

## **JOINT STIPULATION OF PAGA REPRESENTATIVE ACTION SETTLEMENT AND RELEASE**

This Joint Stipulation of PAGA Representative Action Settlement and Release (hereinafter “Settlement Agreement”) is made and entered into by and between the following parties: Plaintiff Carmen Garcia (“Garcia”), Plaintiff Chance Macaire (“Macaire”), and Plaintiff Arturo Sarmiento III (“Sarmiento”) (together, “Plaintiffs”), individually and as proxies of the State of California and the California Labor and Workforce Development Agency (“LWDA”) on behalf of all other allegedly aggrieved employees, and Defendant Caliber Holdings LLC (“Caliber”) (collectively, the “Parties”), and their respective counsel of record. This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court. This Settlement Agreement accurately sets forth the Parties’ PAGA representative action settlement in the total amount of Four Million Ninety Thousand Dollars (\$4,090,000) to resolve all claims, as detailed below.

### **I. DEFINITIONS**

1. “Garcia Action” means the action entitled “*Carmen Garcia v. Caliber Holdings of California, LLC, et al.*,” Case No. S-CV-0050365, filed in the Superior Court of California in and for the County of Placer.
2. “Macaire Action” means the action entitled “*Chance Macaire v. Caliber Holdings LLC, et al.*,” Case No. 23STCV2051, filed in the Superior Court of California in and for the County of Los Angeles.
3. “Approval Date” means the date the Court approves this Settlement Agreement, and enters the Order Granting Settlement Approval and Judgment to that effect.
4. “Approval Hearing” means the hearing on the Motion for Settlement Approval and Judgment.
5. “Caliber Releasees” means Caliber Holdings LLC f/k/a Caliber Holdings Corporation, Caliber Holdings of California LLC, and all of their current, future, and former parents, subsidiaries, divisions, affiliates, affiliates and subsidiaries under common ownership, owners, shareholders, members, directors, officers, employees, attorneys, insurers, benefit plans, agents and independent contractors, and the predecessors, successors, and assigns of each of them.

6. “Court” means the Superior Court of California in and for the County of Placer, which presides over the Garcia Action.

7. “Covered PAGA Pay Periods” means, as reflected on Caliber’s internal records, pay periods from May 27, 2022 to August 27, 2024, in which a PAGA Member worked for Caliber as a non-exempt employee in California.

8. “Cy Pres Recipient” means Children’s Advocacy Institute.

9. “Defendants” means Caliber; Caliber Holdings Corporation, Caliber Holdings of California LLC; and Philip Tarin.

10. “Defendants’ Counsel” means Morgan, Lewis & Bockius LLP.

11. “Estimated Pay Periods” means the estimate of the pay periods at issue provided by Caliber in connection with the execution of the Parties’ Memorandum of Understanding.

12. “PAGA Settlement Payment” means the final gross amount sent and paid to any PAGA Member under this Settlement Agreement.

13. “PAGA Settlement Fund” means the twenty-five percent (25%) of the Net Settlement Amount allocated for the PAGA Settlement Payments to the PAGA Members.

14. “Plaintiffs” means Carmen Garcia and Chance Macaire and Plaintiff Arturo Sarmiento III, the named Plaintiffs in the Operative Complaint.

15. “LWDA” means the California Labor and Workforce Development Agency.

16. “Maximum Settlement Amount” is the sum of Four Million Ninety Thousand Dollars (\$4,090,000), which represents the maximum amount payable in this Settlement by Caliber, and includes all attorneys’ fees, litigation costs, the Settlement Administration Expenses, the Service Enhancement to the Plaintiffs, and all settlement payments to the LWDA and the PAGA Members.

17. “Net Settlement Amount” equals the Maximum Settlement Amount less Plaintiffs’ Counsel’s attorneys’ fees and actual litigation costs, Settlement Administration Expenses, and the Service Enhancement to the Plaintiffs.

18. “Operative Complaint” means the First Amended Complaint filed in the Garcia Action that adds the parties and Claims from the Macaire Action, and adds Sarmiento as an additional PAGA

representative. On September 24, 2024, the Parties filed a Stipulation with the Court requesting leave for Plaintiffs to file the Operative Complaint.

19. “Order Granting Settlement Approval and Judgment” means the Order entered by the Court in the Garcia Action, *inter alia*: (1) approving the terms and conditions of this Settlement Agreement, including the payments and the release of claims as set forth herein; (2) approving the amount of attorneys’ fees and litigation costs to be awarded to Plaintiffs’ Counsel, the Settlement Administration Expenses, and the Service Enhancements to be awarded from the Maximum Settlement Amount; and (3) dismissing the Action with prejudice and entering judgment in the Action pursuant to and consistent with the terms and conditions of this Settlement Agreement.

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

21. “PAGA Member(s)” means all individuals employed by Caliber as non-exempt employees in California between May 27, 2022 and or August 27, 2024.

22. “Plaintiffs’ Counsel” means Blumenthal Nordrehaug Bhouwmik De Blouw LLP (“BNDB”); and, Castle Law: California Employment Counsel, PC (“Castle”).

23. “Released Claims” means any and all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law against the Caliber Releasees that were asserted, or are reasonably related to those asserted, in the Complaints in the Garcia Action and Macaire Action, the PAGA letters to the LWDA, and any amendments thereto; or that could have been asserted based on the facts in the Complaints in the Garcia Action and Macaire Action, the PAGA letters to the LWDA, and any amendments thereto, or are reasonably related to those claims that could have been asserted based on the facts in the Complaints, the PAGA letters to the LWDA, and any amendments thereto, that occurred during the Covered PAGA Pay Periods. Released Claims include, but are not limited to, claims for failure to pay minimum wage, failure to pay overtime or pay overtime at the correct rate of pay, failure to pay for all hours worked (off-the-clock work), failure to pay double time, failure to pay non-productive time pay, failure to pay all wages or pay all wages at the correct rate, failure to pay reporting time pay, failure to properly pay for sick time including paying sick time at the correct rate, failure to pay

all vested vacation and holiday time including vacation time at the correct rate of pay, failure to provide meal periods, failure to provide rest periods, failure to pay meal and rest premiums at the correct rate of pay, failure to timely pay final wages and wages earned during employment, failure to provide reimbursement for necessary business-related expenditures, failure to maintain wage-related records and/or furnish accurate wage statements, failure to provide employment records upon request, unlawful deductions, failure to provide suitable seating, and includes all such claims from May 27, 2022 through August 27, 2024. Class claims, claims outside the Covered PAGA Pay Period, and Plaintiffs' respective non-PAGA individual claims that are subject to a separate releases, are expressly not released as part of the Released Claims.

24. "Service Enhancement" means the incentive payment paid to Plaintiffs in an amount not to exceed \$10,000 to Garcia, \$10,000 to Macaire, and \$10,000 to Sarmiento for Plaintiffs' efforts and work in prosecuting the Garcia Action and Macaire Action, respectively.

25. "Settlement Administration Expenses" means all settlement administration fees and costs, including those for the Settlement Administrator, in effectuating the Settlement and approved by the Court in an amount not to exceed \$34,000.

26. "Settlement Administrator" means Apex Class Action Administration or any other third-party settlement administrator that the Parties jointly select.

27. "Settlement Agreement" or "Settlement" will mean this Joint Stipulation of PAGA Representative Action Settlement and Release.

28. "Settlement Effective Date" means, after the Order Granting Settlement Approval and Judgment has been entered by the Court in the Action, the latter of the following dates: (a) if an appeal, review, or writ is not sought from the Order Granting Settlement Approval and Judgment, the 63rd day after service of notice of entry of the Order Granting Settlement Approval and Judgment; or (b) if an appeal, writ, or review is sought from the Order Granting Settlement Approval and Judgment, the day after the Order Granting Settlement Approval and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Order Granting Settlement Approval and Judgment is no longer subject to any further judicial review.

## **II. LITIGATION BACKGROUND**

29. On or about April 14, 2023, Garcia served the LWDA with a PAGA notice letter which stated that Garcia intended to seek civil penalties against Caliber for alleged violations of the California Labor Code.

30. On or about April 24, 2023, Garcia filed a representative action under PAGA against Defendants in the Superior Court of California for the County of Placer.

31. On or about March 3, 2023, Macaire served the LWDA with an amended PAGA notice letter which stated that Macaire intended to seek civil penalties against Caliber for alleged violations of the California Labor Code.

32. On or about August 7, 2023, Macaire served the LWDA with an amended PAGA notice letter which corrected the name of the Defendant and added two additional Defendants.

33. On or about October 13, 2023, Macaire filed a representative action under PAGA against Defendants Caliber and Caliber Holdings of California LLC in the Superior Court of California for the County of Los Angeles.

34. On or about June 21, 2024, Macaire served the LWDA with an amended PAGA notice letter which added Plaintiff Arturo Sarmiento III.

35. As Part of this Agreement, the Parties filed a Stipulation with the Court requesting leave for Plaintiffs to file the Operative Complaint as set forth in Section I.18 above and Section IV.C

36. Caliber denies Plaintiffs' claims, and asserts that it has complied fully with California's labor laws and wage orders. Consequently, Caliber does not believe that any liability to Plaintiffs, the State of California or the LWDA, or to any other PAGA Member exists, or that Plaintiffs, the State of California or the LWDA, or any other PAGA Member are entitled to any recovery in the Garcia Action or Macaire Action.

37. On May 23, 2024, counsel for the Parties participated in a mediation with experienced mediator Michael Dickstein, Esq. With Mr. Dickstein's assistance, the Parties negotiated a complete settlement of Plaintiffs' claims. The terms of the settlement pertaining to Plaintiffs' PAGA claims are now set forth in complete and final form in this Settlement Agreement.

38. Neither this Settlement, nor any final judgment pursuant to this Settlement, will constitute an admission of any form of wrongdoing or liability on the part of Caliber or the accuracy of any allegation raised in the Garcia Action or Macaire Action. This Settlement is entered into in compromise of disputed claims. Plaintiffs and Caliber intend, by their actions pursuant to this Settlement, merely to avoid the expense, delay, uncertainty, and burden of litigation. This Settlement and any related court documents or orders may not be cited or otherwise admitted as evidence of liability. There has been no final determination by any Court as to the merits of the Garcia Action or Macaire Action.

39. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims against the Caliber Releasees arising from or related to the Garcia Action and Macaire Action.

40. It is the intention of the Parties that this Settlement Agreement will constitute a full and complete settlement and release of the PAGA claims averred in the Garcia Action and Macaire Action by the Plaintiffs, both individually and as proxies of the State of California and the LWDA on behalf of all PAGA Members pursuant to PAGA. This release includes in its effect a release of all the Caliber Releasees of the Released Claims.

### **III. JURISDICTION AND VENUE**

41. This Court has jurisdiction over the Parties and the subject matter of this Settlement. This Court will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations provided for herein have been fully executed, satisfied or otherwise discharged.

### **IV. TERMS OF SETTLEMENT**

42. NOW, THEREFORE, in consideration of the mutual covenants, promises, and undertakings set forth herein, the Parties agree, subject to the Court's approval, as follows:

#### **A. Non-Admission of Liability**

43. Nothing in this Settlement Agreement, or any communications, papers, or orders related to this Settlement Agreement, will be construed to be or deemed an admission by the Caliber Releasees of any liability, culpability, negligence, or wrongdoing toward the Plaintiffs, the PAGA Members, or any other

person, and the Caliber Releasees specifically disclaim any liability, culpability, negligence, or wrongdoing toward the Plaintiffs, the PAGA Members, or any other person. Caliber also maintains that, for any purpose other than settlement, the claims alleged in the Garcia Action and Macaire Action are not suitable or appropriate for representative action treatment and are not manageable pursuant to California Labor Code § 2698 *et seq.*, nor are the claims alleged in the Garcia Action and Macaire Action suitable or appropriate for class and/or collective action treatment under California Code of Civil Procedure Section 382, the Fair Labor Standards Act, or any other applicable laws or rule(s). The Parties stipulated to to representative action treatment for settlement purposes only. Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies, including in the Garcia Action and Macaire Action. This Settlement Agreement and any communications, papers, or orders related to the Settlement Agreement may not be cited or otherwise admitted as evidence of liability, whether in the Garcia Action, Macaire Action, or elsewhere. There has been no final determination by any Court as to the merits of the claims asserted by Plaintiffs against Defendants.

44. Furthermore, nothing in this Settlement Agreement will be considered a form of waiver of any of the alternative dispute resolution provisions contained in Caliber's Arbitration Agreement or any other applicable alternative dispute resolution agreement with Caliber, and Caliber expressly does not waive any right to enforce arbitration agreements and class, collective, and representative action waivers under any other circumstance.

**B. Non-Approval By The Court**

45. If this Settlement Agreement is not approved by the Court, fails to become effective, is reversed, withdrawn or modified by the Court:

- (a) The Settlement Agreement will have no force or effect, other than the confidentiality and non-disclosure provisions in Section XI and the non-admission provisions in Section IV.A;
- (b) The Settlement Agreement will not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or

procedural;

- (c) None of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments with respect to the merits of Plaintiffs' claims; and
- (d) Caliber does not waive, and instead expressly reserves its right to challenge the propriety of the Garcia Action and Macaire Action proceeding as representative actions.

**C. Operative Complaint**

46. The Parties filed a joint stipulation with the Court requesting leave for Plaintiffs to file the Operative Complaint.

47. Macaire will request dismissal of the Macaire Action pending in Los Angeles County Superior Court without prejudice within five (5) business days after the filing of the Operative Complaint.

**D. Settlement Payments**

48. Caliber agrees to pay a Maximum Settlement Amount of Four Million Ninety Thousand Dollars (\$4,090,000), inclusive of (a) all PAGA penalty settlement payments to the LWDA and PAGA Members; (b) any award of attorneys' fees and out-of-pocket litigation costs and expenses to Plaintiffs' Counsel; (c) any award of Service Enhancements; and (d) all Settlement Administration Expenses. The Maximum Settlement Amount covers all PAGA claims, including amendments thereto, for civil penalties alleged by Plaintiffs on behalf of themselves, the State of California, the LWDA, and all PAGA Members against Caliber. The Parties specifically agree, subject to Court approval, to the following allocations to be paid from the Maximum Settlement Amount:

- (a) From the Maximum Settlement Amount, Plaintiffs' Counsel may seek from the Court attorneys' fees up to \$ 1,363,333.33, and reasonable and substantiated litigation costs in an amount not to exceed \$40,000 for serving as Plaintiffs' Counsel. Plaintiffs' Counsel attorneys' fees will be allocated among Plaintiffs' Counsel as follows: 50% to BNBD and 50% to Castle. Caliber will not oppose Plaintiffs' application up to these amounts so long as Plaintiffs and Plaintiffs'

counsel are not in breach of the Settlement Agreement.

- (b) From the Maximum Settlement Amount, Plaintiffs' Counsel may seek from the Court a Service Enhancement awards to Plaintiffs not to exceed \$10,000 each, paid on an IRS Form 1099, which Caliber will not oppose so long as Plaintiffs and Plaintiffs' Counsel are not in breach of the Settlement Agreement.
- (c) From the Maximum Settlement Amount, Settlement Administration Expenses in a reasonable amount currently estimated at \$34,000.
- (d) From the Net Settlement Amount, settlement payments attributable to PAGA penalties will be allocated and paid to the LWDA and the PAGA Members.
  - (i) Seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA as its share of the Settlement attributable to PAGA penalties.
  - (ii) The remaining twenty-five percent (25%) of the Net Settlement Amount will be the PAGA Settlement Fund and will be distributed as PAGA Settlement Payments to the PAGA Members based on their eligible employee service time for Covered PAGA Pay Periods, as reflected on Caliber's internal records. PAGA Settlement Payments will be calculated as follows: the numerator shall be the number of the PAGA Member's individual Covered PAGA Pay Periods; the denominator shall be the total Covered PAGA Pay Periods for all PAGA Members; this fraction shall be multiplied by the PAGA Settlement Fund.
- (e) If the Court approves a lesser amount of attorneys' fees and litigation costs and expenses, the Service Enhancements, and Settlement Administrator Expenses, than those sought by Plaintiffs and Plaintiffs' Counsel, any amount disallowed by the Court will be added to the PAGA Settlement Fund to be distributed in pro rata shares to the PAGA Members. The Parties agree that the Settlement Agreement will remain binding with such modification(s) as ordered by the Court, and its terms will be otherwise unchanged. Plaintiffs' counsel agrees not to appeal any

reduction in the award of fees by the Court. This Settlement is not conditioned upon the Court's approval of Plaintiffs' Counsel's petition for fees and costs or the amount of any Service Enhancement award.

- (f) The Settlement Administrator will disburse monies from the Net Settlement Amount as and when authorized in this Settlement Agreement and by order of the Court, will file and issue any necessary tax reporting documents, and will inform the Parties and the Court of its fulfillment of the duties imposed by this Settlement Agreement.
- (g) The Settlement Administrator will issue settlement checks to the LWDA and PAGA Members under this Settlement Agreement, as well as the Service Enhancements to the Plaintiffs and attorneys' fees and costs awarded to Plaintiffs' Counsel, by sending such payments by mail, wire, or other reliable means to the respective recipients as specified below.
- (h) All PAGA penalty allocations to the PAGA Members will be paid out with no reversion to Caliber and no claim forms required.

**E. Estimated Pay Periods**

49. In connection with the Parties' execution of the Memorandum of Understanding, Caliber has provided to Plaintiffs with 544,907 pay periods as the Estimated Pay Periods. If the total number of pay periods during the period from May 27, 2022 to May 3, 2024 exceeds the number of Estimated Pay Periods by greater than ten percent (10%), then Caliber will have the option to (a) increase the Maximum Settlement Amount on a pro-rata basis for the number of pay periods in excess of the ten percent (10%) increase (e.g., if the number is 11% higher, the Maximum Settlement Amount will be increased by 1%); or (b) modify the end date for the settlement period to an earlier date that would reduce the total number of pay periods proportionately to the excess percentage.

**F. Released Claims**

50. Upon the Settlement Effective Date, Plaintiffs individually, and the State of California, the LWDA, and all PAGA Members, through Plaintiffs acting as proxies for the State of California and the

LWDA and as a Private Attorney General acting on behalf of all other PAGA Members, will be deemed to have fully, finally, and forever released the Caliber Releasees and Philip Tarin from all Released Claims as set forth in Section VII.A. Plaintiffs, in conjunction with their execution of this Settlement Agreement and requesting their Service Enhancement, also will enter into the General Release as set forth in Section VII.B.

**G. Waiver of Appeal**

51. The Parties expressly acknowledge and agree that approval of this Settlement Agreement, through the Order Granting Settlement Approval and Judgment, effectuates the Releases set forth in Section VII, extinguishes all Released Claims, and dismisses the Garcia Action with prejudice. Upon the Approval Date, Plaintiffs, Caliber, and their counsel expressly agree to hereby waive and extinguish their right to appeal any order or judgment in the Garcia Action, and the judgment entered in the Garcia Action will be final.

**H. No Right to Exclusion or Objections by PAGA Members**

52. Because this Settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as a Private Attorney General of and for the State of California and the LWDA, the Parties agree that no PAGA Member has the right to exclude himself or herself from the Settlement. PAGA Members will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any PAGA Settlement Payment received as a result of this Settlement. The Parties also agree that no PAGA Member, including Plaintiffs, has the right to object to the terms of the Settlement Agreement and Plaintiffs agree not to object to the Settlement.

**I. Motion for Settlement Approval and Entry of Judgment**

53. Plaintiffs will file a motion for settlement approval and entry of judgment with the Court, in which Plaintiff will request that the Court, among other things, enter an Order Granting Settlement Approval and Judgment in accordance with the terms of this Settlement Agreement. Concurrent with filing the motion for settlement approval and entry of judgment, Plaintiffs will submit that motion and any supporting papers, including a copy of this Settlement Agreement, to the LWDA pursuant to Labor Code § 2699(I)(2).

## **V. SETTLEMENT ADMINISTRATION**

### **A. Settlement Administrator Duties**

54. Pursuant to the terms of this Settlement Agreement, the Settlement Administrator will be responsible for and the Settlement Administration Expenses will cover: (a) calculating and determining the LWDA's 75% share of the Net Settlement Amount, and preparing and mailing that payment to the LWDA; (b) preparing a list of all PAGA Members, calculating the PAGA Settlement Payments due to each PAGA Member from the PAGA Settlement Fund, and issuing and mailing checks payable to said PAGA Members, including taking appropriate steps to trace, update and locate any PAGA Members whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated; (c) issuing to Plaintiffs, Plaintiffs' Counsel, and PAGA Members any tax forms as may be required by applicable law for all amounts paid pursuant to this Settlement Agreement; (d) forwarding all taxes and penalties to the appropriate government authorities; (e) maintaining the Maximum Settlement Amount account in an interest-bearing account at a federally insured banking institution, as discussed below; (f) preparing and mailing the amount of attorneys' fees and litigation costs awarded to Plaintiffs' Counsel from the Maximum Settlement Amount; (g) preparing and mailing the Service Enhancements awarded to Plaintiffs from the Maximum Settlement Amount; (h) reporting to Defendants' Counsel, Plaintiffs' Counsel, and, if necessary, the Court regarding the completion of the tasks identified in this paragraph; and (i) carrying out other related tasks including the proper maintenance of undisbursed PAGA Settlement Payments or uncashed checks in an interest bearing account and any reporting required for that account, in accordance with the terms of this Settlement Agreement.

55. All disputes relating to the Settlement Administrator's ability and need to perform its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully executed.

### **B. Qualified Settlement Fund**

56. The Settlement Administrator will create a Qualified Settlement Fund ("QSF"), to be funded by the Maximum Settlement Amount paid by Caliber and administered by the Settlement

Administrator. The Settlement Administrator shall have control over the distribution of funds from the QSF, once funded. With respect to the QSF, the Settlement Administrator shall: (1) satisfy all federal, state and local income and other tax reporting, return, and filing requirements with respect to the QSF and any interest or other income earned by the QSF; and (2) satisfy out of the QSF all fees, expenses and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and functions as described in this Settlement Agreement. The aforementioned fees, costs and expenses shall be treated as and included in the costs of administering the QSF and as Settlement Administration Expenses. The Parties agree to cooperate with the Settlement Administrator and one another to the extent reasonably necessary to carry out the provisions of this Section. If the Court does not enter the Order Granting Settlement Approval and Judgment, Caliber shall not be obligated to fund the QSF.

**C. Calculating and Issuing Payments To PAGA Members**

57. The Settlement Administrator shall calculate the PAGA Settlement Payments to PAGA Members as described in Paragraph 42(d)(ii).

58. In addition to the payments to PAGA Members, Caliber, through the Settlement Administrator, shall also make a payment to the California LWDA as consideration for the release of all PAGA claims that are the subject of the Garcia Action on behalf of the State of California. Of the Net Settlement Amount, seventy-five percent (75%) shall be paid to the LWDA.

59. Prior to mailing the PAGA Settlement Payments to PAGA Members, the Settlement Administrator will update the addresses for the PAGA Members using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. Any returned envelopes from the initial mailing with forwarding addresses will be used by the Settlement Administrator to locate PAGA Members and re-mail the PAGA Settlement Payments to the correct or updated address. The Settlement Administrator will use appropriate tracing methods, including skip tracing, to ensure that the PAGA Settlement Payments are received by PAGA Members. The Settlement Administrator will also take reasonable steps, including skip tracing, to locate any PAGA Member whose PAGA Settlement Payments are returned as undeliverable.

60. The PAGA Settlement Payments mailed to each PAGA Member will include the notice

letter attached to this Settlement Agreement as **Exhibit A** and will provide a payment of each PAGA Member's pro rata share from the PAGA Settlement Fund.

61. All settlement payments from the Maximum Settlement Amount, including any payment to the LWDA, any PAGA Settlement Payments, and any Service Enhancement approved by the Court, will be treated as civil penalties under PAGA, and will be reported on an IRS Form 1099 without withholdings. The payments to Plaintiffs' Counsel for attorneys' fees and litigation costs will be treated as miscellaneous income and will be reported on an IRS Form 1099 without withholdings. The Plaintiffs and PAGA Members will be exclusively liable for any and all tax liability, if any. All Parties represent that they have not received, and will not rely on, advice or representations from other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or local law.

**D. Settlement Administration Expenses**

62. All Settlement Administration Expenses will come out of the Maximum Settlement Amount. If the actual Settlement Administration Expenses are less than the amount approved by the Court, those funds will be added to the Net Settlement Amount.

**VI. DISTRIBUTION OF NET SETTLEMENT AMOUNT**

**A. Process and Deadlines**

63. Within thirty (30) days after the Approval Date, Caliber will provide information in an electronic format regarding all PAGA Members, including name(s), last known residence addresses, Social Security numbers, and all Covered PAGA Pay Periods worked, to the Settlement Administrator only, contingent upon the Settlement Administrator's execution of a confidentiality agreement. PAGA Member data will be used by the Settlement Administrator only for the purpose of calculating settlement shares and finding and paying PAGA Members their portion of the PAGA Settlement Fund. Data for PAGA Members will be kept confidential by the Settlement Administrator, and will not be disclosed to Plaintiffs, Plaintiffs' Counsel, the LWDA, or any other PAGA Member without the written consent of Caliber.

64. Within fourteen (14) days after the running of the time to appeal the Court's settlement approval order, Caliber will provide payment of the Maximum Settlement Amount to the Settlement Administrator to fund the QSF to be created by the Settlement Administrator.

65. Within twenty-one (21) days after the running of the time to appeal the Court's settlement approval order, the Settlement Administrator will calculate the Net Settlement Amount and will make the calculation of payments from the Net Settlement Amount to be distributed to the LWDA (representing its 75% share under PAGA of the Net Settlement Amount) and to each of the PAGA Members (representing, in the aggregate, their 25% share under PAGA of the Net Settlement Amount). Upon completion of its calculation of payments, and at least seven (7) days prior to the distribution of payments to the LWDA and PAGA Members, the Settlement Administrator will provide Defendants' Counsel with a report listing the amount of all payments to be made to the LWDA and to each PAGA Member from the Net Settlement Amount.

66. Within and no earlier than fourteen (14) days after the QSF has been funded with the Maximum Settlement Amount, and provided that no timely appeal has been filed of the Court's Order Granting Settlement Approval and Judgment, the Settlement Administrator will distribute and pay PAGA Settlement Payments to all PAGA Members, issue a Settlement check to the LWDA for its payment of PAGA penalties, pay Plaintiffs the Service Enhancements, and pay Plaintiffs' Counsel any awarded attorneys' fees and costs. The Settlement Administrator will then also issue a payment to itself in the amount approved by the Court for services performed in administering this Settlement. In the event that a timely appeal of the Court's Order Granting Settlement Approval and Judgment is filed, the Settlement Administrator will not disburse the settlement amounts pursuant to this Paragraph until a date approved by both Parties.

**B. Uncashed Settlement Checks**

67. PAGA Members who are sent PAGA Settlement Payments will have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks and will be so advised of such deadline. If PAGA Members do not cash their checks within that period, those checks will become void and the settlement payment amounts will be paid to the Cy Pres Recipient designated by the Parties.

**VII. RELEASE OF CLAIMS**

**A. Release of Claims by Plaintiffs, the LWDA, and All PAGA Members**

68. Upon the Approval Date, Plaintiffs, on behalf of themselves, the State of California and

the LWDA, and all PAGA Members, fully and forever releases and discharges the Caliber Releasees (as defined in Paragraph 5) from the Released Claims as defined in Paragraph 23. The Parties agree that this Settlement Agreement is conditioned upon this release of all Released Claims, both by Plaintiffs individually, and by the State of California, the LWDA, and all PAGA Members through Plaintiffs acting on behalf of, and as a Private Attorney General for, the State of California, the LWDA, and all allegedly aggrieved current and former employees of Caliber. Upon the Settlement Effective Date, Plaintiffs, the LWDA, and each and every PAGA Member will be bound by the terms of this Settlement Agreement and will have recourse exclusively to the benefits, rights, and remedies provided hereunder.

69. The Parties further understand and agree that this Settlement Agreement, in conjunction with the Order Granting Settlement Approval and Judgment, prohibits and enjoins any PAGA Member (including Plaintiffs), from bringing against the Caliber Releasees any of the Released Claims (including unknown Released Claims) through and including the Approval Date. Upon the Settlement Effective Date, Plaintiffs, on behalf of themselves and on behalf of the LWDA and each and every PAGA Member, will be deemed to have, and by operation of the Order Approving Settlement Agreement and Judgment entered by the Court will have fully, finally, and forever released, relinquished, and discharged each and all of the Caliber Releasees from any and all Released Claims (including unknown Released Claims) through the Approval Date.

**B. General Releases by Plaintiffs**

70. Pursuant to separate Confidential Settlement Agreements, in addition to the Maximum Settlement Amount, Defendants have agreed to separately pay Plaintiff Macaire \$30,000, Plaintiff Garcia \$60,000, and Plaintiff Sarmiento \$20,000 (“Individual Settlement Amount(s)”). The Individual Settlement Amounts will be distributed by the Settlement Administrator to the Plaintiffs. The Individual Settlement Amount is made in exchange for a general release of all claims arising out of employment with Defendants, including a waiver of any unknown claims pursuant to California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

**VIII. DUTIES OF THE PARTIES**

71. Plaintiffs' Counsel, subject to Caliber's approval, will submit this Settlement Agreement to the Court and a proposed Order Granting Settlement Approval and Judgment.

72. Following entry of the Court's Order Granting Settlement Approval and Judgment, the Parties will each act to assure his or its timely execution and the fulfillment of all provisions in that Order and in this Settlement Agreement, including but not limited to the following:

- (a) Within ten (10) days after the Approval Date, Plaintiffs' Counsel will submit a copy of the Order Granting Settlement Approval and Judgment to the LWDA pursuant to Labor Code § 2699(l)(3).
- (b) Within fourteen (14) days after the running of the time to appeal the Court's settlement approval order, Caliber will provide to the Settlement Administrator: (1) payment of the Maximum Settlement Amount to fund the QSF, and (2) the PAGA Member list and identification and contact information specified in Paragraph 63 above. Caliber will submit this information in electronic format as specified by the Settlement Administrator. and will thereafter assist the Settlement Administrator as necessary or as requested to use, correct, or update this information in order to enable the Settlement Administrator to locate and contact PAGA Members, and to provide information needed or requested by the Settlement Administrator in order to make determinations on PAGA Members' challenges.
- (c) Plaintiffs' Counsel and Defendants' Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating PAGA Members entitled to payments from the PAGA Settlement Fund and assuring delivery of such payments.

- (d) Plaintiffs' Counsel and Defendants' Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amount of the PAGA Settlement Fund for any uncashed checks to the Cy Pres Recipient.

**IX. SETTLEMENT APPROVAL PROCEDURES AND TIMELINE FOR COMPLETION OF SETTLEMENT**

73. This Settlement Agreement will become final and effective only upon the occurrence of all of the following events:

- (a) Execution of this Settlement Agreement by the Parties and their respective counsel of record.
- (b) Submission of the Settlement Agreement to the Court for approval.
- (c) Plaintiffs' submission of the Settlement Agreement to the LWDA.
- (d) Entry by the Court of an Order Approving Settlement Approval and Judgment, which, among other things, must:
  - (i) approve the Settlement and the release of claims set forth herein, adjudging the terms thereof to be fair, adequate, reasonable, and binding on Plaintiffs, the LWDA, and all PAGA Members through Plaintiffs acting on behalf of, and as a Private Attorney General for, the State of California, the LWDA, and all PAGA Members, and directing that its terms and provisions be carried out;
  - (ii) approve settlement administration services to be provided by the Settlement Administrator;
  - (iii) permanently enjoin and prohibit Plaintiffs, the LWDA, and all other PAGA Members from pursuing and/or seeking to reopen claims that have been released by this Agreement;
  - (iv) provide that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Settlement and the Court's orders;

- (v) otherwise incorporate the terms of this Settlement Agreement; and  
occurrence of the Settlement Effective Date.

74. The schedule for approval and payment procedures carrying out this Settlement is as follows. The schedule may be modified depending on whether and when the Court grants necessary approvals. In the event of such modification, the Parties will cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

|                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Within 10 days after the Approval Date                                                                    | Plaintiffs' Counsel to submit a copy of the Approval Order and Judgment to the LWDA.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Within fourteen (14) days after the running of the time to appeal the Court's settlement approval order   | Caliber to (1) send payment of the Maximum Settlement Amount to the Settlement Administrator to be deposited into the QSF; and (2) provide the Settlement Administrator the PAGA Member information, including names, last known residence addresses, social security numbers, and the number of Covered PAGA Pay Periods.                                                                                                                                                                                                                                                                                                                                                        |
| Within twenty-one (21) days after the running of the time to appeal the Court's settlement approval order | Settlement Administrator to make the calculation of payments from the Net Settlement Amount to be distributed to the LWDA and to the PAGA Members and provide Defendants' Counsel with a report listing the amount of all payments to be made to the LWDA and to each PAGA Member.<br><br>Settlement Administrator to complete any skip trace or other address searches for PAGA Members, including updating any contact information.                                                                                                                                                                                                                                             |
| Settlement Effective Date                                                                                 | Following entry of the Order Granting Settlement Approval and Judgment, the latter of the following dates: (a) if an appeal, review, or writ is not sought from the Order Granting Settlement Approval and Judgment, the 63rd day after service of notice of entry of the Order Granting Settlement Approval and Judgment; or (b) if an appeal, writ, or review is sought from the Order Granting Settlement Approval and Judgment, the day after the Order Granting Settlement Approval and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Order Granting Settlement Approval and Judgment is no longer subject to further judicial review. |

|                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Within fourteen (14) days after the QSF has been funded with the Maximum Settlement Amount; alternatively, if a timely appeal of the Court's order and judgment is filed, on a date approved by both Parties | Settlement Administrator to distribute and pay Settlement checks to the LWDA and to all PAGA Members from the Net Settlement Amount, pay the Plaintiff his Service Enhancement, and pay Plaintiffs' Counsel the attorney's fees and costs approved and awarded by the Court. |
| 180 days after distribution of settlement checks                                                                                                                                                             | Expiration of PAGA Members' settlement checks.                                                                                                                                                                                                                               |
| Within 210 days after distribution of settlement checks                                                                                                                                                      | Settlement Administrator to calculate and pay any remaining amount from the Net Settlement Amount (due to expired settlement checks) to the Cy Pres Recipient.                                                                                                               |

## **X. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT**

75. Caliber has the right to withdraw from the Settlement at any time prior to the Settlement Effective Date if: (a) the Settlement is construed in such a fashion that Caliber is required to pay more than the Maximum Settlement Amount; or (b) the Court denies approval of the Settlement or any material terms thereof (excluding any reduction of Plaintiffs and Plaintiffs' Counsel's requests for attorneys' fees, litigation costs and expenses, and the Service Enhancement); or (c) the Court does not order the release of claims of the PAGA Members set forth in this Settlement Agreement, or otherwise makes an order inconsistent with any of the material terms of this Settlement Agreement; or (d) Plaintiffs or Plaintiffs' counsel breaches this Settlement Agreement.

76. If for any reason the Settlement Agreement is not approved, or the Court fails to enter the Order Granting Settlement Approval and Judgment, or Caliber or Plaintiffs withdraw from the Settlement, this Settlement Agreement and any related settlement documents (including the Parties' memorandum of understanding) will be null and void, other than the confidentiality and non-disclosure provisions in Section XI and the non-admission provisions in Section IV.A. In such an event, neither this Settlement Agreement, nor the parties' memorandum of understanding, nor the settlement documents, nor the negotiations leading to the Settlement, may be used as evidence for any purpose, and Caliber will retain the right to challenge all claims and allegations in the Garcia Action and to assert all applicable defenses on all applicable grounds.

77. Other than as specified above, this Settlement Agreement may not be changed, altered, or

modified, except in writing and signed by counsel for the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto, and approved by the Court.

#### **XI. CONFIDENTIALITY AND PUBLICITY**

78. Names of PAGA Members and their allocation amounts will be kept strictly confidential by the Settlement Administrator, who will not release such information to Plaintiffs or Plaintiffs' Counsel and will only file such information under seal if necessary. Plaintiffs' Counsel agrees that any information they receive or have received in connection with this Settlement, may be used for the purposes of settling the Garcia Action only, and may not be used for any purpose or in any other action or proceeding.

79. Plaintiffs and Plaintiffs' Counsel agree to keep this settlement and Settlement Agreement confidential before the Settlement Agreement is filed with the Court, and after filing not to disclose the terms of this settlement and Settlement Agreement except in court papers or if required by legal process. In the event that Plaintiffs and/or Plaintiffs' Counsel believe they are legally obligated by statutory or regulatory requirements (including compulsory legal process, such as a subpoena) to make disclosures regarding the terms of this settlement or Settlement Agreement, they must notify Defendants' Counsel, Carrie A. Gonell, by email at [carrie.gonell@morganlewis.com](mailto:carrie.gonell@morganlewis.com), within three (3) business days of receiving such notice that gives Plaintiffs and/or Plaintiffs' Counsel reason to believe they are so obligated, and they shall take reasonable steps to maintain the confidentiality of this settlement and Settlement Agreement, including by filing any required disclosures under seal. Neither Plaintiffs nor Plaintiffs' Counsel, directly or indirectly, will issue a press release, hold a press conference, publish information about the settlement on any website, or otherwise publicize the settlement, with the exception that Plaintiffs' Counsel may put information available in the public record about the settlement in a description of their experience or the like in order to describe their experience to a court. Plaintiffs and Plaintiffs' Counsel agree not to respond to any press inquiries concerning the settlement except to refer reporters generally to papers filed with the Court.

#### **XII. PARTIES' AUTHORITY**

80. The signatories hereby represent that they are fully authorized to enter into this Settlement

Agreement and bind the Parties hereto to the terms and conditions hereof.

### **XIII. MUTUAL FULL COOPERATION**

81. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement will use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiffs' Counsel will, with the assistance and cooperation of Caliber and Defendants' Counsel, take all necessary steps to secure the Court's approval of this Settlement Agreement. The Parties agree not to object to any Court filings consistent with this Settlement Agreement. The Parties further agree that the litigation will be stayed for all purposes except those filings described herein and other filings necessary to obtain approval of the Settlement, and that the time within which to bring this action to trial under California Code of Civil Procedure Section 583.310 shall be extended for a period of not less than one (1) year starting from June 21, 2024 until the entry of the Court's settlement approval order or, if settlement approval is not entered, the date the settlement agreement shall no longer be of any force or effect.

### **XIV. NOTICES**

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

To Plaintiffs' Counsel:

Timothy B. Del Castillo  
CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC  
2999 Douglas Blvd., Suite 180  
Roseville, CA 95661  
Tel: (916) 245-0122  
[tdc@castleemploymentlaw.com](mailto:tdc@castleemploymentlaw.com)

Norman B Blumenthal  
Kyle R. Nordrehaug  
BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP  
2255 Calle Clara  
La Jolla, CA 92037  
Tel: (858)551-1223  
Fax: (858) 551-1232  
[norm@bamlawca.com](mailto:norm@bamlawca.com)  
[kyle@bamlawca.com](mailto:kyle@bamlawca.com)

To Defendants' Counsel:

Carrie A. Gonell  
MORGAN, LEWIS & BOCKIUS LLP  
600 Anton Boulevard, Suite 1800  
Costa Mesa, CA 92626  
Tel: (714) 830.0600  
Fax: (714) 830.0700  
[carrie.gonell@morganlewis.com](mailto:carrie.gonell@morganlewis.com)

If the identity of the persons to be notified for any Party changes, or their address changes, that Party will notify all other Parties of the change in writing.

## **XV. MISCELLANEOUS PROVISIONS**

### **A. Captions and Titles**

83. Paragraph titles, headings, 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 Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

### **B. Drafting**

84. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties. Neither Party will be considered the "drafter" of the Settlement Agreement for purposes of having terms construed against that Party, and this Settlement Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement.

### **C. Extensions of Time**

85. If a Party cannot reasonably comply with an obligation under this Settlement Agreement

by the deadline set forth herein applicable to that obligation, that Party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other Party.

**D. Governing Law**

86. The rights and obligations of the Parties hereunder will be construed and enforced in accordance with, and will be governed by, the laws of the State of California, without regard to principles of conflict of laws.

**E. No Impact on Benefit Plans**

87. Neither the Settlement Agreement nor any amounts paid under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Caliber. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Caliber's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement will not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of Caliber's benefit plan, policy, or bonus program. Caliber retains the right to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

**F. Integration**

88. This Settlement Agreement contains 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.

**G. No Prior Assignments**

89. This Settlement Agreement will be binding upon and inure to the benefit of the Parties

hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

**H. Counterparts**

90. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. When each Party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Settlement Agreement, which will be binding upon and effective as to all Parties. A facsimile signature or electronic image will have the same force and effect as the original signature.

**READ CAREFULLY BEFORE SIGNING**

**PLAINTIFF**

Dated: Oct 23, 2024

Carmen garcia  
Carmen garcia (Oct 23, 2024 12:26 PDT)  
Carmen Garcia

**PLAINTIFF**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Chance Macaire

**PLAINTIFF**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Arturo Sarmiento III

**PLAINTIFF**

**CALIBER HOLDINGS LLC**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

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**READ CAREFULLY BEFORE SIGNING**

**PLAINTIFF**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Carmen Garcia

**PLAINTIFF**

Dated: 10/23/2024

\_\_\_\_\_  
*Chance macaire*  
Chance macaire (Oct 23, 2024 22:21 PDT)  
\_\_\_\_\_  
Chance Macaire

**PLAINTIFF**

Dated: 10/23/2024

\_\_\_\_\_  
*Arturo Sarmiento III*  
Arturo Sarmiento III (Oct 23, 2024 14:34 PDT)  
\_\_\_\_\_  
Arturo Sarmiento III

**PLAINTIFF**

**CALIBER HOLDINGS LLC**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM**

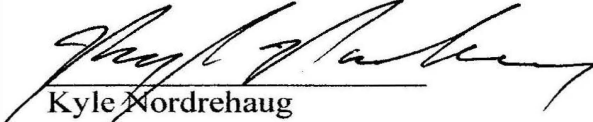
Dated: October 23, 2024

**CASTLE LAW: CALIFORNIA  
EMPLOYMENT COUNSEL, PC**

  
\_\_\_\_\_  
Timothy B. Del Castillo  
Attorneys for Plaintiff Carmen Garcia

Dated: 10/24/24

**BLUMENTHAL NORDREHAUG  
BHOWMIK DE BLOUW LLP**

  
\_\_\_\_\_  
Kyle Nordrehaug  
Attorneys for Plaintiff Chance Macaire

**MORGAN, LEWIS & BOCKIUS LLP**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Carrie A. Gonell  
Attorneys for Defendant Caliber Holdings LLC