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Calpine Operating Services Company, Inc. and Calpine Corporation

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ELOY HERRERA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

CALPINE OPERATING SERVICES
COMPANY, INC.; CALPINE
CORPORATION; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00007065-CU-OE-CTL
[Consolidated with
Case No. 37-2023-00016891-CU-OE-CTL]

*ASSIGNED FOR ALL PURPOSES TO JUDGE
BLAINE K. BOWMAN, DEPT C-74*

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT OF
CLASS AND PAGA CLAIMS**

Action Filed: February 17, 2023

1 This Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims
2 (“Stipulation of Settlement” or “Settlement” or “Settlement Agreement”) is made and entered into
3 by and between (a) Plaintiff Eloy Herrera (hereinafter referred to as “Class Representative” or
4 “Plaintiff”), and on behalf of the Class and Aggrieved Employees (as defined below), and (b)
5 Defendants Calpine Operating Services Company, Inc. (“COSCI”) and Calpine Corporation
6 (“Calpine”, collectively with COSCI “Defendants”) (Plaintiff and Defendants hereinafter
7 collectively referred to as the “Parties”).

8 THE PARTIES STIPULATE AND AGREE as follows:

9 **DEFINITIONS**

10 1. “**Action**” shall mean the action entitled *Eloy Herrera, individually and on behalf of*
11 *all other similar situated, v. Calpine Operating Services Company, Inc.; Calpine Corporation, San*
12 *Diego San Diego County Superior Court, Case No. 37-2023-0007065-CU-OE-CTL* (the “Class
13 *Complaint*”) and *Eloy Herrera, on behalf of aggrieved employees and the State of California under*
14 *the Private Attorneys General Act, v. Calpine Operating Services Company, Inc.; Calpine*
15 *Corporation, San Diego San Diego County Superior Court, Case No. 37-2023-00016891-CU-OE-*
16 *CTL* (the “PAGA Complaint”) that were consolidated on or about August 14, 2023 with the Class
17 Complaint designated as the lead case.

18 2. “**PAGA Letter**” shall mean the PAGA letters Plaintiff submitted to the State of
19 California Labor and Workforce Development Agency (“LWDA”) dated February 15, 2023 and
20 April 8, 2024 that includes all claims alleged in the Operative Complaint, defined below.

21 3. “**Class Counsel**” shall mean Lauren Vega, Esq. and Nicholas Ferraro, Esq. of Ferraro
22 Vega Employment Lawyers, Inc.

23 4. “**Class Members**” shall mean current and former nonexempt, hourly-paid employees
24 of Defendants, employed in California at any time from February 17, 2019, through the date
25 Preliminary Approval of the Class Settlement is granted or May 3, 2024, whichever is later; or a
26 sooner date per the procedure set forth in Paragraph 71 of the settlement agreement, at Defendants’
27 option (“Settlement Class Members”).

1 5. **“Class Period”** shall mean February 17, 2019, through May 3, 2024 or the date of
2 Preliminary Approval of the Class Settlement, whichever is later; or a sooner date per the procedure
3 set forth in Paragraph 71 of the settlement agreement, at Defendants’ option.

4 6. **“Class Released Claims”** shall have the meaning ascribed to it in Paragraph 62(a)-
5 (c) below.

6 7. **“Class Representative”** or **“Plaintiff”** shall mean Plaintiff Eloy Herrera.

7 8. **“Court”** shall mean the Superior Court of the State of California for the County of
8 San Diego.

9 9. **“Court’s Final Order and Judgment”** means the Final Order Approving Class
10 Action and PAGA Settlement and Judgment in a form to be agreed upon by the Parties and approved
11 by the Court.

12 10. **“Defendants’ Counsel”** shall mean Stacey E. James, Luis E. Lorenzana and
13 Warsame Y. Hassan of Littler Mendelson, P.C.

14 11. **“Effective Date”** shall have the meaning ascribed to it in Paragraph 38, below.

15 12. **“Final Approval Hearing”** shall mean the hearing where the Court shall consider,
16 without limitations, any timely objections to the Settlement from Settlement Class Members,
17 testimony from the Parties or their counsel, declarations regarding the claims process from the
18 Settlement Administrator, and otherwise make a final determination regarding the fairness of the
19 Settlement as set forth herein.

20 13. **“Gross Settlement Amount”** shall refer to One Million Six Hundred Fifty-Four
21 Thousand Seven Hundred Forty-Five Dollars and Zero Cents (\$1,654,745.00), which is the
22 maximum amount that Defendants will pay pursuant to this Settlement subject to the Escalation
23 Clause, excluding Defendants’ share of payroll taxes, which shall be paid by Defendants separately
24 and in addition to the Gross Settlement Amount.

25 14. **“Incentive Award”** shall mean the payment made to Plaintiff in his capacity as a
26 Class Representative, which sum is over and above his Individual Settlement Payment, and which
27 is further provided in connection with his general release of all claims against Defendants as stated
28 in Paragraph 64 below.

1 15. **“Individual Settlement Payment”** will be the portion of the Net Settlement Amount
2 payable to a Settlement Class Member.

3 16. **“Net Settlement Amount”** shall have the meaning ascribed to it in Paragraph 42,
4 below.

5 17. **“Notice of Proposed Settlement”** or **“Notice”** means the Notice of Pendency of
6 Class Action in substantially the form attached hereto as Exhibit A, and as approved by the Court.

7 18. **“Operative Complaint”** shall mean the allegations included in the Amended Class
8 Complaint and PAGA Complaint filed in the consolidated action for: (1) failure to pay minimum
9 wages (regular rate, off-the-clock work, inaccurate time keeping, working through meal periods)
10 (Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198); (2) failure to pay overtime wages
11 (off-the-clock work, inaccurate time keeping, and working through meal periods), or pay overtime
12 wages at the regular rate;(Labor Code §§ 204, 510, 511, 558, 1194 and 1198, and the applicable
13 Wage Order); (3) failure to provide meal periods or pay premiums in lieu thereof at the regular rate
14 (Labor Code §§ 226.7, 512, 558 and 1198, and the applicable Wage Order); (4) failure to provide
15 rest periods or pay premiums in lieu thereof at the regular rate (Labor Code §§ 226.7, 516, 558 and
16 1198, and the applicable Wage Order); (5) failure to provide paid sick leave or supplemental paid
17 sick leave, or pay sick leave at the regular rate (Labor Code §§ 246 through 248.7); (6) failure to
18 timely pay wages during employment (Labor Code §§ 204, 204b, 210, 221, 223, 224, 256 and 218);
19 (7) failure to furnish timely and accurate wage statements, and keep payroll records (Labor Code §§
20 226(a), 226(a)(1)-(9), 226(e), 226.3, 1174 and 1174.5); (8) failure to timely pay wages upon
21 termination of employment - waiting time penalties (Labor Code §§ 201, 202 and 203, and the
22 applicable Wage Order); (9) failure to provide records (Labor Code §§ 226, 432 and 1198.5, and
23 the applicable Wage Order); (10) failure to reimburse for business expenses (personal phone
24 expenses, mileage and travel expenses) (Labor Code §§ 2800 and 2802); (11) violation of
25 California’s Unfair Competition Law based upon the alleged Labor Code violations (Business &
26 Professions Code § 17200 *et seq.*); and (12) violation of the California Private Attorneys General
27 Act of 2004 (Labor Code §§ 558 and 2698, *et seq.*) predicated on the same or similar facts and/or
28 claims alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiff in or prior to

the Lawsuit, as well as any claims that could have been pled under the California Labor Code and California Industrial Welfare Commission Wage Orders.

19. “**PAGA**” shall mean the California Labor Code Private Attorneys General Act, Labor Code §§ 2698 *et seq.*

20. “**PAGA Employee**” or “Aggrieved Employee” shall mean all persons who are Class Members who were employed at any time during the PAGA Period and are represented by the Plaintiff and the LWDA.

21. “**PAGA Payment**” means the payment to the LWDA and the PAGA Employees in settlement of all claims for PAGA penalties.

22. “**PAGA Employee Payments**” means the payment issued to each PAGA Employee for his/her/their share of the PAGA Payment.

23. “**PAGA Period**” shall mean April 24, 2022, through May 3, 2024, or the date of Preliminary Approval of the Class Settlement, whichever is later; or a sooner date per the procedure set forth in Paragraph 71 of the settlement agreement, at Defendants’ option.

24. “**Parties**” shall refer to the Plaintiff and Defendants, each of whom is a “Party.”

25. “**Released Parties**” collectively shall include Defendants and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, including but not limited to Calpine Operating Services Company, Inc. and Calpine Corporation, as well as each of its past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants.

26. “**Settlement Administrator**” shall mean CPT Group.

27. “**Settlement Class Members**” shall mean the individual Class Members who did not opt-out of the Settlement by submitting a valid request for exclusion as described in Paragraph 55.

RECITALS

28. In the Action, Plaintiff alleged causes of action for: (1) failure to pay minimum wages (regular rate, off-the-clock work, inaccurate time keeping, and working through meal periods) (Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198); (2) failure to pay overtime wages

1 (off-the-clock work, inaccurate time keeping, and working through meal periods), or pay overtime
2 wages at the regular rate (Labor Code §§ 204, 510, 511 558, 1194 and 1198, and the applicable
3 Wage Order); (3) failure to provide meal periods or pay premiums in lieu thereof at the regular rate
4 (Labor Code §§ 226.7, 512, 558 and 1198, and the applicable Wage Order); (4) failure to provide
5 rest periods or pay premiums in lieu thereof at the regular rate (Labor Code §§ 226.7, 516, 558 and
6 1198, and the applicable Wage Order); (5) failure to provide paid sick leave or supplemental paid
7 sick leave, or pay sick leave at the regular rate (Labor Code §§ 246 through 248.7); (6) failure to
8 timely pay wages during employment (Labor Code §§ 204, 204b, 210, 221, 223, 224, 256 and 218);
9 (7) failure to furnish timely and accurate wage statements, and keep payroll records (Labor Code §§
10 226(a), 226(a)(1)-(9), 226(e), 226.3, 1174 and 1174.5); (8) failure to timely pay wages upon
11 termination of employment - waiting time penalties (Labor Code §§ 201, 202 and 203, and the
12 applicable Wage Order); (9) failure to provide records (Labor Code §§ 226, 432 and 1198.5, and
13 the applicable Wage Order); (10) failure to reimburse for business expenses (personal phone
14 expenses, mileage and travel expenses) (Labor Code §§ 2800 and 2802); (11) violation of
15 California's Unfair Competition Law based upon the alleged Labor Code violations (Business &
16 Professions Code § 17200 *et seq.*); and (11) violation of the California Private Attorneys General
17 Act of 2004 (Labor Code §§ 558 and 2698, *et seq.*) predicated on the same or similar facts and/or
18 claims alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiff in or prior to
19 the Lawsuit, as well as any claims that could have been pled under the California Labor Code and
20 California Industrial Welfare Commission Wage Orders.

21 29. After commencing the Action, Plaintiff served discovery on Defendants. Following
22 exchange and extensive review of relevant documents and class data, on November 14, 2023, the
23 Parties engaged in a full-day mediation with experienced wage and hour class action mediator
24 Francis J. ("Tripper") Ortman III, Esq., which resulted in a settlement.

25 30. Defendants deny any liability or wrongdoing of any kind whatsoever associated with
26 the claims in the Action, and further denies that, for any purpose other than settling this Action, this
27 Action is appropriate for class action or representative treatment.

28

31. It is the Parties' desire to fully, finally and forever settle, compromise and discharge all disputes and claims arising from or related to the allegations of this Action, as to each other.

32. It is the Parties' intention that this Stipulation of Settlement shall constitute a full and complete settlement and release of all Class Released Claims and all PAGA Claims (as defined in Paragraphs 62 and 63 below) against all Released Parties.

33. It is the Parties' intention that this Settlement shall not become effective until the Effective Date, as defined in Paragraph 38, below.

34. Class Counsel have conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents and data, and have diligently pursued an investigation of the Class Members' claims against Defendants. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendants is fair, reasonable and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risks of the class not being certified, and the defenses asserted by Defendants. Defendants and Defendants' Counsel also agree that the Settlement is in the best interests of the Class Members. Counsel for the Parties further agree that the Settlement is fair, reasonable and adequate with respect to civil penalties sought pursuant to PAGA.

35. The Parties agree to cooperate and take all steps necessary and appropriate to consummate this settlement in accordance with the terms of this Stipulation of Settlement.

TERMS OF SETTLEMENT

36. In consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, to the terms herein.

37. It is agreed by and between Plaintiff and Defendants to settle and resolve the Action, the Class Released Claims, the PAGA Claim and Claims by Class Representative (as set forth in Paragraphs 62-64 below), subject to the terms and conditions set forth in this Stipulation of Settlement and the Court's approval.

38. Effective Date: The Settlement embodied in this Stipulation of Settlement shall become effective when all of the following events have occurred (“Effective Date”): (i) this Stipulation of Settlement has been executed by Plaintiff and Defendants; (ii) the Court has given

1 preliminary approval to the Settlement; (iii) the Notice has been sent to the Class Members,
2 providing them the opportunity to object to the Settlement, and the opportunity to opt out of the
3 Settlement; (iv) the Notice has been sent to the LWDA; (v) the Court has held a final fairness hearing
4 and entered the Court's Final Order and Judgment; and (vi) the later of the following events: (A) if
5 there are no objections, the date the Court grants Final Approval; (B) if one or more class members
6 objects to the settlement, five (5) calendar days after the period for filing any appeal, writ or other
7 appellate proceeding opposing the Final Approval has elapsed without any appeal, writ or other
8 appellate proceeding having been filed (*i.e.*, sixty-five (65) days from the date the court grants final
9 approval); or (C) if any appeal, writ, or other appellate proceeding opposing Final Approval has
10 been filed, five (5) business days after any appeal, writ or other appellate proceeding opposing the
11 Settlement has been dismissed finally and conclusively with no right to pursue further remedies or
12 relief. If the Court declines to approve the Settlement, the entire Stipulation of Settlement is deemed
13 void and unenforceable as if no settlement of any claim was ever reached. All negotiations,
14 statements and proceedings and data relating thereto shall be protected by California Evidence Code
15 §1152 and shall be without prejudice to the rights of any of the Parties.

16 39. Gross Settlement Amount: To implement the terms of this Settlement, Defendants
17 agrees to pay a maximum total payment of One Million Six Hundred Fifty-Four Thousand Seven
18 Hundred Forty-Five Dollars and Zero Cents (\$1,654,745.00), which includes payments to
19 Settlement Class Members (excluding any appropriate and lawfully required employer-side payroll
20 taxes owed by Defendants on such payments which Defendants shall be separately responsible for
21 apart from the Gross Settlement Amount), Incentive Award to the Class Representative, the PAGA
22 Payment, the Settlement Administrator's fees and costs, approved attorneys' fees and litigation
23 costs, and any other payments provided by this Settlement. Except as otherwise specified herein,
24 Defendants shall not be required to pay any additional monies beyond the amount of the Gross
25 Settlement Amount plus the employer-side payroll taxes. Further, no portion of the Gross
26 Settlement Amount shall revert to Defendants, and any amount of the Gross Settlement Amount not
27 required to pay the above-referenced amounts shall be paid to the Settlement Class Members on a
28 pro rata basis according to the formula contained herein.

1 40. Tax Treatment of the Gross Settlement Amount: The Parties agree that the Gross
2 Settlement Amount will qualify as a settlement fund pursuant to the requirements of section
3 468(B)(g) of the Internal Revenue Code of 1986, as amended, and section 1.468B-1. *et seq.* of the
4 income tax regulations. Furthermore, the Settlement Administrator is hereby designated as the
5 “Administrator” of the qualified settlement funds for purposes of section 1.46B-2(k) of the income
6 tax regulations. As such, all taxes imposed on the gross income of the Gross Settlement Amount
7 and any tax-related expenses arising from any income tax return or other reporting document that
8 may be required by the Internal Revenue Service or any state or local taxing body will be paid from
9 the Gross Settlement Amount, except the Defendants’ share of the employer payroll taxes.

10 41. Funding of Settlement Amount: Within twenty-one (21) calendar days after the
11 Effective Date, Defendants shall transfer to the Settlement Administrator an amount equal to the
12 Gross Settlement Amount plus the employer’s share of payroll taxes. The delivery of the Gross
13 Settlement Amount and the employer’s share of payroll taxes to the Settlement Administrator shall
14 constitute full and complete discharge of the entire obligation of Defendants under this Settlement.
15 Once Defendants has made such payments, Defendants will be deemed to have satisfied all terms
16 and conditions under this Settlement, shall be entitled to all protections afforded to Defendants and
17 the Released Parties under this Settlement, and shall have no further obligations under the terms of
18 the Settlement regardless of what occurs with respect to those sums.

19 42. Allocation of the Gross Settlement Amount: After the deduction of the amounts
20 approved for the Incentive Award to the Class Representative, the PAGA Payment, the Settlement
21 Administrator’s costs, Class Counsel’s fees and expenses from the Gross Settlement Amount, the
22 remainder shall be referred to as the “Net Settlement Amount”. Subject to Court approval and the
23 conditions specified in this Agreement, and in consideration of the mutual covenants and promises
24 set forth herein, the Parties agree the Gross Settlement Amount shall encompass the following: (1)
25 Class Counsel’s fees and expenses; (2) the Plaintiff’s Incentive Award; (3) the Settlement
26 Administrator’s costs; (4) the PAGA Payment (including both the PAGA payment to the LWDA
27 and the PAGA Settlement Checks to PAGA Employees); and (5) the Net Settlement Amount.

28 Settlement Class Members will receive a share of the Net Settlement Amount. The Parties

1 agree that twenty-five percent (25%) of the Net Settlement Amount distributed to each Settlement
2 Class Member will be considered wages, and will be reported as such to each Settlement Class
3 Member on an IRS Form W-2. The Parties agree that seventy-five percent (75%) of the Net
4 Settlement Amount distributed to each Settlement Class Member will be considered penalties and
5 interest, , and will be reported as such to each Settlement Class Member on an IRS Form 1099 misc.,
6 if applicable. The foregoing tax allocation shall not apply to the Incentive Award paid to Plaintiff
7 as the Plaintiff will receive a 1099 for the total sum of the Incentive Award. The Parties further
8 agree that the PAGA payment distributed to each PAGA Member will be treated entirely as civil
9 penalties, and will be reported as such to each PAGA Member on an IRS Form 1099 misc., if
10 applicable.

11 a. The Net Settlement Amount shall be divided among the Settlement Class Members
12 on a pro-rata basis, based upon the following:

- 13 1. Each Settlement Class Member's workweeks worked count, which
14 shall be the sum of the total number of workweeks the Settlement
15 Class Member worked during the Class Period;
- 16 2. Divided by the combined sum of all Settlement Class Members'
17 workweek count; and,
- 18 3. Multiplied by the value of the Net Settlement Amount.

19 b. The Parties agree that if any Settlement Class Member disputes the basis for
20 determining their share of the Settlement, Defendants' records shall presumptively
21 control unless the Settlement Class Member can produce documentation evidence of
22 other workweeks worked during the relevant time period. The Parties further agree
23 that any dispute that cannot be resolved by Class Counsel and Defendants' counsel
24 may be brought before the Court before final approval of the Class Settlement.

25 c. To the extent that amounts in Paragraphs 46 and 47 below are not approved by the
26 Court, such amounts will be reallocated to the Net Settlement Amount unless
27 allocated otherwise by agreement of the Parties, with approval of the Court.

28

1 d. Within fourteen (14) calendar days of the transfer of the Gross Settlement Amount
2 to the Settlement Administrator, and only upon the Effective Date being met, the
3 Settlement Administrator shall issue to each Settlement Class Member his/her/their
4 Individual Settlement Payment.

5 e. A Class Member must cash his or her Individual Settlement Payment check within
6 180 calendar days after it is mailed to him or her. If a check is returned to the
7 Settlement Administrator, the Settlement Administrator will make all reasonable
8 efforts to re-mail it to the Class Member at his or her correct address. If any Class
9 Member's Individual Settlement Payment check is not cashed within 120 days of its
10 initial issuance to the Class Member, the Settlement Administrator will send the
11 Class Member a letter, dated 120 days from the initial mailing, informing him or her
12 that, unless the check is cashed within 60 days of the date of this letter, it will expire
13 and become non-negotiable, and offer to replace the check if it was lost or misplaced
14 but not cashed. If the check remains uncashed by the expiration of the 60-day period
15 after this interim notice, the Settlement Administrator will keep an accounting of
16 such funds, including the identification of the Class Member. The Settlement
17 Administrator will then disburse said funds to the State of California State
18 Controller's Office, in the Class Member's name to be held as unclaimed property
19 for the Class Member. In such event, the Class Member will nevertheless remain
20 bound by the Settlement and the releases contained herein.

21 43. PAGA Payment: Subject to the Court's Approval, up to a maximum of Forty
22 Thousand Dollars and Zero Cents (\$40,000.00) shall be allocated as the PAGA Payment. Thirty
23 Thousand Dollars and Zero Cents (\$30,000.00), representing 75% of the PAGA Payment, shall be
24 paid to the LWDA. Ten Thousand Dollars and Zero Cents (\$10,000.00), representing 25% of the
25 penalties paid pursuant to PAGA, shall be distributed to the PAGA Employees as PAGA Employee
26 Payments. The PAGA Employees shall release their PAGA claims in their entirety and may not opt
27 out of or object to the PAGA release. To arrive at the PAGA Employee Payments, the portion of
28

1 the PAGA Payment allocated to the PAGA Employees shall be divided among the PAGA
2 Employees on a pro-rata basis, based upon the following:

- 3 a. Each PAGA Employee's pay period count, which shall be the sum of the total
4 number of pay periods the PAGA Employee worked during the PAGA Period;
- 5 b. Divided by the combined sum of all PAGA Employees' pay period counts; and
- 6 c. Multiplied by the value of the portion of the PAGA Payment allocated to the PAGA
7 Employees.

8 44. Individual Settlement Payments Do Not Trigger Additional Benefits: All Individual
9 Settlement Payments, PAGA Employee Payments, and the Incentive Award shall not be utilized to
10 calculate any additional benefits under any benefit plans to which any Plaintiff, Settlement Class
11 Members and/or PAGA Employee may be eligible including, but not limited to: retirement plans,
12 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, paid time off,
13 sick leave plans, PTO plans, pension plans, or any other benefit plan. It is the Parties' intention that
14 this Agreement will not affect any rights, contributions, or amounts to which Plaintiff, Settlement
15 Class Members and PAGA Employees may be entitled under any benefit plans.

16 45. Settlement Administrator: The Settlement Administrator shall be CPT Group (the
17 "Settlement Administrator"). The Settlement Administrator will maintain acceptable electronic and
18 physical security protocols to adequately protect and safeguard the private employee information it
19 will have access to as a result of the claims process. The fees and expenses of the Settlement
20 Administrator, which is currently estimated not to exceed approximately Fifteen Thousand Dollars
21 and Zero Cents (\$15,000.00), shall be paid through the Gross Settlement Amount.

22 46. Attorneys' Fees and Attorneys' Costs: Subject to the Court's approval, Class Counsel
23 shall seek attorneys' fees which shall not exceed 33.33% of the Gross Settlement Amount not to
24 exceed Five Hundred Fifty-One Thousand Five Hundred Twenty-Six Dollars and Fifty Cents
25 (\$551,526.50), and reimbursement of actual costs and expenses associated with Class Counsel's
26 litigation and settlement of the Action, in an amount not to exceed Thirty Five Thousand Dollars
27 and Zero Cents (\$35,000.00), subject to approval by the Court. Defendants will not object to Class
28 Counsel's application for attorneys' fees and costs in these amounts. The amount set forth above

1 will cover all work performed and all fees and costs incurred to date, and all work to be performed
2 and all fees and costs to be incurred in the future in connection with the approval by the Court of
3 this Stipulation of Settlement, and the administration of the Settlement. Should Class Counsel
4 collectively request a lesser amount, or should the Court approve a lesser amount of attorneys' fees
5 and/or attorneys' costs, the difference between the lesser amount and the maximum amount set forth
6 above shall be added to the Net Settlement Amount. No Class Counsel shall be entitled to further
7 fees or costs from Defendants if it or they elect to appeal any reduction in the requested fee or cost
8 award. Any reduction by the Court of Class Counsel's claimed attorneys' fees and/or reasonable
9 costs/expenses shall not be sufficient grounds to void the Settlement. Plaintiff and Defendants shall
10 bear their own attorney's fees and costs, except as provided herein.

11 47. Class Representative's Incentive Award: Subject to the Court's approval, the Class
12 Representative will be paid an Incentive Award in an amount up to a maximum of Ten Thousand
13 Dollars and Zero Cents (\$10,000.00) in recognition for his service as a Class Representative, which
14 shall be paid from the Gross Settlement Amount. Defendants will not object to Class Counsel's
15 application for Court approval of an Incentive Award to the Class Representative in the amount of
16 Ten Thousand Dollars and Zero Cents (\$10,000.00). It is understood that the Incentive Award is in
17 addition to any claimed Individual Settlement Payment or PAGA Employee Payment to which
18 Plaintiff is entitled. The Incentive Award shall not be deemed wages and will be reported on an IRS
19 Form 1099-MISC, if applicable.

20 48. Tax Forms: The Settlement Administrator shall be responsible for issuing the
21 payments and withholding all required state and federal taxes in accordance with this Stipulation of
22 Settlement. The Settlement Administrator will issue IRS Forms 1099 with respect to the amounts
23 paid as interest and penalties to the Settlement Class Members and PAGA Employees. The
24 Settlement Administrator will also issue IRS Forms 1099 to: (1) Plaintiff for the Incentive Award;
25 and (2) Class Counsel for the amount paid for approved fees and costs. The Settlement
26 Administrator will be responsible for preparing these forms correctly. The Settlement Administrator
27 shall also be responsible for submitting Defendants' share of payroll taxes to the appropriate
28 government agencies on behalf of Defendants. Plaintiff and Class Counsel will be responsible for

1 correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts
2 received.

3 49. Indemnification: Plaintiff and Class Counsel acknowledge and agree that they are
4 and will be responsible for the payment of any and all Federal, State, and Local taxes or penalties
5 associated with their respective allocated portions of the payments described herein, and agree to
6 indemnify, defend, and hold Defendants and the Released Parties harmless from any and all claims
7 by any Federal, State, or Local taxing authority that Plaintiff or Class Counsel failed to pay or
8 underpaid their or her or his share of taxes associated with the payments set forth in this Settlement.
9 The Parties acknowledge and agree that Class Counsel is not responsible for the payment of any
10 Federal, State, and Local taxes or penalties associated with payments to Plaintiff and Class
11 Members.

12 NOTICE TO THE SETTLEMENT CLASSES

13 50. Within twenty-one (21) calendar days of preliminary approval of this Settlement by
14 the Court, Defendants shall provide to the Settlement Administrator a database containing the
15 following information (“Class Member List”):

- 16 a. The full name, last known address, and full social security number of all Class
17 Members; and
- 18 b. The information necessary to determine the estimated settlement allocation to each
19 Class Member, including: (i) The total number of workweeks worked by each Class
20 Member within the Class Period; and (ii) The total number of pay periods worked by
21 each PAGA Employee within the PAGA Period.

22 51. The Settlement Administrator (along with any of its agents) shall represent and
23 warrant that it will: (1) provide reasonable and appropriate administrative, physical and technical
24 safeguards, including a reasonable security protocol, for any personally identifiable information
25 (“PII”), which it receives from Defendants’ Counsel and/or Class Counsel; (2) not disclose the PII
26 to third parties, including agents or subcontractors, without Defendants’ consent; (3) not disclose or
27 otherwise use the PII other than to carry out its duties as set forth herein; and (4) promptly provide
28 Defendants with notice if PII is subject to unauthorized access, use, disclosure, modification, or

1 destruction. The Settlement Administrator may provide notice to both Parties if the PII is subject
2 to unauthorized access, use, disclosure, modification or destruction; however, all additional
3 communications from the Settlement Administrator regarding the scope, circumstances, and
4 substance shall be communicated solely to Defendants.

5 52. The Settlement Administrator shall send a Notice to each Class Member by first class
6 mail within fourteen (14) calendar days of receipt of the Class Member List. Prior to mailing the
7 Notice, the Settlement Administrator shall update the addresses of the Class Members by reference
8 to the National Change of Address Database maintained by the United States Postal Service. If a
9 Notice is returned as non-deliverable but with a forwarding address, the Settlement Administrator
10 shall resend the Notice to the forwarding address. If a Notice is returned as non-deliverable with no
11 forwarding address, the Settlement Administrator shall conduct an advanced skip trace to locate the
12 most current address of the person to whom the Notice was addressed, and shall resend the Notice
13 to any updated address within five (5) calendar days. The Settlement Class shall have an additional
14 fifteen (15) calendar days from the date of re-mailing to object, opt-out or dispute workweeks, or
15 pay periods. Upon completion of these steps, the Parties shall be deemed to have satisfied their
16 obligations to provide the Notice to the affected Class Members.

17 53. The Settlement Administrator shall provide to the Court, concurrently with
18 Plaintiff's Motion for Final Approval, a declaration of due diligence and proof of mailing with
19 regard to the mailing of the Notices.

20 54. The Settlement Administrator shall also be responsible for:

- 21 a. Mailing the Notice as directed by the Court;
- 22 b. Consulting with counsel for the Parties concerning any relevant issue, including
23 (without limitation) the estimated amounts of approximate Individual Settlement
24 Payments, PAGA Employee Payments, and the acceptance of any late or deficient
25 disputes;
- 26 c. Keeping track of timely and proper requests for exclusion;
- 27 d. Calculation of the Individual Settlement Payments, PAGA Employee Payments, and
28 the PAGA Payment to the LWDA;

- 1 e. Providing weekly status reports to counsel for the Parties, including: (a) the number
2 of Notices mailed (including information regarding undeliverable and/or emailed
3 Notices); (b) the number of disputes received (and sending copies of said disputes);
4 (c) the number of objections received; and (d) the number of requests for exclusion
5 received;
- 6 f. Notifying Counsel for Defendants of the wiring instructions to fund the Settlement
7 Amount as approved by the Court;
- 8 g. Distributing and paying the Incentive Award, Individual Settlement Payments,
9 PAGA Employee Payments, the PAGA Payment to the LWDA, and fees and costs
10 awarded to Class Counsel;
- 11 h. Issuing tax forms and addressing employer and employee-side payroll taxes; and
- 12 i. Such other tasks as the Parties mutually agree or the Court orders the Settlement
13 Administrator to perform, including responding to questions from Class Members.

14 **REQUESTS FOR EXCLUSION**

15 55. Each Class Member shall have forty-five (45) calendar days from the mailing of the
16 Notice within which to complete and postmark a written request for exclusion, for return to the
17 Settlement Administrator. The request need not be in any particular form and will be considered a
18 valid request for exclusion so long as it communicates a clear desire by the Settlement Class Member
19 not to be included in the Settlement and/or Settlement Class, and identifies his/her/their full name
20 and date of birth, and current address along with his/her/their signature. No requests for exclusion
21 shall be accepted if postmarked after the forty-five (45) calendar day period for the filing of
22 exclusions. Class Members are responsible to maintain a photocopy of their request for exclusion,
23 reflecting that it was submitted in a timely manner. Any disputes regarding the timeliness of a
24 request for exclusion or whether a written communication constitutes a valid request that cannot be
25 resolved between the Parties shall be determined by the Court, whose determination shall be final.

26 56. Any Class Member who validly excludes himself/herself/themselves from this
27 Settlement shall not be bound by the Class Released Claims and shall not be entitled to any portion
28 of the Net Settlement Amount.

1 57. If ten percent (10%) or more of the Class Members opt out of the Settlement by
2 submitting valid and timely requests for exclusion, Defendants shall have the sole and absolute
3 discretion to rescind/void the Settlement Agreement within fifteen (15) calendar days after receiving
4 from the Settlement Administrator the final list of requests for exclusion. Defendants agree to meet
5 and confer in good faith with Class Counsel before rescinding or voiding the Settlement Agreement.
6 In the event that Defendants elect to rescind/void the Settlement Agreement, Defendants shall
7 provide written notice of such rescission to Class Counsel. Such rescission shall have the same effect
8 as a termination of the Settlement Agreement for failure to satisfy a condition of settlement, and the
9 Settlement Agreement shall become null and void and have no further force or effect. The Parties
10 specifically agree not to solicit opt-outs, directly or indirectly, through any means. If Defendants
11 terminate the Settlement Agreement, Defendants shall cover the costs of any third-party settlement
12 administrator costs to such date, if any.

13 **OBJECTIONS TO THE SETTLEMENT**

14 58. Each Class Member shall have forty-five (45) calendar days from the mailing of the
15 Notice, or such number of days as the Court shall specify, within which to postmark an objection,
16 for return to the Settlement Administrator. Any Class Member, who does not affirmatively opt-out
17 of the Settlement by submitting a valid and timely request for exclusion, may object to the approval
18 of class action settlement (“Objecting Class Member”). Any Class Member who makes a timely
19 request for exclusion has waived their right to object. The Objecting Class Member shall: (1) submit
20 a written objection with the Settlement Administrator containing: (a) the full name and current
21 address of the Objecting Class Member and (b) the specific reason(s) for the objection; and (2) also
22 provide any and all evidence and supporting papers (including, without limitation, all briefs, written
23 evidence, and declarations) to be considered by the Court. The Settlement Administrator shall
24 provide copies of any all written objections from Objecting Class Members to the Parties, who in
25 turn will submit the same to the Court. Any Objecting Class Member who wishes to appear at the
26 Final Approval Hearing and be heard orally in support of, or in opposition to the class action
27 settlement, must state so in the objection. Class Members shall have no right to object to the PAGA
28 release or PAGA Payment.

1 59. Any Class Member who fails to timely submit an objection shall be foreclosed from
2 making any objection to this Settlement or from filing an appeal of the Court's Final Order and
3 Judgment unless otherwise ordered by the Court.

4 60. Counsel for the Parties shall file any response to the objections submitted by
5 Objecting Class Members, if any, at least seven (7) calendar days before the date of the Final
6 Approval Hearing.

7 61. At no time shall any of the Parties or their counsel seek to solicit or otherwise
8 encourage Class Members to submit written objections to the Settlement or to appeal from the
9 Court's Final Order and Judgment. Class Counsel shall not represent any Class Members with
10 respect to any such objections to this Settlement.

11 **RELEASE OF CLAIMS BY CLASS REPRESENTATIVE, SETTLEMENT CLASS**
12 **MEMBERS, AND PAGA EMPLOYEES**

13 62. The "Class Released Claims". Upon Final Approval by the Court and the funding of
14 the Gross Settlement Amount in accordance with Paragraph 41, Plaintiff and the Class Members
15 hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised,
16 relinquished and discharged all claims pled in the Operative Complaint and which could have been
17 alleged under state or federal law under the same or similar facts, allegations and/or claims pled in
18 the Action or in any letter by Plaintiff to the LWDA, against Defendants and the Released Parties
19 (as defined above), for work performed during the Class Period, including the following:

- 20 a. The Claims set forth in the Operative Complaint, specifically: (1) failure to pay
21 minimum wages (regular rate, off-the-clock work, inaccurate time keeping, and
22 working through meal periods) (Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1,
23 and 1198); (2) failure to pay overtime wages (off-the-clock work, inaccurate time
24 keeping, and working through meal periods), or pay overtime wages at the regular
25 rate (Labor Code §§ 204, 510, 511, 558, 1194 and 1198); (3) failure to provide meal
26 periods or pay premiums in lieu thereof at the regular rate (Labor Code §§ 226.7,
27 512, 558 and 1198, and the applicable Wage Order); (4) failure to provide rest
28 periods or pay premiums in lieu thereof at the regular rate (Labor Code §§ 226.7,

1 516, 558 and 1198, and the applicable Wage Order); (5) failure to provide paid sick
2 leave or supplemental paid sick leave, or pay sick leave at the regular rate (Labor
3 Code §§ 246 through 248.7); (6) failure to timely pay wages during employment
4 (Labor Code §§ 204, 204b, 210, 221, 223, 224, 256 and 218); (7) failure to furnish
5 timely and accurate wage statements, and keep payroll records (Labor Code §§
6 226(a), 226(a)(1)-(9), 226(e), 226.3, 1174 and 1174.5); (8) failure to timely pay
7 wages upon termination of employment - waiting time penalties (Labor Code §§ 201,
8 202, 203 and the applicable Wage Order); (9) failure to provide records (Labor Code
9 §§ 226, 432 and 1198.5, and the applicable Wage Order); (10) failure to reimburse
10 for business expenses (personal phone expenses, mileage and travel expenses)
11 (Labor Code §§ 2800 and 2802); ; (11) violation of California's Unfair Competition
12 Law based upon the alleged Labor Code violations (Business & Professions Code §
13 17200 *et seq.*); and (12) violation of the California Private Attorneys General Act of
14 2004 (Labor Code §§ 558 and 2698, *et seq.*) predicated on the same or similar facts
15 alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiff in or
16 prior to the Lawsuit, as well as any predicated claims that could have been pled under
17 the California Labor Code and California Industrial Welfare Commission Wage
18 Orders.

19 b. Any claims for injunctive relief, declaratory relief, restitution, alleged or which could
20 have been alleged under the facts, allegations and/or claims pleaded in the complaints
21 filed as part of the Action;

22 c. Any and all other claims under California common law, the federal law, and the
23 California Business and Professions Code alleged in or that could have been alleged
24 under the same or similar facts, allegations and/or claims pleaded in the Operative
25 Complaint and based on the alleged Labor Code violations.

26 d. The claims set forth in subparagraphs (a)-(c) hereinabove shall be collectively
27 referred to as the "Released Claims."
28

1 63. Release of PAGA Claims. Upon Final Approval by the Court and the funding of the
2 Gross Settlement Amount in accordance with Paragraph 41, the State of California, Plaintiff and the
3 PAGA Employees hereby do and shall be deemed to have fully, finally, and forever released, settled,
4 compromised, relinquished and discharged any and all of the Released Parties of and from any and
5 all claims for violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698,
6 et seq.), (“PAGA claims”) predicated on the facts and/or claims alleged in the Action and/or any
7 PAGA Letter sent to the LWDA by Plaintiff, as well as any claims that could have been pled under
8 the California Labor Code and California Industrial Welfare Commission Wage Orders. To the
9 extent the LWDA has released the PAGA claims in connection with this Agreement, no PAGA
10 Employee may pursue these same PAGA claims released here in another action. The PAGA
11 Employees are collaterally estopped from pursuing the PAGA claims released and compromised by
12 the LWDA. The PAGA Employees will be issued a check for their share of the PAGA Payment
13 and will not have the opportunity to opt out of, or object to, the PAGA Payment and release of the
14 PAGA Claims set forth in this Paragraph. The PAGA Employees are bound by the release of the
15 PAGA Claims regardless of whether they cash or deposit their PAGA Employee Payment or opt out
16 of being a Settlement Class Member in accordance with Paragraph 55.

17 64. Release of Claims by Class Representative. Upon Final Approval by the Court and
18 the funding of Gross Settlement Amount in accordance with Paragraph 41, and as a condition of
19 receiving any portion of his Incentive Award, the Class Representative, for himself only, agrees to
20 the additional following General Release: in consideration of Defendants’ promises and agreements
21 as set forth herein, the Class Representative hereby fully releases the Released Parties from any and
22 all Class Released Claims and also generally releases and discharges the Released Parties from any
23 and all any claims for wages, bonuses, severance pay, vacation pay, penalties, employment benefits,
24 stock options, violation of any personnel policy, any and all claims arising from his employment or
25 as a result of his termination from employment including claims based on discrimination,
26 harassment, unlawful retaliation, violation of public policy, or damages of any kind whatsoever,
27 arising out of any common law torts, contracts, express or implied, any covenant of good faith and
28 fair dealing, any theory of wrongful discharge, any theory of negligence, any theory of retaliation,

1 any legal restriction on any Defendants' right to terminate the employment relationship, or any
2 federal, state, or other governmental statute, executive order, regulation or ordinance, or common
3 law, or any other basis whatsoever, to the fullest extent provided by law. Class Representative shall
4 be deemed to have, and by operation of the Final Order and Judgment shall have, expressly waived
5 and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section
6 1542 of the California Civil Code, or any other similar provision under federal or state law that
7 purports to limit the scope of a general release. Class Representative, for himself, has read Section
8 1542 of the Civil Code of the State of California, which provides as follows:

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

15 The Class Representative understands that Section 1542 gives the right not to release existing claims
16 of which he is not now aware, unless the Class Representative voluntarily chooses to waive this
17 right. Having been so apprised, the Class Representative nevertheless voluntarily waives the rights
18 described in Section 1542, and elects to assume all risks for claims that now exist in his favor, known
19 or unknown. The release of the claims of the Class Representative as set forth in this Paragraph is
20 a condition precedent to enforcement of this Stipulation of Settlement.

21 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL/CLASS**

22 **CERTIFICATION**

23 65. For settlement purposes only, the Parties agree that the Class Members as defined in
24 Paragraph 4 herein, and which will run through the date of preliminary approval, or a sooner date
25 per the procedure set forth in Paragraph 71 below, at Defendants' option, may be certified in the
26 Action. The Parties are not certifying any PAGA claims. In support of this Agreement, Plaintiff
27 will request that the Court certify for settlement purposes only the Class as to all non-PAGA claims
28 that have been asserted, which Defendants shall not oppose or object to.

1 66. For settlement purposes only, the Parties agree that the PAGA Period shall run from
2 the period defined in Paragraph 23 herein and set forth in Paragraph 71 below.

3 67. Class Counsel shall promptly submit this Stipulation of Settlement to the Court in
4 support of Plaintiff's Motion for Preliminary Approval and for determination by the Court as to
5 whether the proposed Settlement is within the range of possible judicial approval. Promptly upon
6 execution of this Stipulation of Settlement, Class Counsel shall apply to the Court for the entry of
7 an order substantially in the following form:

- 8 a. Scheduling of the Final Approval Hearing on the question of whether the proposed
9 Settlement, including payment of attorneys' fees and costs and the Incentive Award
10 should be finally approved as fair, reasonable and adequate as to the Settlement Class
11 Members and for approval of the PAGA Settlement;
- 12 b. Certifying the Settlement Class;
- 13 c. Approving the Class Notice attached hereto as **Exhibit A**;
- 14 d. Directing the mailing of the Notice by first class mail to the Class Members and
15 PAGA Employees; and
- 16 e. Preliminarily approving the Settlement subject only to the objections of the Class
17 Members and final review by the Court.

18 68. The Parties will work cooperatively to mutually agree upon the form and content of
19 the Notice, as well as the Proposed Order Granting Preliminary Approval. Class Counsel shall
20 provide Defendants' counsel with a draft of the Preliminary Approval papers for review at least
21 seven (7) days prior to filing.

22 69. The Class Representative and Class Counsel will not make any public disclosure of
23 the Settlement until after the filing of the motion for preliminary approval of the Settlement. The
24 Class Representative and each Class Counsel represent that they have not made any such disclosure.
25 The Class Representative and Class Counsel shall not encourage any Class Members to opt-out.
26 Class Counsel will take all steps necessary to ensure that the Class Representative is aware of, and
27 will encourage Class Representative to adhere to, the restriction against any public disclosure of the
28 Settlement until after the Settlement is preliminarily approved by the Court. Thereafter, Class

1 Counsel and the Class Representative agree not to publicize the terms of this Settlement with the
2 media, including but not limited to, any newspaper, journal, magazine, website and/or online
3 reporter of settlements, or publicize the fact or the terms of this Settlement on any website. This
4 provision is not intended to prohibit Class Counsel or Plaintiff's communications with putative class
5 members about their respective rights under the settlement.

6 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

7 70. Following final approval by the Court of the Settlement provided for in this
8 Stipulation of Settlement, Class Counsel shall submit a proposed Final Order and Judgment in
9 approximately the following form and with input from Defendants' Counsel: Approving the
10 Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing
11 consummation of its terms and provisions including the approval of Class Counsel's application for
12 an award of attorneys' fees and costs and the Incentive Award to the Class Representative. The
13 Parties will work cooperatively to mutually agree upon the form and content of the Proposed Order
14 Granting Final Approval of the Class Settlement and Approval of the PAGA Settlement and
15 Judgment.

16 **ESCALATOR CLAUSE**

17 71. Defendants estimate that the calculated number of workweeks through the date of
18 May 3, 2024 is approximately 98,983 workweeks. Any finding of workweeks during the time frame
19 from February 17, 2019 through Preliminary Approval or May, 3, 2024, whichever is later, that
20 exceeds the workweek count by more than 10% (for a total of 108,881 workweeks) at the option of
21 Defendants, Defendants shall either increase the Gross Settlement Amount or elect to move the end
22 date for the Settlement Class Period to the latest date before the Preliminary Approval or May, 3,
23 2024, whichever is later, that does not exceed 108,881. In the event Defendants elect to extend the
24 Class Period to a date wherein the total workweeks is more than 108,881, the Gross Settlement
25 Amount will be increased by determining the workweek value calculated based on 108,881
26 workweeks divided by the Gross Settlement Amount multiplied by the additional number of
27 workweeks. For example, if the total number of workweeks by the end of the Settlement Class
28

1 Period is 109,081 and the workweek value is \$10 per workweek, Defendants would have to increase
2 the Gross Settlement Amount by \$2,000 (109,081 – 108,881 = 200 x \$10).

3 **VOIDING OF AGREEMENT IF SETTLEMENT NOT FINALIZED**

4 72. Subject to the obligations of mutual full cooperation set forth herein, either Plaintiff
5 or Defendants may terminate this Settlement if after submitting the settlement for approval to the
6 Court, the Court declines to enter the final approval order, or judgment in substantially the form
7 submitted by the Parties, or if the Stipulation of Settlement as agreed does not become final because
8 of appellate court action. The terminating Party shall give to the other Party (through counsel)
9 written notice of its decision to terminate no later than fourteen (14) calendar days after receiving
10 notice that one of the enumerated events has occurred. Termination shall have the following effects:

- 11 (a) The Stipulation of Settlement shall be terminated and shall have no force or effect,
12 and no Party shall be bound by any of its terms.
- 13 (b) In the event the Settlement Agreement is terminated, Defendants shall have no
14 obligation to make any payments to any party, Settlement Class Member, PAGA
15 Employee or Class Counsel.
- 16 (c) The preliminary approval order, final approval order and judgment shall be vacated.
- 17 (d) The Stipulation of Settlement and all negotiations, statements and proceedings
18 relating thereto shall be without prejudice to the rights of any of the Parties, all of
19 whom shall be restored to their respective positions prior to the Settlement.
- 20 (e) Except as otherwise discoverable, neither this Stipulation of Settlement nor any
21 ancillary documents, actions, statements or filings in furtherance of settlement
22 (including all matters associated with the mediation) shall be admissible or offered
23 into evidence in the Action or any other action for any purpose whatsoever.

24 **PARTIES' AUTHORITY**

25 73. The signatories hereto hereby represent that they are fully authorized to enter into
26 this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

27 **MUTUAL FULL COOPERATION**

28 74. The Parties agree to fully cooperate with each other to accomplish the terms of this
24

1 Stipulation of Settlement, including, but not limited to, execution of such documents and taking of
2 such action as reasonably may be necessary to implement the terms of this Stipulation of Settlement.
3 The Parties to this Stipulation of Settlement shall use their best efforts, including all efforts
4 contemplated by this Stipulation of Settlement and any other efforts that may become necessary by
5 order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set forth
6 herein. As soon as practicable after execution of this Stipulation of Settlement, Class Counsel shall
7 take all necessary steps to secure the Court's final approval of this Stipulation of Settlement.

8 75. The Parties and their respective counsel agree that they will not attempt to encourage
9 or discourage Class Members from filing requests for exclusion.

10 **NO PRIOR ASSIGNMENTS**

11 76. The Parties and their respective counsel represent, covenant and warrant that they
12 have not, directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer or
13 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
14 or right herein released and discharged except as set forth herein.

15 **NO ADMISSION**

16 77. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is
17 to be construed or deemed an admission of liability, culpability, negligence or wrongdoing on the
18 part of Defendants or the Released Parties. Each of the Parties hereto has entered into this
19 Stipulation of Settlement solely with the intention to avoid further disputes and litigation with the
20 attendant inconvenience and expenses.

21 **BREACH AND ENFORCEMENT ACTIONS**

22 78. The Parties will jointly request that the Court retain jurisdiction pursuant to
23 California Code of Civil Procedure § 664.6 to oversee and enforce the terms of this Settlement. In
24 the event of a breach of this Settlement, the non-breaching Party shall provide notice to the breaching
25 party and request that the breaching party cure any alleged breach. If the breach is not cured within
26 thirty (30) days of said notice, the non-breaching party may pursue legal action or other proceeding
27 against any other breaching party or parties to enforce the provisions of this Stipulation of Settlement
28 or to declare rights or obligations under this Stipulation of Settlement. In the event of such

1 enforcement actions, the successful party or parties shall be entitled to recover from the unsuccessful
2 party or parties reasonable attorneys' fees and costs, including expert witness fees incurred in
3 connection with any enforcement actions. All such disputes shall be resolved by the Court.

4 NOTICES

5 79. Unless otherwise specifically provided herein, all notices, demands or other
6 communications given hereunder shall be in writing and shall be deemed to have been duly given
7 as of the third business day after mailing both electronically and by United States registered or
8 certified mail, return receipt requested, and addressed as follows:

9 To Plaintiff, the Settlement Class and Class Counsel:

10 Lauren N. Vega
11 Nicholas J. Ferraro
12 Ferraro Vega Employment Lawyers, Inc.
13 3333 Camino del Rio South, Suite 300
14 San Diego, California 92108
T: (619) 693-7727 / F: (619) 350-6855
lauren@ferrarovega.com
nick@ferrarovega.com

15 To Defendants and Defendants' Counsel:

16 Stacey E. James
17 Luis E. Lorenzana
18 Warsame Y. Hassan
19 LITTLER MENDELSON, P.C.
20 501 W. Broadway, Suite 900
21 San Diego, CA 92101
T: (619) 232-0441 / F : (619) 232-4302
sjames@littler.com
llorenzana@littler.com
wyhassan@littler.com

22 CONSTRUCTION

23 80. The Parties hereto agree that the terms and conditions of this Stipulation of
24 Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this
25 Stipulation of Settlement shall not be construed in favor of or against any party by reason of the
26 extent to which any Party or their counsel participated in the drafting of this Stipulation of
27 Settlement.

CAPTIONS AND INTERPRETATIONS

81. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Stipulation of Settlement or any provision of it. Each term of this Stipulation of Settlement is contractual and not merely a recital.

MODIFICATION

82. This Stipulation of Settlement may not be changed, altered or modified, except in writing and signed by the Parties hereto. Material changes, alterations, or modifications must be approved by the Court. This Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

83. This Stipulation of Settlement, and the Exhibits attached hereto and incorporated herein by reference, contain the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

BINDING ON ASSIGNS

84. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

COUNTERPARTS

85. This Stipulation of Settlement may be executed in counterparts and by facsimile signatures, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and effective as to all Parties.

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set forth below:

1 Dated: Apr 12, 2024, 2024

Eloy Herrera

Eloy Herrera
Plaintiff and Class Representative

2
3 Dated: April 10,, 2024

Katherine C. Piper
Katherine C. Piper, on behalf of
Defendants Calpine Operating Services
Company and Calpine Corporation

4
5
6 **APPROVED AS TO FORM AND CONTENT:**

7
8 DATED: Apr 12, 2024

FERRARO VEGA EMPLOYMENT LAWYERS, INC.

9
10 BY: *Nicholas J. Ferraro*
Nicholas Ferraro, Esq.
Lauren Vega, Esq.

11
12 Attorneys for Plaintiff

13 DATED: April 10, 2024

LITTLER MENDELSON, P.C.

14
15 BY: *Stacey E. James*
Stacey E. James, Esq.
Luis E. Lorenzana, Esq.
Hassan Y. Warsame, Esq.

16
17 Attorneys for Defendants

18 The filing party has obtained the authorization and approval of all signatories.