Code, including, Lab. Code §§ 210, 221, 226(a), 227.3, 1198, the Fair Labor Standards
20 Act (“FLSA”), California Industrial Welfare Commission Wage Orders, California Code of
21 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the California Business and
22 Professions Code alleged in or that could have been alleged under the Operative Complaint (the
23 “Released Class Claims”).

24 **B. Release by All Aggrieved Employees**

25 The Aggrieved Employees and, to the extent permitted by law, the State of California,
26 shall release Defendant and the Released Parties, for the defined PAGA Period, from all claims
27 for PAGA civil penalties, attorneys’ fees, claims for interest, or costs pursuant to the PAGA, for
28

1 any violations that were alleged, or reasonably could have been alleged in the Operative
2 Complaint and/or the PAGA Notices, including, Labor Code §§ 201, 202, 203, 204, 210, 221,
3 226(a), 226.3, 226.7, 227.3, 246 et seq., 510, 512, 558, 558(a)(1)(2), 1174.5, 1194, 1197, 1197.1,
4 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and
5 the applicable Wage Order(s), or premiums in connection with any of the preceding claims, as
6 well as any claims under the California Labor Code, California Industrial Welfare Commission's
7 Wage Orders, or the California Code of Regulations, based upon the facts that were alleged in
8 the PAGA Notices and Operative Complaint (the "Released PAGA Claims"). The Released Class
9 Claims and the Released PAGA Claims are hereinafter referred to as the "Released Claims."

10 **C. Mutual Release**

11 Plaintiffs and Defendant, and each of them, waive any and all claims for fees, costs,
12 indemnity or contribution against Plaintiffs, any Class Member, Class Counsel in the Actions,
13 Defendant, Defendant's Counsel, MarBorg, or MarBorg's Counsel in the Actions other than as
14 provided herein.

15 **D. Claims Not Released**

16 The Released Claims by Class Members and Aggrieved Employees set forth herein
17 exclude any and all claims asserted against MarBorg stemming solely from their direct
18 employment by MarBorg during the Class Period and/or the PAGA Period (to the extent Class
19 Members and/or Aggrieved Employees may attempt to allege any claim under a theory of joint
20 employment between the Released Parties, those claims have been expressly released as a
21 material term and condition of this Agreement) and all other claims for vested benefits, wrongful
22 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
23 disability, social security, workers' compensation, and any other claims outside of the Class
24 Released Claims of Participating Class Members arising during the Class Period and the PAGA
25 Released Claims of Aggrieved Employees (and, to the extent permitted by law, the State of
26 California) arising outside of the PAGA Period.

1 **E. General Release**

2 Upon the Effective Date and payment by Defendant to the Settlement Administrator
3 selected of the full Gross Settlement Amount and Employer's Taxes necessary to effectuate the
4 Settlement, in addition to the Released Claims, Plaintiffs make the additional following General
5 Release: Plaintiffs and their respective former and present spouses, representatives, agents,
6 attorneys, heirs, administrators, successors, and assigns generally, release and discharge the
7 Released Parties from all claims, demands, rights, liabilities, transactions, occurrences, and
8 causes of action of every nature and description whatsoever, known or unknown, asserted or that
9 might have been asserted, whether in tort, contract, or for violation of any state or federal statute,
10 rule, law or regulation arising out of, relating to, or in connection with any act or omission of the
11 Released Parties through the date of full execution of this Agreement in connection with
12 Plaintiffs' employment with Defendant or termination thereof, except for any and all other claims
13 that may not be released as a matter of law through this Agreement. To the extent of the General
14 Release provided herein, Plaintiffs stipulate and agree that, upon the Effective Date and payment
15 by Defendant to the Settlement Administrator selected of the full Gross Settlement Amount and
16 Employer's Taxes necessary to effectuate the Settlement, Plaintiffs expressly waive and
17 relinquish, to the fullest extent permitted by law, all rights and benefits afforded to them by
18 Section 1542 of the California Civil Code and do so understanding and acknowledging the
19 significance of the waiver of Section 1542, or any other similar provision under federal or state
20 law, which states:

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

28 **8. SETTLEMENT ADMINISTRATOR**

A. Plaintiff, through Class Counsel, has selected ILYM Group to administer the
Settlement, which includes, but is not limited to, translating the Class Notice to Spanish,

1 distributing, and responding to inquiries about the Class Notice, and calculating all amounts to
2 be paid from the Gross Settlement Amount. Charges and expenses of the Settlement
3 Administrator, currently estimated to be \$15,000, will be paid from the Gross Settlement
4 Amount. If the actual amount of the Settlement Administration Costs is less than \$15,000, the
5 difference between \$15,000 and the actual Settlement Administration Costs shall be a part of the
6 Net Settlement Amount. If the Settlement Administration Costs exceed \$15,000, then such excess
7 will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for
8 paying any additional funds in order to pay these additional costs.

9 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION AND EXCLUSION**
10 **PROCESS**

11 **A. Notice to the Settlement Class Members**

12 (1) Within ten (10) calendar days after the Preliminary Approval Date,
13 Defendant's Counsel shall provide the Settlement Administrator with information with respect
14 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
15 currently in Defendant's possession, custody or control; (3) last known telephone number(s)
16 currently in Defendant's possession, custody or control; (4) last known Social Security
17 Number(s) in Defendant's possession, custody or control; and (5) the dates of employment, *i.e.*,
18 hire dates and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class
19 Member ("Class List"). The Settlement Administrator shall perform an address search using the
20 United States Postal Service National Change of Address ("NCOA") database and update the
21 addresses contained on the Class List with the newly found addresses, if any. Within seven (7)
22 calendar days or soon thereafter of receiving the Class List from Defendant, the Settlement
23 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
24 Members via first-class regular U.S. Mail using the most current mailing address information
25 available. The Settlement Administrator shall maintain the Class List and digital copies of all the
26 Settlement Administrator's records evidencing the giving of notice to any Settlement Class
27 Member for at least four (4) years from the Final Approval Date.

(2) The Class Notice will set forth:

- (a) the Settlement Class Member's estimated Individual Settlement Payment and Individual PAGA Payment, and the basis for each;
 - (b) the information required by California Rules of Court, rule 3.766, subdivision (d);
 - (c) the material terms of the Settlement;
 - (d) the proposed Settlement Administration Costs;
 - (e) the definition of the Settlement Class;
 - (f) a statement that the Court has preliminarily approved the Settlement;
 - (g) how the Settlement Class Member can obtain additional information, including contact information for Class Counsel;
 - (h) information regarding opt-out and objection procedures;
 - (i) the date and location of the Final Approval Hearing; and
 - (j) that the Settlement Class Member must notify the Settlement Administrator no later than the Response Deadline if the Settlement Class Member disputes the accuracy of the number of Workweeks worked as set forth on his or her Class Notice ("Workweek Dispute").
- If a Settlement Class Member fails to timely dispute the number of Workweeks attributed to him or her in conformity with the instructions in the Class Notice, then he or she shall be deemed to have waived any objection to its accuracy and any claim to any additional settlement payment based on different data.

(3) If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator

1 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
2 Member within three (3) business days. Further, any Class Notices that are returned to the
3 Settlement Administrator with a forwarding address before the Response Deadline shall be
4 promptly re-mailed to the forwarding address affixed thereto.

5 (4) No later than seven (7) calendar days from the Response Deadline, the
6 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
7 completion of the notice process, including the number of attempts to obtain valid mailing
8 addresses for and re-sending of any returned Class Notices, as well as the identities,² number of,
9 and copies of all Requests for Exclusion and Objections received by the Settlement
10 Administrator.

11 **B. Objections**

12 Only Participating Class Members may object to the Settlement. In order for any
13 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
14 do so by mailing a written objection to the Settlement Administrator at the address provided on
15 the Class Notice no later than the Response Deadline. The Settlement Administrator shall email
16 a copy of the Objection forthwith to Class Counsel and Defendant's Counsel and attach copies
17 of all Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in
18 support of Plaintiff's Motion for Final Approval. The Objection should set forth in writing: (1)
19 the Objector's name; (2) the Objector's address; (3) the last four digits of the Objector's Social
20 Security Number; (4) the Objector's signature; (5) a statement of whether the Objector plans to
21 appear at the Final Approval Hearing; and (6) the reason(s) for the Objection, along with
22 whatever legal authority, if any, the Objector asserts in support of the Objection. If a Settlement
23 Class Member objects to the Settlement, the Settlement Class Member will remain a member of
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25 ² The identities of the Settlement Class Member(s) who request an exclusion from and/or opt of
26 the settlement will be used exclusively by the Parties to notify the Court of potential objectors at
27 any hearing for Final Approval and to identify the individuals excluded from the Class. Class
28 Counsel represents that it will not use the information to seek to represent, discuss, or refer any
of these individuals in conjunction with filing a potential lawsuit against any of the Released
Parties on the Class Released Claims and/or PAGA Released Claims.

1 the Settlement Class and if the Court approves this Agreement, the Settlement Class Member
2 will be bound by the terms of the Settlement in the same way and to the same extent as a
3 Settlement Class Member who does not object. The date of mailing of the Class Notice to the
4 objecting Settlement Class Member shall be conclusively determined according to the records of
5 the Settlement Administrator. Settlement Class Members need not object in writing to be heard
6 at the Final Approval Hearing; they may object or comment in person at the hearing at their own
7 expense. Class Counsel and Defendant's Counsel may respond to any objection lodged with the
8 Court up to five (5) court days before the Final Approval Hearing.

9 **C. Requesting Exclusion**

10 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
11 Settlement by mailing a written request to be excluded from the Settlement ("Request for
12 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
13 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last
14 four (4) digits of the Class Member's Social Security Number; (3) the Class Member's signature;
15 and (4) the following statement: "Please exclude me from the Settlement Class in the *Montoya*
16 *v. FPR II, LLC, et al.*, matter," or any statement of similar meaning standing for the proposition
17 that the Class Member does not wish to participate in the Settlement. The Settlement
18 Administrator shall immediately report the Requests for Exclusions that it receives, to the Court,
19 in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class
20 Member who requests exclusion using this procedure will not be entitled to receive any payment
21 from the Settlement and will not be bound by the Settlement Agreement or have any right to
22 object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not
23 opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound
24 by all terms of the Settlement, including those pertaining to the Released Claims, as well as any
25 Judgment that may be entered by the Court if Final Approval of the Settlement is granted.

26 In addition, to the extent required by law, the cashing of the settlement check by a
27 Settlement Class Member shall be deemed to be an opt-in for purposes of releasing the Released
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1 Parties from any claims predicated under the Fair Labor Standards Act (“FLSA”) pursuant to
2 *Rangel v. Check Cashers*, 899 F.3d 1106 (9th Cir. 2018) that could have been alleged under the
3 same or similar facts, allegations and/or claims pleaded in the Operative Complaint, Actions, and
4 PAGA Notices. The Settlement Administrator shall include a legend on the settlement check,
5 stating: “By cashing this check, I am opting into the settlement in *Jennifer Montoya v. FPR II*,
6 *LLC, et al.*, Santa Clara County Superior Court, Case Number 22CV404499, under the Fair Labor
7 Standards Act, 29 U.S.C. § 216(b), and releasing the Released Claims described in the Settlement
8 Agreement.” A Settlement Class Member cannot submit both a Request for Exclusion and an
9 objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the
10 Request for Exclusion will control, and the Objection will be overruled. Settlement Class
11 Members who worked during the PAGA Period as Aggrieved Employees that submit a valid
12 Request for Exclusion will still be deemed Aggrieved Employees, will still receive their
13 Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

14 **D. Disputes Regarding Settlement Class Members’ Workweek Data**

15 Each Settlement Class Member may dispute the number of Workweeks attributed to him
16 or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to
17 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
18 Response Deadline. The Settlement Administrator shall immediately provide copies of all
19 disputes to Defense Counsel and shall immediately attempt to resolve all such disputes directly
20 with relevant Settlement Class Member(s) with the assistance of Defense Counsel. If the dispute
21 cannot be resolved in this manner, the Court shall adjudicate the dispute.

22 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
23 **PAGA PAYMENTS**

24 Individual Settlement Payments will be calculated and distributed to Participating Class
25 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
26 Members’ respective number of Workweeks worked during the Class Period. Individual PAGA
27 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
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1 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
2 number of Pay Periods worked during the PAGA Period. Specific calculations of the Individual
3 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
4 follows:

5 **A.** The Settlement Administrator will determine the total number of Workweeks
6 worked by each Settlement Class Member during the Class Period ("Class Member's
7 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
8 Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
9 Administrator will determine the total number of Pay Periods worked by each Aggrieved
10 Employee during the PAGA Period ("Aggrieved Employee's Pay Periods"), as well as the
11 aggregate number of Pay Periods worked by all Aggrieved Employees during the PAGA Period
12 ("PAGA Pay Periods").

13 **B.** To determine each Participating Class Member's Participating Individual
14 Settlement Share, the Settlement Administrator will determine the aggregate number of
15 Workweeks worked by all Participating Class Members during the Class Period ("Participating
16 Class Workweeks") and use the following formula: Individual Settlement Share =
17 (Participating Class Member's Workweeks worked ÷ Participating Class Workweeks) × Net
18 Settlement Amount.

19 **C.** The net amount of the Participating Individual Settlement Share is to be paid out
20 to Participating Class Members by way of check and is referred to as "Individual Settlement
21 Payment(s)".

22 **D.** To determine each Aggrieved Employee's Individual PAGA Payment, the
23 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
24 PAGA Payment = (Aggrieved Employee's PAGA Pay Periods worked ÷ PAGA Pay Periods)
25 x \$18,750.00 (the PAGA Payment).

26 **E.** Individual Settlement Payments and Individual PAGA Payments shall be paid
27 to Participating Class Members and/or Aggrieved Employees by way of check. When a
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1 Participating Class Member is also an Aggrieved Employee, one check may be issued that
2 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

3 **11. DISTRIBUTION OF PAYMENTS**

4 **A. Distribution of Individual Settlement Payments**

5 Participating Class Members will receive an Individual Settlement Payment. Individual
6 Settlement Payment checks shall remain valid and negotiable for one hundred eighty (180)
7 calendar days after the date of their issuance. Thereafter, checks for such payments shall be
8 canceled and funds associated with such checks shall be considered unpaid, unclaimed, or
9 abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”).
10 The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section
11 384, shall be transmitted as follows: Child Advocates of Silicon Valley, the *cy pres* recipient,
12 509 Valley Way, Building 2, Milpitas, CA 95035, for use in Santa Clara County. The Settlement
13 Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil
14 Procedure section 384 and the report shall be presented to the Court by Class Counsel along with
15 a proposed amended judgment that is consistent with the provisions of Code of Civil Procedure
16 section 384.

17 **B. Funding of Settlement**

18 Defendant shall, within fourteen (14) calendar days of the Effective Date, make payment
19 of the Gross Settlement Amount (as the same may be increased pursuant to Paragraph 17 of this
20 Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal Revenue
21 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”)
22 with an FDIC insured banking institution, for distribution in accordance with this Agreement and
23 the Court’s Orders, and subject to the conditions described herein. The Participating Class
24 Members hereby agree that Leadpoint shall be solely responsible for remittance of the Gross
25 Settlement Amount and Employer Taxes and hereby waive, release and forever discharge
26 MarBorg from any and all claims, demands or actions for contribution relating to any unpaid
27 portion of the Gross Settlement Amount, and agree not to seek recovery from MarBorg for such
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unpaid amounts.

C. Time for Distribution

Within seven (7) calendar days after payment of the full Gross Settlement Amount and Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator shall distribute all payments due from the QSA for: (1) the Service Award to Plaintiff, as specified in this Agreement and approved by the Court; (2) the Attorneys' Fees and Costs Award to be paid to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA Payment, as specified in this Agreement and approved by the Court; (5) Individual PAGA Payments to Aggrieved Employees, as specified in this Agreement and approved by the Court; and (6) Individual Settlement Payments to Participating Class Members, less applicable taxes and withholdings, as specified in this Agreement and approved by the Court. All interest accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to Participating Class Members based on the number of Workweeks worked by them in the Class Period.

12. ATTORNEYS' FEES AND LITIGATION COSTS

Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 17 of this Agreement, amounts to Five Hundred Thousand Dollars and Zero Cents (\$500,000.00). The fee split between BLG and BNBD is 40% of fees awarded to BLG and 60% to BNBD. All Plaintiffs consented to the fee split pursuant to rule 1.5.1 of the California Rules of Professional Conduct. Class Counsel shall further apply for, and Defendant shall not oppose, an application or motion by Class Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to Fifty Thousand Dollars and Zero Cents (\$50,000.00), subject to proof. Awards of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle and obtain Final Approval of the settlement in

1 Action. The “future” aspect of the amounts stated herein includes, without limitation, all time
2 and expenses expended by Class Counsel (including any appeals therein). There will be no
3 additional charge of any kind to either the Settlement Class Members or request for additional
4 consideration from Defendant for such work unless, Defendant materially breach this Agreement,
5 including any term regarding funding, and further efforts are necessary from Class Counsel to
6 remedy said breach, including, without limitation, moving the Court to enforce the Agreement,
7 subject to proof. Should the Court approve attorneys’ fees and/or litigation costs and expenses in
8 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
9 be a part of the Net Settlement Amount.

10 **13. SERVICE AWARDS TO PLAINTIFFS**

11 Named Plaintiffs shall seek, and Defendant shall not oppose, Service Award in an amount
12 not to exceed Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) to each
13 plaintiff, for a total of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to Plaintiffs,
14 for their participation in and assistance with the Action. Any Service Awards and additional
15 consideration awarded and/or paid to Plaintiffs shall be paid from the Gross Settlement Amount
16 and shall be reported on an IRS Form 1099. If the Court approves the Service Awards in less
17 than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net
18 Settlement Amount. Any determination by the Court of a lesser Service Aware shall not void this
19 Agreement.

20 **14. TAXATION AND ALLOCATION**

21 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
22 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
23 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties and reported
24 IRS Form 1099. The Parties agree that the employees’ share of taxes and withholdings with
25 respect to the wage portion of the Individual Settlement Share will be withheld from the
26 Individual Settlement Share in order to yield the Individual Settlement Payment.

1 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
2 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
3 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
4 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
5 set forth in this Section may be modified in a manner to bring Defendant into compliance with
6 any such changes.

7 c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to
8 the Gross Settlement Amount. Defendant shall remain liable to pay the employer’s share of
9 payroll taxes as described above.

10 d. Neither Counsel for Plaintiffs nor Defendant intend anything contained in this
11 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
12 be relied upon as such within the meaning of United States Treasury Department Circular 230
13 (31 C.F.R. Part 10, as amended) or otherwise.

14 **15. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

15 The Parties agree to allocate Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00)
16 of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
17 percent (75%) of the amount allocated toward PAGA penalties (\$56,250.00) will be paid to the
18 LWDA and twenty-five percent (25%) or \$18,750.00 will be distributed to Aggrieved Employees
19 on a *pro rata* basis based upon their respective Pay Periods worked as Aggrieved Employees
20 during the PAGA Period.

21 **16. COURT APPROVAL**

22 This Agreement is contingent upon an order by the Court granting Final Approval of the
23 Settlement, and that the LWDA does not intervene and object to the Settlement. Plaintiffs or
24 Defendant may terminate this Settlement if after submitting the settlement for approval to the
25 Court, any Court declines to enter the preliminary approval order (despite best efforts by the
26 Parties to resolve the Court’s concerns), the final approval order, or judgment in substantially the
27 form submitted by the Parties, or if an appeal opposing the judgment is not ultimately dismissed.

1 The terminating Party shall give to the other Party (through its/their counsel) written notice of its
2 decision to terminate no later than fourteen (14) calendar days after receiving notice that one of
3 the enumerated events has occurred. Termination shall have the following effects:

4 **A.** The Settlement Agreement shall be terminated and shall have no force or effect,
5 and no Party shall be bound by any of its terms.

6 **B.** In the event the Settlement Agreement is terminated, Defendant shall have no
7 obligation to make any payments to any party, Class Member, or counsel, and the Gross
8 Settlement Amount in its entirety in the escrow account shall revert to Defendant. If there are
9 any fees incurred by the Settlement Administrator and the settlement is terminated by Defendant,
10 Defendant shall solely be responsible for any costs and fees incurred by the Settlement
11 Administrator.

12 **C.** The preliminary approval order, final approval order, and judgment shall be
13 vacated.

14 **D.** The Settlement and all negotiations, statements and proceedings relating to same
15 shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their
16 respective positions prior to the Settlement.

17 **E.** Except as otherwise discoverable, this Agreement nor any ancillary documents,
18 actions, statements, or filings in furtherance of settlement (including all matters associated with
19 the mediation) shall be admissible or offered into evidence in the Actions or any other action for
20 any purpose whatsoever.

21 If this Settlement Agreement is voided, not approved by the Court or approval is reversed
22 on appeal, it shall have no force or effect and no Party shall be bound by its terms except to the
23 extent: (a) the Court reserves any authority to issue any appropriate orders when denying
24 approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically
25 stated to survive the Settlement Agreement being voided or not approved, and which control in
26 such an event.

1 **17. INCREASE IN WORKWEEKS**

2 Defendant represents that there are no more than 58,000 Workweeks worked by Class
3 Members during the Class Period. In the event the number of Workweeks worked by Class
4 Members during the Class Period increases by more than 5% or 2,900 Workweeks, Defendant,
5 at its option, can choose to: (1) cut off the end date for the Class Period as of the date on which
6 the number of Workweeks reaches 58,000; or (2) increase the Gross Settlement Amount
7 proportionally by the Workweeks in excess of 58,000 multiplied by the Workweek Value. The
8 Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement
9 Amount (\$1,500,000.00) by 58,000. The Parties agree that the Workweek Value and the
10 settlement amounts to \$25.86 per Workweek ($\$1,500,000 / 58,000$ Workweeks). Thus, for
11 example, should there be 61,000 Workweeks worked by Class Members during the Class Period
12 and Defendant chooses the second option, then the Gross Settlement Amount shall be increased
13 by \$77,580 ((61,000 Workweeks – 58,000 Workweeks) x \$25.86/Workweek).

14 **18. DEFENDANT’S RIGHT TO WITHDRAW**

15 If 5% or more of the Class Members timely opt out of the Settlement, Defendant may,
16 but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant
17 withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that
18 neither Party will have any further obligation to perform under this Agreement, provided
19 Defendant will remain responsible for paying all Settlement Administration Expenses incurred
20 to that point. Defendant must notify Class Counsel of its election to withdraw not later than
21 fifteen (15) calendar days after the Administrator sends the final Exclusion List to Defense
22 Counsel.

23 **19. NOTICE OF JUDGMENT**

24 In addition to any duties set out herein, the Settlement Administrator shall provide
25 notice of the Final Judgment entered in the Action by posting the same on its website for a
26 period of no less than four (4) years.

1 **20. MISCELLANEOUS PROVISIONS**

2 **A. Interpretation of the Agreement**

3 This Agreement constitutes the entire agreement between the Parties with respect to its
4 subject matter. Except as expressly provided herein, this Agreement has not been executed in
5 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
6 written representations or terms shall modify, vary, or contradict its terms. In entering into this
7 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
8 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
9 enforced under the laws of the State of California, both in its procedural and substantive aspects,
10 without regard to its conflict of law provisions. Any claim arising out of or relating to the
11 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
12 Court of the State of California for the County of Santa Clara, and Plaintiffs and Defendant
13 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
14 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties, and
15 each of them, participated in the negotiation and drafting of this Agreement had available to them
16 the advice and assistance of independent counsel. As such, neither Plaintiffs nor Defendant may
17 claim that any ambiguity in this Agreement should be construed against the other. The Agreement
18 may be modified only by a writing signed by counsel for the Parties and approved by the Court.

19 **B. Further Cooperation**

20 The Parties and their respective attorneys shall proceed diligently to prepare and execute
21 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
22 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
23 will not take any action inconsistent with this Agreement, including, without limitation,
24 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
25 Party has taken actions inconsistent with the Settlement, including, without limitation,
26 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
27 actions, including enjoining any Party from communicating regarding the Settlement on an ex
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1 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
2 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
3 opt-outs and/or objections.

4 **C. Confidentiality**

5 Plaintiffs and Class Counsel will not make any public disclosure of the Settlement
6 until after the filing of the motions for preliminary approval of the Settlement. Plaintiffs and
7 Class Counsel represent that they have not made any such disclosure. Class Counsel will take all
8 steps necessary to ensure that Plaintiffs are aware of, and will encourage them to adhere to, the
9 restriction against any public disclosure of the Settlement until after the Settlement is
10 preliminarily approved by the Court. After preliminary approval, Class Counsel and Plaintiffs
11 agree not to publicize the terms of this Settlement with the media, including but not limited to,
12 any newspaper, journal, magazine, website and/or online reporter of settlements or on any
13 website.

14 **D. Counterparts**

15 The Agreement may be executed in one or more actual or non-original counterparts, all
16 of which will be considered one and the same instrument and all of which will be considered
17 duplicate originals.

18 **E. Authority**

19 Each individual signing below warrants that he or she has the authority to execute this
20 Agreement on behalf of the Party for whom or which that individual signs.

21 **F. No Third-Party Beneficiaries**

22 Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California,
23 Class Counsel, and the Released Parties are direct beneficiaries of this Agreement, but there are
24 no third-party beneficiaries.

25 **G. Deadlines Falling on Weekends or Holidays**

26 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
27 or legal holiday, that deadline shall be continued until the following business day.

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H. Jurisdiction of the Court

Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

I. Severability

In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way affect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

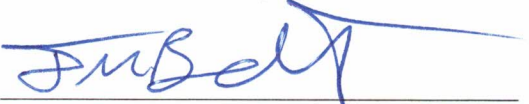
Dated: _____, 2024

JENNIFER MONTOYA
Plaintiff and Class Representative

Dated: _____, 2024

JUAN MANSO GONTEZ
Plaintiff and Class Representative

Dated: June 19, 2024



FPR II, LLC, dba LEADPOINT BUSINESS SERVICES
Defendant
By: Dan Behrendt
Its: CFO

1 **H. Jurisdiction of the Court**

2 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
3 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of
4 this Settlement Agreement and all orders and judgments entered in connection therewith, and the
5 Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,
6 implementing, and enforcing the settlement embodied in this Settlement Agreement and all orders
7 and judgments entered in connection therewith.

8 **I. Severability**

9 In the event that one or more of the provisions contained in this Agreement shall for any
10 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
11 unenforceability shall in no way affect any other provision if Defendant's Counsel and Class
12 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
13 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

14
15 **IT IS SO AGREED:**

16 Dated: 06-13, 2024

Jennifer Montoya
JENNIFER MONTOYA
Plaintiff and Class Representative

18
19
20 Dated: _____, 2024

JUAN MANSO GONTEZ
Plaintiff and Class Representative

21
22
23 Dated: _____, 2024

FPR II, LLC, dba LEADPOINT BUSINESS
SERVICES
Defendant
By: _____
Its: _____

1 **H. Jurisdiction of the Court**

2 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
3 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of
4 this Settlement Agreement and all orders and judgments entered in connection therewith, and the
5 Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,
6 implementing, and enforcing the settlement embodied in this Settlement Agreement and all orders
7 and judgments entered in connection therewith.

8 **I. Severability**

9 In the event that one or more of the provisions contained in this Agreement shall for any
10 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
11 unenforceability shall in no way affect any other provision if Defendant’s Counsel and Class
12 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
13 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

14
15 **IT IS SO AGREED:**

16
17 Dated: _____, 2024

JENNIFER MONTOYA
Plaintiff and Class Representative

18
19 Dated: **06/17**
20 _____, 2024



Juan Manso (Jun 17, 2024 11:29 PDT)

JUAN MANSO GONTEZ
Plaintiff and Class Representative

21
22
23 Dated: _____, 2024

FPR II, LLC, dba LEADPOINT BUSINESS
SERVICES
Defendant
By: _____
Its: _____

1 **AGREED AS TO FORM:**

2
3 Dated: June 19, 2024



Kyle Nordrehaug
APARAJIT BHOWMIK
NICHOLAS J. BLOUW

4
5
6
7
8
9 Dated: , 2024



DAVID D. BIBIYAN
VEDANG J. PATEL
BRANDON M. CHANG

Counsel for Plaintiff JENNIFER MONTOYA
and JUAN MANSO GONTEZ

10
11
12
13
14 Dated: June 21, 2024



CHAD D. GREESON
NICHOLAS A. GIOIELLO

Counsel for Defendant FPR II, LLC, dba
LEADPOINT BUSINESS SERVICES

EXHIBIT “A”

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT, YOUR RIGHTS, AND DATE
FOR FINAL APPROVAL HEARING**
Montoya. v. FPR II, L.L.C., et al.
(County of Santa Clara, California Superior Court Case No. 22CV404499)

As a current or former non-exempt, hourly-paid employee of FPR II, L.L.C., dba Leadpoint Business Services, in the State of California, you are entitled to receive money from a class action settlement.

PLEASE READ THIS NOTICE CAREFULLY

You have received this Notice of Class Action Settlement (“Notice”) because the records of FPR II, L.L.C., dba Leadpoint Business Services, (“Leadpoint” or “Defendant”) show that you are a “Class Member” and, therefore, are entitled to payment from this class action settlement. “Class Members” are all persons currently or formerly employed by Leadpoint as nonexempt, hourly-paid employees during the period from October 13, 2018, through January 25, 2024 (“Class Period”) in the State of California. “Class Members” does not include any current or former employees directly hired by MarBorg Industries, Inc. and/or MarBorg Recovery Management, LLC (collectively, “MarBorg”) during the period from October 13, 2018, through January 25, 2024, except to the extent any “Class Members” may claim liability under a theory of joint employment.

As a “Class Member” you have a right to know about a proposed settlement of a class action lawsuit, and about all your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

Jennifer Montoya and Juan Manso Gontez were non-exempt, hourly-paid employees of Leadpoint. They are the “Plaintiffs” in this class action lawsuit, *Montoya v. FPR II, LLC, et al.*, filed in Santa Clara County Superior Court, Civil Case Number 22CV404499 (the “Lawsuit”), alleging, among other things, claims for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1 and the Applicable IWC Wage Order; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, 1194, 119 and the Applicable IWC Wage Order; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Breaks in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226 and the Applicable IWC Wage Order; (7) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, 203, 204 and the Applicable IWC Wage Order; (9) Failure to Pay Sick Wages in Violation of Cal. Lab. Code §§ 201-204, 233, 246; (10) Waiting Time Penalties in Violation of Cal. Lab. Code §§ 201, 202, 203 and the Applicable IWC Wage Order; (11) Failure to Timely Pay Wages in Violation of Cal. Lab. Code § 204 and the Applicable IWC Wage Order; and (12) Violation of the Private Attorneys General Act (“PAGA”) [Cal. Lab. Code § 2698, *et seq.*].

Santa Clara County Superior Court granted preliminary approval the proposed Settlement and this Notice. The Court has not made any determination of the validity of the claims in the Lawsuit. Leadpoint expressly denies any liability or wrongdoing of any kind associated with this Lawsuit and further denies all material allegations set forth in the Lawsuit. Leadpoint contends that it has complied with Federal and California law in all respects, and nothing about this Notice should be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Leadpoint. The Court has only preliminarily approved this class action settlement. The Court will decide whether to give final approval to this settlement at the Final Approval Hearing.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit. Based on Defendant’s records, and the Parties’ current assumptions, your estimated payment as a Class Member is <<\$_____>>. See the explanation on page 4 below.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment for settlement of the class claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the settlement of the Lawsuit. If you worked for Defendants as a non-exempt, hourly-paid employee during the period of July 12, 2021 through January 25, 2024 (“PAGA Period”) as well, then you will be deemed an “Aggrieved Employee” and you will still receive your share of the proceeds available from the settlement of the PAGA Released Claims, defined below, (your “Individual PAGA Payment”) even if you opt out of the class settlement. “Aggrieved Employees” do not include any current or former employees directly hired and employed by MarBorg, except to the extent any “Aggrieved Employee” may claim liability under a theory of joint employment.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, _____ about why you object to the settlement, and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement, despite your objection, you will still be bound by the Settlement. You or your attorney may also address the Court during the Final Approval Hearing scheduled for [DATE AND TIME] in Department 19 of the Santa Clara County Superior Court, located at 161 North First Street, San Jose, CA 95113. Class Members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely _____ are _____ provided _____ at https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

Summary of the Settlement Terms

Plaintiffs and Defendants have agreed to settle this case on behalf of themselves and Class Members and Aggrieved Employees for the Gross Settlement Amount of \$1,500,000.00, unless increased pursuant to the Settlement Agreement. The Gross Settlement with the exception of employer payroll taxes, which will be paid separately from an in addition to the settlement Amount, the Settlement Amount is an “all in” amount and includes: (1) Administration Costs up to \$15,000 (2) service awards of up to \$12,500.00 to Jennifer Montoya and Juan Manso Gontez each, for a total of \$25,000.00 to plaintiffs for their time and effort in pursuing this case; (3) up to one-third (1/3) of the Gross Settlement Amount in attorneys’ fees which, unless escalated pursuant to the Settlement Agreement, amounts to \$500,000.00; (4) up to \$50,000.00 in litigation costs to Class Counsel, according to proof; (5) payment allocated to PAGA penalties in the amount of \$75,000.00 of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA, or \$56,250.00, will be paid to the LWDA and twenty-five percent (25%), or \$18,750.00, will be distributed to “Aggrieved Employees.” After deducting these sums, a total of approximately not less than \$ [REDACTED] will be available for distribution to Class Members (“Net Settlement Amount”).

What do I Release Under The Settlement?

Upon the Effective Date and payment by Defendant to the Settlement Administrator of the full Gross Settlement Amount and Employer’s Taxes necessary to effectuate the Settlement, Plaintiffs and all Participating Class Members, will release Defendant and the Released Parties from all class claims that occurred during the Class Period that were alleged, or reasonably could have been alleged based upon the facts alleged in the Operative Complaint, including any attached Exhibits, including the following: Unfair competition in violation of California Business and Professions Code §§ 17200, *et seq.*; failure to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1; failure to pay overtime wages in violation of California Labor Code § 510; failure to provide request meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; failure to provide request rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; failure to provide accurate itemized wage statements in violation of California Labor Code § 226; failure to reimburse employees for required expenses in violation of California Labor Code § 2802 (including mandatory safety uniforms, gear required to perform job duties, cell phones, and personal vehicles or mileage reimbursement); failure to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and failure to pay sick wages in violation of California Labor Code §§ 201-204, 233, 246; any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts pleaded in the complaints; and any and all other claims under California common law, the California Labor Code, including, Lab. Code §§ 210, 221, 226(a), 227.3, 1198, the Fair Labor Standards Act (“FLSA”), California Industrial Welfare Commission Wage Orders, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the California Business and Professions Code alleged in or that could have been alleged under the Operative Complaint (the “Released Class Claims”).

The Aggrieved Employees and, to the extent permitted by law, the State of California, shall release Defendant and the Released Parties, for the defined PAGA Period, from all claims for PAGA civil penalties, attorneys’ fees, claims for interest, or costs pursuant to the PAGA, for any violations that were alleged, or reasonably could have been alleged in the Operative Complaint and/or the PAGA Notices, including, Labor Code §§ 201, 202, 203, 204, 210, 221, 226(a), 226.3, 226.7, 227.3, 246 *et seq.*, 510, 512, 558, 558(a)(1)(2), 1174.5, 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), or premiums in connection with any of the preceding claims, as well as any claims under the California Labor Code, California Industrial Welfare Commission’s Wage Orders, or the California Code of Regulations, based upon the facts that were alleged in the PAGA Notices and Operative Complaint (the “Released PAGA Claims”).

“Released Parties” shall mean Defendant, MarBorg Industries, Inc., MarBorg Recovery Management, LLC, Waste Management, Inc., Republic Services, Inc., FCC Environmental Services, LLC, and any of their past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as well as each of their past, present, and future officers, directors, employees, partners, members, owners, shareholders, agents, attorneys, insurers, reinsurers, and any individual or entity which was alleged or could have been alleged as jointly liable with Leadpoint and/or MarBorg as an employer of the Class Members.

The Released Claims by Class Members and Aggrieved Employees set forth herein exclude any and all claims asserted against MarBorg stemming solely from their direct employment by MarBorg during the Class Period and/or the PAGA Period (to the extent Class Members and/or Aggrieved Employees may attempt to allege any claim under a theory of joint employment between the Released Parties, those claims have been expressly released as a material term and condition of this Agreement) and all other claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, and any other claims outside of the Class Released Claims of Participating Class Members arising during the Class Period and the PAGA Released Claims of Aggrieved Employees (and, to the extent permitted by law, the State of California) arising outside of the PAGA Period.

Distribution to Class Members

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members’ respective number of Workweeks worked during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees’ respective number of Workweeks worked during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees.

The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period (“Class Member’s Workweeks”), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period (“Class Workweeks”). Additionally, the Settlement Administrator will determine the total number of Pay Periods worked by each Aggrieved Employee during the PAGA Period (“Aggrieved Employee’s Pay Periods”), as well as the aggregate number of Pay Periods worked by all Aggrieved Employees during the PAGA Period (“PAGA Pay Periods”).

To determine each Settlement Class Member’s Individual Settlement Share, the Settlement Administrator will use the following formula: Individual Settlement Share = (Settlement Class Member’s Workweeks worked ÷ Class Workweeks) × Net Settlement Amount. To determine each Participating Class Member’s Participating Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Workweeks worked by all Participating Class Members during the Class Period (“Participating Class Workweeks”) and use the following formula: Individual Settlement Share = (Participating Class Member’s Workweeks worked ÷ Participating Class Workweeks) × Net Settlement Amount.

Defendant’s records indicate that you worked [Eligible Workweeks] Workweeks as an hourly-paid employee in California during the Class Period and [Eligible Pay Periods] Pay Periods during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award] and your estimated payment as an Aggrieved Employee would be [\$Estimated Award].

Tax Reporting

Payments to Class Members as PAGA Payments shall be designated as penalties. All other payments to Class Members from the Net Settlement Amount shall be designated 20% as wages and 80% as penalties. The Settlement Administrator will be responsible for issuing a form W-2 to each Class Member for the amount each receives for unpaid “wages” and any IRS Form 1099s required by law. This notice is not intended to provide legal or tax advice on your Settlement Share.

Your check will be valid for 180 days after issuance. Thereafter, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed, or abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted as follows: Child Advocates of Silicon Valley, the *cy pres* recipient, for use in Santa Clara County.

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Individual Settlement Payment (*i.e.*, your share of the Net Settlement Amount) because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the entire release in the settlement and receive your Individual Settlement Payment, as well as your Individual PAGA Payment if you are also an Aggrieved Employee. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment(s) set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all “Released Claims” he or she may have or had upon final approval of this Settlement and payment by Defendants to the Settlement Administrator.

Option 2 – Opt Out of the Settlement

In order to opt out of the Settlement, the Class Member must timely submit by mail an opt-request request to the Settlement Administrator by the Response Deadline. The opt-out request should state the Class Member’s name, address, the last four (4) digits of the Class Member’s Social Security Number, the Class Member’s signature, and the following statement: “Please exclude me from the Settlement Class in the *Montoya v. FPR II, LLC, et al.*, matter,” or any statement of similar meaning standing for the proposition that the Class Member does not wish to participate in the Settlement. Sign, date, and mail your written request for exclusion to the address below:

[Settlement Administrator]

[Mailing Address]

The Request for Exclusion form must be mailed and postmarked to the Administrator not later than [RESPONSE DEADLINE].

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves the settlement, then even if you request exclusion from the settlement, if you are an Aggrieved Employee, you will still receive your Individual

PAGA Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right, if any, to individually pursue only the Class Released Claims.

Option 3 – Submit an Objection to the Settlement

If you wish to object to the Settlement, you may submit an objection in writing by mail, stating why you object to the Settlement. Your written objection must provide your name, address, last four (4) digits of your Social Security Number, your signature, a statement of whether you plan to appear at the Final Approval Hearing, and a statement of the reason(s), along with whatever legal authority, if any, why you believe that the Court should not approve the Settlement. Your written objection must be mailed to the Administrator no later than [RESPONSE DEADLINE]. Please note that you cannot both object to the Settlement and opt out of the Settlement. If you exclude yourself, then your objection will be overruled. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

You may also appear at the Final Approval Hearing at your expense. Class Members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number (*Montoya v. FPR II, LLC, et al.*, Case Number 22CV404499), (b) be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, or by filing in person at the same location; (c) also be mailed to the law firms identified below, and (d) be filed or postmarked on or before [RESPONSE DEADLINE].

Final Approval Hearing

You may, if you wish, appear at the Final Approval Hearing set for [REDACTED] at [REDACTED]:[REDACTED].m. Before Hpn. Theodore Zayner in Department 19 of the Santa Clara County Superior Court, located at 161 North First Street, San Jose, CA 95113, and orally object to the Settlement, discuss your written objections with the Court and the Parties, or otherwise comment on the Settlement at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense. Class Members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may call the Settlement Administrator at [PHONE NUMBER] or Class Counsel, whose information appears below:

Attorneys For Plaintiff and Class Members	Attorneys For Defendants
BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP Norman B. Blumenthal (State Bar #068687) Kyle R. Nordrehaug (State Bar #205975)	LITTLER MENDELSON, P.C. Chad D. Greeson Nicholas Gioiello 1255 Treat Boulevard, Suite

Email: kyle@bamlawca.com 2255 Calle Clara La Jolla, CA 92037 Telephone: (858)551-1223; Facsimile: (858)551-1232 Website: www.bamlawca.com BIBIYAN LAW GROUP, P.C. David D. Bibiyan (SBN 287811) david@tomorrowlaw.com Jeffrey D. Klein (SBN 297296) jeff@tomorrowlaw.com Vedang J. Patel (SBN 328647) vedang@tomorrowlaw.com 1460 Westwood Boulevard Los Angeles, CA 90024 Tel: (310) 438-5555; Fax: (310) 300-1705	600 Walnut Creek, CA 94597 Tel: (925) 932-2468 Fax: (925) 946-9809 E-Mail: cgreeson@littler.com ; ngioiello@littler.com
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You may also visit the Settlement Administrator's website at [\[WEBSITE\]](#) to gain access to key documents in this case, including the Settlement Agreement, the Order Granting Preliminary Approval of this Settlement, the Order Granting Final Approval of this Settlement, and the Final Judgment.

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Santa Clara's Electronic Filing and Service Website at www.scefiling.org, or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.**