

Kevin Mahoney (SBN: 235367)

kmahoney@mahoney-law.net

Morgan Glynn (SBN: 303822)

mglynn@mahoney-law.net

MAHONEY LAW GROUP, APC

249 E. Ocean Blvd., Ste. 814

Long Beach, CA 90802

Telephone: (562) 590-5550

Facsimile: (562) 590-8400

Attorneys for Plaintiff KERRY SOTO as individual and on behalf of all employees similarly situated

Grace Horoupian (SBN: 180337)

ghoroupian@laborlawyers.com

Boris Sorsher (SBN: 251718)

bsorsher@laborlawyers.com

FISHER & PHILLIPS LLP

2050 Main Street, Suite 1000

Irvine, California 92614

Telephone: (949) 851-2424

Facsimile: (949) 851-0152

Attorneys for Defendant UNITED PACIFIC WASTE dba UPW WASTE AND RECYCLING SERVICES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF LOS ANGELES

KERRY SOTO as an individual and on behalf
of all similarly situated employees

Plaintiff,

v.

UNITED PACIFIC WASTE dba UPW
WASTE AND RECYCLING SERVICES,
and DOES 1 through 50, inclusive

Defendant.

Case No.: BC607176

STIPULATION OF RESOLUTION

*[Assigned for All purposes to:
Honorable Carolyn B. Kuhl in Dept.: 309]*

Complaint Filed: January 14, 2016

Trial Date: None Set

1 This Stipulation of Resolution is made by and between the Named Plaintiff, Kerry Soto
2 (“Plaintiff”), on his own behalf and on behalf of all members of the Settlement Class, as defined
3 below, on the one hand, and United Pacific Waste dba UPW Waste and Recycling Services
4 (“Defendant”) on the other hand (collectively the “Parties”), in the lawsuit entitled Kerry Soto
5 v. United Pacific Waste dba UPW Waste and Recycling Services, et al., filed in Los Angeles
6 County Superior Court, Case No. BC607176. This Stipulation of Resolution resolves all claims
7 that were asserted or could have been asserted against Defendant pertaining to the claims in the
8 Litigation.

9 **I. DEFINITIONS**

10 **A. Administrative Costs.** All administrative costs of settlement, including cost of
11 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged
12 by the Settlement Administrator in connection with the execution of its duties under this
13 Stipulation of Settlement.

14 **B. Agreement.** The terms “Agreement” or “Settlement Agreement” are used
15 synonymously herein to mean this Stipulation of Resolution for purposes of Resolution.

16 **C. Class Counsel.** The term “Class Counsel” as used herein means: Kevin
17 Mahoney, Esq., and Morgan Glynn, Esq., and all the lawyers, of Mahoney Law Group, APC
18 who are (or were at some time) counsel for and acting on behalf of Named Plaintiff and the
19 Settlement Class. The term Class Counsel shall be used synonymously with the term Plaintiff’s
20 Counsel.

21 **D. Court.** The term “Court” as used herein means the Superior Court of the State
22 of California for the County of Los Angeles.

23 **E. Effective Date.** The term final shall mean the first business day upon which the
24 last of the following have occurred:

- 25 a. If Class Members have not filed objections, or if they have filed objections,
26 said objections have been withdrawn, entry of the Final Judgment in this
27 Action after the Court has granted final approval of the Settlement, and a file
28 stamped copy of the Final Judgment with a proof of service has been served

on all parties by Class Counsel, or

- b. If Stipulated Class Members have filed objections that have not been withdrawn, either (1) the time to appeal, object or attack the Court's entry of Final Judgment has expired and there has been no appeal, objection or attack; or (2) The court of last resort to which any appeal is taken has affirmed its entry of Final Judgment in its entirety or the Stipulated Class Member has presented a petition for review and the affirmance is no longer subject to further appeal or review, and no further challenge to the entry of Final Judgment is possible.

F. Date of Final Approval. The terms "Date of Final Approval" or "Final Approval" as used herein mean the date of the Final Fairness and Approval Hearing.

G. Defendant. The term "Defendant" as used herein means United Pacific Waste dba UPW Waste and Recycling Services.

H. Employer Taxes. Employer-funded taxes and contributions imposed on the wage portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state taxes and contributions required of employers, such as for unemployment insurance. Defendant shall pay the employer's share of payroll taxes separate and apart from the Settlement Amount as defined in herein.

I. Litigation. The term "Litigation" as used herein means the action entitled filed in Los Angeles County Superior Court, Case No. 30-2015-00800771-CU-OE-CXC.

J. Named Plaintiff. The term "Named Plaintiff" as used herein means Kerry Soto. The term Named Plaintiff shall be used synonymously with the term Class Representative.

K. Net Settlement Amount. The term "Net Settlement Amount" as used herein means the Settlement Amount minus any award of attorneys' fees and Litigation costs, Administrative Costs, enhancement to the Named Plaintiff, twenty-five percent (25%) of penalties recoverable pursuant to California's Private Attorney General Act ("PAGA") ("PAGA Settlement"), and as provided in Sections XIII, VIII, XIV, XV, and XVI, respectively.

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1 **L. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
2 payments made to the Settlement Class as part of the Resolution, including wages, penalties and
3 interest.

4 **M. Resolution.** The term “Resolution” as used herein means this Agreement to
5 resolve the Litigation.

6 **N. Settlement Administrator.** The term “Settlement Administrator” as used herein
7 means Phoenix Settlement Administrator which will be responsible for the administration of the
8 Settlement Payment, as defined below, and all related matters.

9 **O. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
10 used synonymously herein to means this Stipulation of Resolution.

11 **P. Settlement Amount.** The terms “Settlement Amount” and “Gross Settlement
12 Fund” as used herein mean a fund in the sum of Three Hundred Thousand dollars and zero cents
13 (\$300,000.00), which shall be paid by Defendant, and from which all: Net Settlement Payments,
14 Court approved attorneys’ fees and Litigation costs pursuant to Section XIII, Administrative
15 Costs pursuant to Section VIII, enhancement to Named Plaintiff pursuant to Section XIV,
16 statutory penalties, interest, and PAGA penalties pursuant to Section XVI shall be paid, except
17 as provided herein. The Settlement shall be an “all in” settlement and shall not provide for a
18 reversion.

19 **Q. Settlement Class.** For settlement purposes only, the Parties agree to the
20 certification of a class pursuant to California Code of Civil Procedure section 382 defined as:
21 All persons who are or were employed by Defendant as non-exempt, hourly paid drivers in the
22 state of California at any time between January 14, 2012, and February 23, 2017. (the
23 “Settlement Class”).

24 **S. Settlement Period.** The term “Settlement Period” as used herein means the
25 period from January 14, 2012 through February 23, 2017.

26 **T. Preliminary Approval.** The term “Preliminary Approval” as used herein means
27 the date on which the Court signs the preliminary approval order and grants preliminary
28 approval of the Resolution.

1 **II. BACKGROUND**

2 **A.** In the Litigation, the Named Plaintiff alleges on behalf of himself and all others
3 similarly situated, that Defendant violated California state wage and hour laws, the California
4 Business and Professions Code Section 17200 *et seq.*, and PAGA, as a result of Defendant's
5 California wage and hour policies and practices. Specifically, Plaintiff alleges that Defendant
6 failed to provide meal breaks, and failed to authorize and permit legally compliant rest breaks
7 each day. Plaintiff further alleges that minimum and overtime wages were not properly paid.
8 Moreover, Plaintiff alleges that the aforementioned conduct resulted in the employees receiving
9 inaccurate wage statements and the underpayment of wages to employees upon termination
10 and/or resignation.

11 Class Counsel conducted formal and informal discovery that yielded information and
12 documentation concerning the claims set forth in the Litigation, such as Defendant's policies
13 and procedures regarding the payment of wages, meal and rest breaks, time keeping, as well as
14 information regarding the number of putative class members and the mix of current versus
15 former employees, the average number of hours worked, the wage rates in effect, and length of
16 employment for the average putative class member.

17 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
18 negotiations. On February 23, 2017, the Parties participated in a mediation before Hon. Peter D.
19 Lichtman. The Parties were unable to reach a settlement at mediation. However, the Parties
20 continued settlement discussions following the mediation, and reached a potential settlement,
21 subject to the approval of the Court, and finalization of a formal Stipulation for Resolution. The
22 Parties have now entered into a more detailed, formalized Settlement Agreement for submission
23 to the Court for preliminary and Final Approval.

24 **C.** Class Counsel has conducted an investigation of the law and facts relating to the
25 claims asserted in the Litigation and has concluded, taking into account the sharply contested
26 issues involved, the poor financial condition of the Defendant, the risk of a bankruptcy filing by
27 the Defendant, the expense and time necessary to pursue the Litigation through trial and any
28 appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse

1 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
2 the Named Plaintiff and the members of the Settlement Class pursuant to this Agreement, that a
3 settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,
4 adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his own behalf
5 and on behalf of the Settlement Class, has agreed to settle the Litigation with Defendant on the
6 terms set forth herein.

7 **D.** Defendant has concluded that, because of the substantial expense of defending
8 against the Litigation, the length of time necessary to resolve the issues presented herein, the
9 inconvenience involved, and the concomitant disruption to their business operations, it is in
10 their best interests to accept the terms of this Agreement. Defendant denies each of the
11 allegations and claims asserted against it in the Litigation. However, Defendant nevertheless
12 desires to settle the Litigation for the purpose of avoiding the burden, expense and uncertainty
13 of continuing litigation and for the purpose of putting to rest the controversies engendered by
14 the Litigation.

15 **E.** This Agreement is intended to and does effectuate the full, final and complete
16 resolution of all allegations and claims that were asserted, or could have been asserted, in the
17 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II.A.

18 **III. JURISDICTION**

19 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
20 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
21 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has
22 granted Final Approval of the Resolution and after the Court has ordered the dismissal of the
23 action, pursuant to California Code of Civil Procedure Section 664.6 the Court shall retain
24 jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing
25 this Resolution consistent with the terms set forth herein.

26 **IV. STIPULATION OF CLASS CERTIFICATION**

27 The Parties stipulate to the certification of this Settlement Class for purposes of
28 Resolution only. This Stipulation is contingent upon the Preliminary and Final Approval and

1 certification of the Settlement Class only for purposes of Resolution. Should the Resolution not
2 become final, for whatever reason, the fact that the Parties were willing to stipulate
3 provisionally to class certification as part of the Resolution shall have no bearing on, and shall
4 not be admissible in connection with, the issue of whether a class should be certified in a non-
5 settlement context in the Litigation. Defendant expressly reserves the right to oppose class
6 certification should this Resolution be modified or reversed on appeal or otherwise not become
7 final.

8 **V. MOTION FOR PRELIMINARY APPROVAL**

9 Named Plaintiff will bring a motion for an order preliminarily approving the Resolution
10 including the Notice of Settlement of Class Action, attached hereto as Exhibit "A." The date
11 that the Court grants Preliminary Approval of this Agreement will be the "Preliminary Approval
12 Date." Class Counsel will prepare the Motion for Preliminary Approval.

13 **VI. STATEMENT OF NO ADMISSION**

14 **A.** Defendant denies liability to Named Plaintiff and to the Settlement Class upon
15 any claim or cause of action. This Agreement does not constitute, and is not intended to
16 constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the
17 allegations or claims made against it in the Litigation.

18 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor
19 any statements, discussions or communications, nor any materials prepared, exchanged, issued
20 or used during the course of the negotiations leading to this Agreement or the Resolution, is
21 intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be
22 used or be admissible in any way in this case or any other judicial, arbitral, administrative,
23 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
24 local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law
25 or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement,
26 directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or
27 other forum or proceeding, as purported evidence of any violation of any federal, state, or local
28 law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in

1 equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in
2 any proceeding before the Court that has as its purpose the interpretation, implementation, or
3 enforcement of this Agreement or any orders or judgments of the Court entered in connection
4 with the Resolution.

5 **C.** None of the documents produced or created by Named Plaintiff or the Settlement
6 Class in connection with the claims procedures or claims resolution procedures constitute, and
7 they are not intended to constitute, an admission by Defendant of any violation of any federal,
8 state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or
9 duty at law or in equity.

10 **D.** The Parties agree that class certification pursuant to California *Code of Civil*
11 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only.
12 Nothing in this Agreement will be construed as an admission or acknowledgement of any kind
13 that any class should be certified or given collective treatment in the Litigation or in any other
14 action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this
15 Agreement will be admissible in any court or other tribunal regarding the propriety of class
16 certification or collective treatment. In the event that this Agreement is not approved by the
17 Judge or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff
18 will not be deemed to have waived, limited or affected in any way any claims, rights or
19 remedies in the Litigation, and Defendant will not be deemed to have waived, limited, or
20 affected in any way any of their objections or defenses in the Litigation.

21 **VII. WAIVER, RELEASE, DISMISSAL, AND CONFIDENTIALITY**

22 **A. Release as to All Settlement Class Members.**

23 Upon the Date of Final Approval, Named Plaintiff and all members of the Settlement
24 Class, except those that make a valid and timely request to be excluded from the Class, will
25 release any and all claims and causes of action, known or unknown, contingent or accrued,
26 against Defendant, Defendant's parents, subsidiaries, affiliates, their insurers, attorneys and all
27 agents thereof, arising out of the facts and claims asserted in the Action for wage and hour
28 violations, or any other claims or causes of action that could have reasonably been asserted in

1 the Litigation, based upon the facts alleged: including meal and rest breaks; unpaid wages,
2 including minimum wages, regular wages, overtime and double time wages, wage statement
3 violations; separation pay violations; unfair business practices; and PAGA, and any other
4 applicable provisions of state or federal law, including the applicable IWC wage order.

5 **B. General Release by Named Plaintiff Only.**

6 In addition to the release made in Section VII(A), Named Plaintiff makes the additional
7 following general release of all claims, known or unknown. Named Plaintiff releases
8 Defendant, and each of its respective subsidiaries, affiliates, predecessors or successors in
9 interest, officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, and re-
10 insurers of any of them, from all claims, demands, rights, liabilities and causes of action of
11 every nature and description whatsoever, known or unknown, asserted or that might have been
12 asserted, whether in tort, contract, or for violation of any state or federal statute, rule or
13 regulation arising out of, relating to, or in connection with any act or omission by or on the part
14 of any Defendant. (The release set forth in this Paragraph B shall be referred to hereinafter as
15 the "General Release.")

16 With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the
17 Date of Final Approval, Named Plaintiff shall be deemed to have expressly waived and
18 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
19 1542 of the California Civil Code, or any other similar provision under federal or state law,
20 which provides:

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

26 Accordingly, if the facts relating in any manner to this Resolution are found hereafter to be
27 other than or different from the facts now believed to be true, the release of claims contained
28 herein shall be effective as to all unknown claims.

1 **C. Publicity.**

2 Named Plaintiff agrees that he has not and will not discuss, disclose, communicate, or
3 publish the Resolution. In response to any inquiries regarding the Litigation, Plaintiff will state
4 that “the case was resolved and it was resolved confidentially.”

5 Plaintiff’s attorneys are authorized to make a limited disclosure to the Court for the
6 purposes of obtaining the approval of the class settlement. Plaintiff’s counsel agrees to not
7 identify Defendant or its counsel directly in any media including Plaintiff’s counsels’ website

8 **VIII. SETTLEMENT ADMINISTRATOR**

9 Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix
10 Settlement Administrator. as the Settlement Administrator to administer the Resolution, which
11 includes but is not limited to distributing and responding to inquiries about the Notice of
12 Proposed Class Action Resolution and Workweek Dispute Form, determining the validity of
13 any disputes and opt-outs and calculate all amounts to be paid from the Net Settlement Fund.
14 Charges and expenses of the Settlement Administrator, estimated to be Ten Thousand Dollars
15 (\$10,000.00), will be paid from the Settlement Amount. Any charges and expenses of the
16 Settlement Administrator greater than the allocated Ten Thousand Dollars (\$10,000.00) will
17 come from the Settlement Amount. If the actual Settlement Administrator fees are less than the
18 Parties’ estimation, the difference between the actual and estimated Settlement Administrator
19 fees will revert to the participating settlement class members.

20 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

21 **A. Notice.**

22 Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared
23 a Notice of Class Action and Proposed Resolution (the “Notice”) and a Workweek Dispute
24 Form, which in substance will be provided to the members of the Settlement Class as follows:

25 As soon as practicable following Preliminary Approval of the Resolution, but no later
26 than fourteen days (14) calendar days after the Court’s Preliminary Approval order, Defendant
27 will provide to the Settlement Administrator the following information about each Settlement
28 Class member: (1) name; (2) last known home address; (3) number of workweeks as a class

1 member during the class period; and (4) social security number ("Class List"). Defendant
2 further agrees to consult with the Settlement Administrator prior to the production date to
3 ensure that the format will be acceptable to the Settlement Administrator.

4 The Settlement Administrator shall run all the addresses provided through the United
5 States Postal Service NCOA database (which provides updated addresses for any individual
6 who has moved in the previous four years who has notified the U.S. Postal Service of a
7 forwarding address) to obtain current address information, and shall mail the Notice and
8 Workweek Dispute Form to the members of the Settlement Class via first-class regular U.S.
9 Mail using the most current mailing address information available within fifteen (5) calendar
10 days of the receipt of the Class List from Defendant. The Notice shall provide the members of
11 the Settlement Class forty-five (45) days' notice of all applicable dates and deadlines.

12 The Notice will also include information regarding the nature of the Litigation; a
13 summary of the terms of the Settlement; the definition of the Settlement Class; a statement that
14 the Court has preliminarily approved the Settlement; the procedure and time period for
15 objecting to the Settlement, the date and location of the Final Approval hearing; information
16 regarding the opt-out procedure; and Defendant's calculation of the number of Eligible
17 Workweeks that each Settlement Class member has worked as an employee in California at any
18 time during Settlement Period. The Notice shall enclose the Workweek Dispute Form for
19 Settlement Class members.

20 For each Settlement Class member, the Workweek Dispute Form will identify the
21 number of Eligible Workweeks that she/he was employed and inform the employee of their
22 right to dispute this number by completing and returning the form within forty five (45) days of
23 the postmark date of the Workweek Dispute Form. Class Member's receipt of settlement
24 proceeds is not conditional on the submission of the Workweek Dispute Form. Absent the
25 receipt of a Workweek Dispute Form the number of workweeks identified in the Workweek
26 Dispute Form shall be determined to be accurate. The resolution of any disputes concerning the
27 number of Eligible Workweeks is discussed in section X.

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1 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
2 submit the applicable and available information, including name, Social Security number, and
3 original mailing address, to a company that specializes in address skip tracing in an attempt to
4 locate a more current address. If the Settlement Administrator is successful in locating a new
5 address, it will re-mail the Notice to the Settlement Class member. Further, any Notices
6 returned with a forwarding address to the Settlement Administrator, as non-deliverable before
7 the deadline date, shall be sent to the forwarding address affixed thereto.

8 Should any member of the Settlement Class timely submit a Workweek Dispute Form
9 with a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by
10 the Settlement Administrator of each timely submitted Workweek Dispute Form, send a
11 deficiency notice. The deficiency notice will provide the member of the Settlement Class no
12 more than fourteen (14) days from the mailing of the deficiency notice to postmark a written
13 response to cure all deficiencies. The failure of a member of Settlement Class to timely submit
14 a Workweek Dispute or timely respond to a notice of deficiency shall invalidate the dispute
15 unless all Parties' counsel agrees to allow the dispute.

16 No later than fifteen (15) days prior to the Final Approval Hearing, the Settlement
17 Administrator shall provide counsel for Defendant and Class Counsel with a declaration
18 attesting to the completion of the Notice process, including the number of attempts to obtain
19 valid mailing addresses for and re-sending of any returned Notices, as well as the number of
20 valid Workweek Dispute Forms, opt-outs and deficiencies which the Settlement Administrator
21 received.

22 **B. Objections.**

23 In order for any Settlement Class member to object to this Resolution, or any term of it,
24 the person making the objection must not submit a request for exclusion (i.e., must not opt out)
25 and may, by no later than forty-five (45) days after the Notice of Proposed Class Action
26 Resolution was initially mailed to the Settlement Class members, serve on the Class
27 Administrator a written statement of the grounds of objection, signed by the objecting
28 Settlement Class member or his or her attorney, along with all supporting papers. The objection

1 should clearly explain why the Settlement Class member objects to the Resolution and state
2 whether the Settlement Class member (or someone on his or her behalf) intends to appear at the
3 Final Approval Hearing. The Settlement Class member may appear through a timely submitted
4 written objection, personally, or through an attorney, at his or her own expense, at the Final
5 Approval hearing to present his or her objection directly to the Court. Any attorney who will
6 represent an individual objecting to this Resolution must file a notice of appearance with the
7 Court and serve Class Counsel and Defense Counsel no later than forty-five (45) days after the
8 Notice of Proposed Class Action Resolution was initially mailed to the Settlement Class
9 members. If a Settlement Class member objects to this Resolution, the Settlement Class
10 member will remain a member of the Settlement Class and if the Court approves this
11 Agreement, the Settlement Class member will be bound by the terms of the Resolution and
12 Final Approval in the same way and to the same extent as a Settlement Class member who does
13 not object. The date of mailing of the Notice of Proposed Class Action Resolution to the
14 objecting Settlement Class member shall be conclusively determined according to the records of
15 the Settlement Administrator. The Court retains final authority with respect to the consideration
16 and admissibility of any Settlement Class member objections. Any Settlement Class member
17 who submits an objection may also participate in the settlement. Provided that the Settlement
18 Administrator mailed the Notice to a member of the Settlement Class as set forth in Paragraph
19 IX(A), this deadline to file an objection shall apply notwithstanding assertion by any member of
20 the Settlement Class of non-receipt of the Notice.

21 Named Plaintiff and Defendant will be permitted to respond in writing to such
22 objections no later than seven (7) days before the Final Approval hearing. Named Plaintiff
23 waives any right to object to the Resolution, and hereby endorses the Resolution as fair,
24 reasonable and adequate and in the best interests of the Settlement Class.

25 **C. Opportunity to be Excluded.**

26 In order for any Settlement Class member to validly exclude himself or herself from the
27 Settlement Class and this Resolution (i.e., to validly opt out), a written request for exclusion
28 ("Request to be Excluded") must be signed by the Settlement Class member or his or her

1 authorized representative and must be sent to the Settlement Administrator, postmarked by no
2 later than forty-five (45) days after the date the Settlement Administrator initially mails the
3 Notice of Proposed Class Action Resolution to the Settlement Class members. The Notice of
4 Proposed Class Action Resolution shall contain instructions on how to opt out.

5 The date of the initial mailing of the Notice of Proposed Class Action Resolution, and
6 the date the signed Request to be Excluded was postmarked, shall be conclusively determined
7 according to the records of the Settlement Administrator. Any Settlement Class member who
8 timely and validly submits a Request to be Excluded from the Settlement Class and this
9 Resolution will not be entitled to any individual settlement payment, will not be bound by the
10 terms and conditions of this Resolution, and will not have any right to object, appeal, or
11 comment thereon.

12 Any member of the Settlement Class who does not timely file and mail a Request to be
13 Excluded from the Settlement Class will be deemed included in the Settlement Class in
14 accordance with this Settlement. Named Plaintiff waives any right to be excluded from the
15 Settlement Class.

16 **D. Cooperation.**

17 The Parties and their respective counsel agree not to encourage members of the
18 Settlement Class to refrain from participating in the settlement, to opt out of this settlement, or
19 to object to the Resolution, directly or indirectly, through any means. However, if a Settlement
20 Class member contacts Class Counsel, Class Counsel may discuss the terms of the Resolution
21 and the Settlement Class member's options.

22 **X. DISPUTES OF ELIGIBLE WORKWEEKS**

23 Named Plaintiff and Defendant have agreed upon the following procedure to resolve all
24 disputes of the Settlement Class during the Settlement Period.

25 **A. Workweek Information.**

26 In the Workweek Dispute Form each member of the Settlement Class will receive a
27 calculation of the total number of Eligible Workweeks.

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1 If a member of Settlement Class does not dispute the number of Eligible Workweeks set
2 forth in the Workweek Dispute Form, such person need not take further action to participate in
3 the Settlement. If the member of the Settlement Class disputes the number of Eligible
4 Workweeks set forth in the Workweek Dispute Form, such person must follow the directions in
5 the Workweek Dispute Form and in the Notice, including preparing a statement setting forth the
6 number of Eligible Workweeks that such person believes in good faith is correct and stating that
7 the member of the Settlement Class authorizes the Settlement Administrator to review the
8 Settlement Class member's personnel file to determine such information and attaching any
9 relevant documentation in support thereof. The member of the Settlement Class must mail the
10 signed and completed statement no later than forty-five (45) days after the date of the mailing of
11 the Workweek Dispute Form, or the number of Eligible Workweeks set forth in the Dispute
12 Form will govern the Net Settlement Payments to the members of the Settlement Class.

13 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation
14 with Class Counsel and counsel for Defendant, will review the pertinent payroll records
15 showing the dates the Settlement Class member was employed and the pertinent leave(s) taken,
16 which records Defendant agree to make available to the Settlement Administrator and Class
17 Counsel.

18 After consulting with Class Counsel and counsel for Defendant, the Settlement
19 Administrator shall compute the number of Eligible Workweeks to be used in computing the
20 Settlement Class member's pro rata share of the Net Settlement Amount. In the event there is a
21 disparity between the dates a Settlement Class member claims he or she worked during the
22 Settlement Period and the dates indicated by Defendant's records, Defendant's records will
23 control unless inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the
24 Settlement Class member, in which case the paycheck stub(s) will control. The Settlement
25 Administrator's decision as to the total number of Eligible Workweeks shall be final and non-
26 appealable. The Settlement Administrator shall send written notice of the decision on any such
27 claim to the Settlement Class member, to Class Counsel, and counsel for Defendant within ten
28 (10) calendar days of receipt of the dispute.

1 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

2 **A. Distribution Formula.**

3 Members of the Settlement Class not opting out will receive a lump sum payment as
4 good and valuable consideration for the waiver and release of claims set forth in Section VII(A),
5 above, in an amount determined by the Settlement Administrator in accordance with the
6 provisions of this Agreement.

7 The lump sum payment to each member of the Settlement Class not excluding him/
8 herself will be determined by dividing the Net Settlement Amount by the total number of
9 Eligible Workweeks worked by all members of the Settlement Class during the Settlement
10 Period (the "Weekly Amount") and then multiplying the Weekly Amount by the number of
11 Eligible Workweeks by the individual class member as determined by the Settlement
12 Administrator in accordance with Section X, above, less any applicable withholding taxes based
13 on the Parties stipulated allocation of the Net Settlement Amount as provided for in Section XV,
14 below.

15 **B. Funding of Resolution.**

16 The funding of the Settlement Amount will be completed at one time with funds
17 provided to and escrowed by the Class Administrator. The funds used for the Settlement
18 Amount shall be paid to the Claims Administrator by Defendant within fifteen (15) days of the
19 Court's Final Approval Order. No distributions from these escrowed funds will be made until
20 fifteen (15) days after the Effective Date. The lump-sum distribution shall occur 15 days after
21 the Effective Date.

22 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
23 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip
24 trace search and, if another address is identified, shall mail the check to the newly identified
25 address. If the Settlement Administrator is unable to obtain a valid mailing address through this
26 process, the monies represented by the check shall be turned over according to the below
27 procedures.

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1 Settlement checks will specifically indicate that they are void if not negotiated within
2 one hundred eighty 180 days of their issuance. Any settlement checks that remain uncashed one
3 hundred eighty (180) or more calendar days after issuance by the Settlement Administrator shall
4 be voided. The Settlement Administrator will remit the amount of each Class Member's
5 uncashed Settlement Payment as follows: 25% to the State Treasury for deposit in the Trial
6 Court Improvement and Modernization Fund; 25% to the State Treasury for deposit into the
7 Equal Access Fund of the Judicial Branch; and 50% to Public Counsel, a pro bono law firm,
8 located at 610 South Ardmore Avenue, Los Angeles, California 90005.

9 **C. Time for Distribution of the Attorney Fees, Costs, and PAGA Settlement and**
10 **Enhancement to Plaintiff.**

11 The Settlement Administrator shall cause the Court approved enhancement to Named
12 Plaintiff, Court approved attorney's fees and Litigation costs, and PAGA Settlement to be paid
13 in pro rata amounts at the same time and manner as the Settlement Payments to the Settlement
14 Class Members.

15 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

16 The amounts paid under this Agreement do not represent a modification of any
17 previously credited hours of service under any employee benefit plan, policy or bonus program
18 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
19 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)
20 sponsored by Defendant, policies or bonus programs. Any payments made under the terms of
21 this Resolution shall not be applied retroactively, currently or on a going forward basis as
22 salary, earnings, wages, or any other form of compensation for the purposes of Defendant's
23 benefit plan, policy or bonus program. Defendant retains the right to modify the language of
24 their benefit plans, policies and bonus programs to effect this intent and to make clear that any
25 amounts paid pursuant to this Resolution are not for "hours worked," "hours paid," "hours of
26 service," or any similar measuring term as defined by applicable plans, policies and bonus
27 programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that
28 additional contributions or benefits are not required by this Resolution.

1 **XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

2 Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall
3 not seek or receive an amount in excess of One Hundred Thousand Dollars and Zero Cents
4 (\$100,000.00), which represents 33 1/3% of the Settlement Amount for all past and future
5 attorneys' fees necessary to prosecute, settle and administer the Litigation and this Resolution.
6 Additionally, Defendant shall not oppose an application by Class Counsel for, and Class
7 Counsel shall not seek or receive an amount in excess of Ten Thousand Dollars (\$10,000.00),
8 which represents all past and future Litigation costs and expenses necessary to prosecute, settle
9 and administer the Litigation and this Resolution. Any attorneys' fees or Litigation costs
10 awarded to Class Counsel by the Court shall be deducted from the Settlement Amount for the
11 purpose of determining the Net Settlement Amount. The "future" aspect of these amounts
12 include, without limitation, all time and expenses expended by Class Counsel in defending the
13 Resolution and securing Final Approval (including any appeals therein). There will be no
14 additional charge of any kind to either the members of the Settlement Class or request for
15 additional consideration from Defendant for such work. This amount shall include all
16 attorneys' fees, Litigation costs and expenses for which Named Plaintiff and Class Counsel
17 could claim under any legal theory whatsoever. Should the Court approve a lesser percentage
18 or amount of fees and/or Litigation costs than the amount that Class Counsel ultimately seeks,
19 then the unapproved portion or portions shall revert to the participating settlement class
20 members on a pro-rata basis.

21 **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

22 Defendant shall not oppose an application by Named Plaintiff, and Named Plaintiff shall
23 not seek or receive an amount in excess of Five Thousand Dollars (\$5,000.00) for his
24 participation in and assistance with the Litigation. Any enhancement awarded to Named
25 Plaintiff by the Court shall be deducted from the Settlement Amount for the purpose of
26 determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court
27 approves an enhancement of less than Five Thousand Dollars (\$5,000.00) to Named Plaintiff,
28

1 then the unapproved portion or portions shall revert into the Net Settlement Amount to be
2 distributed between the participating Settlement Class Members on a pro-rata basis.

3 **XV. TAXATION AND ALLOCATION**

4 The Parties agree that all employment taxes and other legally required withholdings will
5 be withheld from payments to the members of the Settlement Class and Named Plaintiff based
6 on the Parties stipulated allocation of the Net Settlement Amount as provided for in this Section.

7 The amount of federal income tax withholding will be based upon a flat withholding rate
8 for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as
9 amended or supplemented. Income tax withholding will also be made pursuant to applicable
10 state and/or local withholding codes or regulations.

11 For withholding tax characterization purposes and payment of taxes, the Net Settlement
12 Amount shall be deemed and is allocated by the Parties as follows (“Net Settlement
13 Allocation”):

- 14 (1) 20% as wages; and
15 (2) 60% as penalties
16 (3) 20% as interest.

17 Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required
18 by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the
19 Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the
20 date of this Agreement, the processes set forth in this section may be modified in a manner to
21 bring Defendant into compliance with any such changes.

22 Finally, any and all Employer Taxes that Defendant normally would be responsible for
23 paying will be paid over and above the Net Settlement Fund based on the stipulated Net
24 Settlement Allocation.

25 **XVI. PRIVATE ATTORNEY GENERAL ACT ALLOCATION**

26 In order to implement the terms of this Resolution and to settle claims alleged under the
27 Private Attorneys’ General Act, (“PAGA”) California Labor Code section 2698 *et seq.*, the
28 Parties agree to allocate Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) of the

1 penalties portion of the Settlement Amount as the PAGA Settlement Amount. Pursuant to
2 PAGA, Seventy Five Percent (75%) or One Thousand Eight Hundred Seventy-Five Dollars
3 00/100 (\$1,875.00) of the PAGA Settlement Amount will be paid to the California Labor and
4 Workforce Development Agency ("LWDA") payment and Twenty- Five Percent (25%) or Six
5 Hundred Twenty-Five Dollars (\$625.00) of the PAGA Settlement Amount will be distributed to
6 the class. Within fifteen (15) calendar days of the Effective Date the Settlement Administrator
7 shall disburse the PAGA Settlement to the California Labor Workforce Development Agency
8 ("LWDA").

9 **XVII. COURT APPROVAL**

10 This Agreement and the Resolution is contingent upon Final Approval by the Court and
11 the entry of judgment Named Plaintiff and Defendant agree to take all steps as may be
12 reasonably necessary to secure both Preliminary Approval and Final Approval of the
13 Resolution, to the extent not inconsistent with the terms of this Agreement, and will not take
14 any action adverse to each other in obtaining Judge approval, and, if necessary, appellate
15 approval, of the Resolution in all respects. Named Plaintiff and Defendant expressly agree that
16 they will not file any objection to the terms of this Stipulation of Resolution or assist or
17 encourage any person or entity to file any such objection.

18 **XVIII. MISCELLANEOUS PROVISIONS**

19 **A. Stay of Litigation.**

20 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation,
21 pending Final Approval of the Resolution by the Court.

22 **B. Interpretation of the Agreement.**

23 This Agreement constitutes the entire agreement between Named Plaintiff and
24 Defendant. Except as expressly provided herein, this Agreement has not been executed in
25 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
26 written representations or terms shall modify, vary or contradict its terms. In entering into this
27 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
28 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and

1 enforced under the laws of the State of California, both in its procedural and substantive
2 aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to
3 the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the
4 Superior Court of the State of California for the County of San Mateo, and Named Plaintiff and
5 Defendant hereby consent to the personal jurisdiction of the Judge over them solely in
6 connection therewith. The foregoing is only limited to disputes concerning this Agreement and
7 in no way limits or negates the enforceability and effect of the underlying arbitration
8 agreements signed by employees of Defendant, specifically including but not limited to Named
9 Plaintiff, obligating them to arbitrate any and all claims on an individual (and not on a class,
10 collective, or representative) basis. Named Plaintiff, on his own behalf and on behalf of the
11 Settlement Class, and Defendant participated in the negotiation and drafting of this Agreement
12 and had available to them the advice and assistance of independent counsel. As such, neither
13 Named Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be
14 construed against the other.

15 The terms and conditions of this Agreement constitute the exclusive and final
16 understanding and expression of all agreements between Named Plaintiff and Defendant with
17 respect to the Resolution of the Litigation. The Agreement may be modified only by a writing
18 signed by the original signatories and approved by the Court.

19 **C. Further Cooperation.**

20 Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to
21 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
22 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
23 possible.

24 **D. Confidentiality of Documents.**

25 After the expiration of any appeals period, Named Plaintiff, the Settlement
26 Administrator, and Class Counsel shall maintain the confidentiality of all documents, deposition
27 transcripts, declarations and other information obtained in the lawsuit, unless necessary for
28 appeal or such documents are ordered to be disclosed by the Judge or by a subpoena.

1 **E. Counterparts.**

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

5 **F. Authority.**

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

8 **G. No Third Party Beneficiaries.**

9 Named Plaintiff, members of the Settlement Class, and Defendant are direct
10 beneficiaries of this Agreement, but there are no third party beneficiaries.

11 **H. Force Majeure.**

12 The failure of any party to perform any of its obligations hereunder shall not subject
13 such party to any liability or remedy for damages, or otherwise, where such failure is
14 occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural
15 disasters, explosions, floods, wars, interruptions or delays in transportation, power outages,
16 labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions,
17 rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any
18 other similar or different circumstances or causes beyond the reasonable control of such party.

19 **I. Deadlines Falling on Weekends or Holidays.**

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

22 **J. Severability.**

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

1 **K. Escalator Clause.**

2 It was represented to Plaintiff that there were 138 Class Members. To the extent the
3 class size increases beyond this number by more than 10% the maximum settlement payment
4 will increase proportionately, with a credit for the initial 10%. For example, if the number of
5 class members increase 12% the settlement amount will increase by 2%.

6
7 Date: February 2, 2018

KERRY SOTO, on behalf of himself and all
others similarly situated

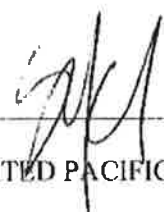
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10 By: _____

KERRY SOTO

11
12 Date: February 2, 2018

UNITED PACIFIC WASTE

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15 By: _____

Name: 
For UNITED PACIFIC WASTE

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18 APPROVED AS TO FORM:

19 DATE: February 2, 2018

FISHER & PHILLIPS LLP

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22 By: _____

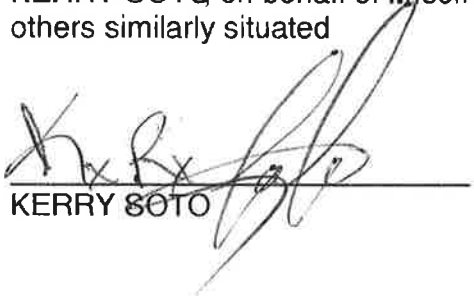

Boris Sorsher
Attorneys for Defendant
UNITED PACIFIC WASTE

1 **K. Escalator Clause.**

2 It was represented to Plaintiff that there were 468 Class Members. To the extent the
3 class size increases beyond this number by more than 10% the maximum settlement payment
4 will increase proportionately with a credit for the initial 10%. For example, if the number of
5 class members increase 12% the settlement amount will increase by 2%.

6
7 Date: February 2, 2018

KERRY SOTO on behalf of himself and all
others similarly situated

8
9
10 By: 
11 KERRY SOTO

12 Date: February 2, 2018

UNITED PACIFIC WASTE

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14
15 By: _____

Name:
For UNITED PACIFIC WASTE

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18 APPROVED AS TO FORM:

19 DATE: February 2, 2018

20 FISHER & PHILLIPS LLP

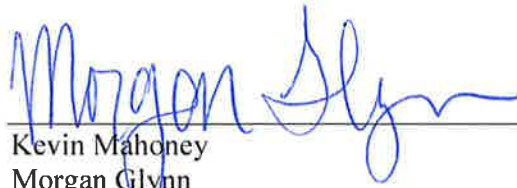
21
22 By: _____

23 Boris Sorsher
24 Attorneys for Defendant
25 UNITED PACIFIC WASTE
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2 Dated: February 2, 2018

MAHONEY LAW GROUP, APC

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5 By:



6 Kevin Mahoney
7 Morgan Glynn
8 Attorneys for Plaintiff
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