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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE
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11 MATTHEW NORTON, individually, on a
12 representative basis, and on behalf of all
others similarly situated;

13 Plaintiff,

14 vs.
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16 CUMMINS INC., an Indiana Corporation;
17 and DOES 1 through 20, inclusive;

18 Defendants.
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Case No.: 30-2023-01319123-CU-OE-CXC
*[Assigned to Hon. William Claster, Dept
CX101, for all purposes]*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL AND:**

- (1) CONDITIONALLY CERTIFYING
THE CLASS FOR SETTLEMENT
PURPOSES ONLY;**
- (2) ORDERING THE DISTRIBUTION
OF THE NOTICE PACKET TO
THE CLASS; AND**
- (3) SETTING A FINAL FAIRNESS
HEARING FOR FINAL APPROVAL
OF THE SETTLEMENT**

Complaint Filed: April 14, 2023

1 **ORDER**

2 Having considered the Class and PAGA Action Settlement Agreement and Release of
3 Claims (“Settlement Agreement” or “Settlement”), which is attached hereto as **Exhibit A**,
4 between Plaintiff Matthew Norton and Defendant Cummins Inc., (collectively, the “Parties”), as
5 well as the Memorandum of Points and Authorities in Support of the Motion for Preliminary
6 Approval of Class and PAGA Action Settlement, the documents submitted in support of the
7 motion, and all supporting legal authorities and documents, IT IS HEREBY ORDERED:

8 1. This Order incorporates by reference the definitions in the Settlement Agreement
9 and all terms defined therein shall have the same meaning in this Order as set forth in the
10 Settlement Agreement.

11 2. The Court GRANTS preliminary approval of the Settlement based upon the terms
12 set forth in the Settlement Agreement and finds its terms to be within the range of reasonableness
13 of a settlement that ultimately could be granted final approval by the Court at a Final Approval
14 hearing. The settlement appears to be fair, adequate and reasonable to the Class. Based on a
15 review of the papers submitted by Plaintiff, the Court finds that the Settlement is the result of
16 arms-length negotiations conducted after the Parties adequately investigated and became familiar
17 with the strengths and weaknesses of the claims. The assistance of an experienced mediator in
18 the Settlement process supports the Court’s conclusion that the Settlement is non-collusive.

19 3. For settlement purposes only, the Court finds that the proposed Class is
20 ascertainable and that there is a sufficiently defined community of interest among the Class
21 Members in questions of law and fact. The Court, therefore, conditionally certifies the following
22 Class, for settlement purposes only:

23 All current and former non-exempt employees of Defendant who resided and
24 worked for Defendant in California at any time during the Class Period of April
25 14, 2019, through the Preliminary Approval Date or, alternatively, the New Class
26 Period End Date¹.

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¹ The Escalator Clause in the Settlement Agreement provides that if the total number of Workweeks reaches 99,001
prior to the Preliminary Approval Date, Defendant has the option of increasing the Gross Settlement Amount by a

1 4. Additionally, the “Aggrieved Employees” are defined as: “all current and former
2 non-exempt employees of Defendant who resided and worked for Defendant in California at
3 any time during the PAGA Period of April 13, 2022, through the Preliminary Approval Date or,
4 alternatively, the New Class Period End Date.” Under the Settlement, \$100,000 will be
5 allocated to PAGA Penalties and is to be paid from the Gross Settlement Amount. Of this
6 \$100,000 amount, \$75,000 (75%) will be paid to the California Labor Workforce Development
7 Agency (“LWDA”) in satisfaction of the claims for penalties under the California Labor Code
8 Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), and the
9 remaining \$25,000 (25%) will be paid to the Aggrieved Employees based upon the number of
10 Pay Periods Worked by each Aggrieved Employee during the PAGA Period. Any Class
11 Member who is also an Aggrieved Employee and who timely requests exclusion from the
12 Settlement will still receive a share of PAGA Penalties and be bound by the Released PAGA
13 Claims.

14 5. For settlement purposes only, Plaintiff Matthew Norton is appointed as the Class
15 Representative, and Brian Mankin and Kristina Carlson of Lauby Mankin Lauby LLP are
16 appointed as Class Counsel.

17 6. The Court preliminarily appoints Phoenix Settlement Administrators to act as the
18 Administrator, and preliminarily approves Administration Costs not to exceed \$8,000 to be paid
19 out of the Gross Settlement Amount for services to be rendered by Phoenix under the
20 Settlement Agreement.

21 7. The Court approves, as to form and content, the Notice Packet (which includes
22 the Notice, Request for Exclusion Form and Objection Form) attached hereto as **Exhibit B**. The
23 Court further finds that the Notice satisfies the requirements of California Rule of Court, rules
24 3.766 and 3.769, subd. (f), and fairly apprises the Class Members of the terms of the final
25 approval hearing date, the proposed settlement terms and of their options, including: (1) the
26 nature of the action, the definition of the Class, the identity of Class Counsel, and the essential
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pro-rata amount or ending the Class Period and PAGA Period as of the date Defendant determines the total number
of Workweeks has reached 99,000 (the “New Class Period End Date”).

1 terms of the Settlement; (2) Plaintiff's and Class Counsel's applications for the Service
2 Payment, and Class Counsel's request for attorneys' fees and costs; (3) a formula used to
3 determine the Class Member's Individual Class Payment and Individual PAGA Payment; (4)
4 Class Members' rights to appear through counsel if they desire; (5) how to object to the
5 Settlement or submit an opt-out request if a Class Member wishes to do so; and (6) how to
6 obtain additional information regarding the action and the Settlement. Counsel for the Parties
7 are authorized to correct any typographical errors and make clarifications, to the extent the same
8 are found or needed, so long as such corrections do not materially alter the substance of the
9 documents.

10 8. The Court approves the procedure for Class Members to participate in, request
11 exclusion from or object to the Settlement, as set forth in the Settlement Agreement and the
12 Notice Packet.

13 9. The Court finds that the deadlines and method set forth in the Settlement
14 Agreement for the mailing of the Notice meet the requirements of due process, provide the best
15 notice practicable under the circumstances, constitute due and sufficient notice to all persons
16 entitled to notice, and otherwise satisfy the requirements of California law and due process.

17 10. Defendant is directed to provide the Administrator, not later than twenty (20) days
18 after entry of the Preliminary Approval Order, a spreadsheet containing the Class Data, as set
19 forth in the Settlement Agreement.

20 11. The Administrator will inform the Parties within five (5) days of receipt of the
21 Class Data if the Escalator Clause has been triggered and, if so, the potential new GSA and
22 whether the Administrator will seek an adjustment of the Administration Costs. Within five (5)
23 days of this notification from the Administrator, Defendant shall make its selection and, if
24 Defendant elects to shorten the Class Period, it shall advise the Administrator and Class Counsel
25 of the New Class Period End Date and upload the revised Class Data that does not exceed 99,000
26 total Workweeks through the New Class Period End Date.

27 12. At least five (5) days prior to mailing the Notice Packet, the Administrator shall
28 provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary

calculation of all payments to be paid from the Settlement Amount, including the estimated Individual Class Payments to each Class Member and Individual PAGA Payments to each Aggrieved Employee (a person's name shall be redacted and a control number used in place of the name).

13. The Court directs the Administrator to perform address verification measures and mail the Class Notice in English and Spanish by first class mail to the Class Members within twenty (20) days of receipt of the Class Data and to otherwise carry out the Settlement according to the terms of the Settlement Agreement and in conformity with this Order. The Parties are also ordered to carry out the Settlement according to the terms of the Settlement Agreement.

14. All Class Members who do not submit a timely and valid Request for Exclusion Form shall be bound by the Class Settlement. Any Class Member who wishes to dispute the number of Workweeks he/she worked during the Class Period, comment on or object to the Settlement or who elects not to participate in the Class Settlement has until 60 days after the mailing of the Notice Packet to submit a dispute, objection, or Request for Exclusion, pursuant to the procedures set forth in the Notice. Alternatively, a Class Member can orally object at the Final Approval Hearing, regardless of whether a written objection was filed.

15. The Court approves the handling of unclaimed funds set forth in the Settlement Agreement, specifically that any unclaimed funds in the Administrator's account as a result of a Class Member or Aggrieved Employee's failure to timely cash a settlement check shall be issued to the California State Controller's Unclaimed Property Fund in the name of the Participating Class Member or Aggrieved Employee, as set forth in the Settlement Agreement.

16. The following dates shall govern for purposes of this Settlement:

March 14, 2025	Preliminary Approval (PA) hearing
April 23, 2025 (40 days after PA)	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
June 23, 2025 (60 days after mailing Notice)	Deadline for Class Members to submit Disputes, Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and Service Payment.

9 court days before Final Approval hearing	Deadline for filing of any written Opposition to Plaintiff's Motion for Final Approval.
5 court days before final approval hearing	Deadline for filing of any written reply to Opposition to Motion for Final Approval, or filing response to any objections submitted by objecting Class Members.
August 11, 2025 Time: 9:00 a.m.	[Proposed] Final Approval Hearing Date

17. A final approval hearing shall be held in this Court on the date and time above to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court, including considering any objections from Class Members; (2) the amount of Attorneys' Fees and Costs Award to Class Counsel; and (3) the amount of the Service Payment to the Class Representative. If the Court continues the Final Approval Hearing, the new hearing date and time shall be posted on the Administrator's website.

18. Upon final approval, Participating Class Members and Aggrieved Employees will be bound by the terms and conditions of the Settlement Agreement, the final Order/Judgment, and the releases set forth therein; and, except as otherwise provided herein and in the Settlement Agreement, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

19. Neither this Order, the Settlement Agreement, nor any document referred to therein, nor any action taken to carry out the settlement embodied in the Settlement Agreement may be construed as, or may be used as an admission by or against Defendant or any of the other Released Parties (as that term is defined in the Settlement Agreement) of any fault, wrongdoing or liability whatsoever.

20. The Court may, for good cause shown, extend any of the deadlines set forth in this Order. If any Class Member submits an objection to the settlement and the Final Approval Hearing is continued, either Class Counsel or the Administrator are directed to give notice of the new hearing date to the objecting party; and

21. In the event that the Settlement Agreement does not receive final approval or the Effective Date (as that term is defined in the Settlement Agreement) of the Settlement does not occur, this Order shall be rendered null and void and shall be vacated.

Date: _____

Hon. William Cluster

EXHIBIT “A”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

MATTHEW NORTON, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

CUMMINS INC., an Indiana Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2023-01319123-CU-OE-CXC
*[Assigned to Hon. William Claster, Dept
CX101, for all purposes]*

**CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint filed: April 14, 2023

1 This Class and PAGA Action Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Matthew Norton, individually and on behalf of all others similarly
3 situated, and Defendant Cummins Inc., and is approved by their respective counsel of record,
4 subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 As used herein, for the purposes of this Settlement Agreement only, the following terms
7 shall be defined as set forth below:

8 1. "Action" or "Lawsuit" means and refers to the case entitled *Matthew Norton v.*
9 *Cummins Inc.*, Orange County Superior Court, Case No. 30-2023-01319123-CU-OE-CXC.

10 2. "Administrator" means and refers to Phoenix Settlement Administrators, the
11 third-party class action Administrator agreed to by the Parties, that will provide the Class Notice
12 to the Class and distribute the settlement amounts as described in this Agreement.

13 3. "Administration Costs" means the costs payable from the Gross Settlement
14 Amount to the Administrator for administering this Settlement, including, but not limited to,
15 printing, distributing, and tracking documents for this Settlement, tax reporting, and deposit of
16 the employee and employer share of payroll taxes, unclaimed property due diligence, reporting
17 and remittance obligations, distributing the Gross Settlement Amount, and providing necessary
18 reports and declarations, as requested by the Parties. If necessary, any costs in excess of the
19 amount represented by the Administrator as being the maximum costs necessary to administer
20 the Settlement shall also be paid from the Gross Settlement Amount.

21 4. "Aggrieved Employees" means all current and former non-exempt employees of
22 Defendant who resided and worked for Defendant in California at any time during the PAGA
23 Period.

24 5. "Agreement" or "Settlement Agreement" shall mean this Class and PAGA Action
25 Settlement Agreement and Release of Claims, including any attached Exhibits.

26 6. "Attorneys' Fees and Costs Award" shall have the meaning ascribed to it in
27 Paragraph 48(f) below.
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1 7. “Class” consists of all current and former non-exempt employees of Defendant
2 who resided and worked for Defendant in California at any time during the Class Period.

3 8. “Class Member” or “Class Member(s)” refers to individual members of the Class.

4 9. “Class Counsel” refers to Brian Mankin and Kristina Carlson of Lauby Mankin
5 Lauby LLP.

6 10. “Class Data” means a complete list that Defendant will diligently and in good
7 faith compile from its records and provide to the Administrator on one spreadsheet and shall
8 include the Class Members’ full names; last known addresses; telephone numbers (if available);
9 Social Security Numbers; the total Pay Periods Worked during the PAGA Period for each
10 Aggrieved Employee, and the total Pay Periods Worked during the Class Period for each Class
11 Member.

12 11. “Class Notice” means the notice substantially in the form attached as Exhibit A,
13 subject to the Court’s approval, that will be sent to the Class Members.

14 12. “Class Period” is deemed to be any time during the period of April 14, 2019,
15 through the Preliminary Approval Date or, alternatively, the New Class Period End Date, as
16 defined in Paragraph 19.

17 13. “Class Representative” or “Plaintiff” means and refers to Matthew Norton.

18 14. “Complaint” refers to the operative first amended complaint in the Action,
19 alleging class action and representative PAGA action claims, for which the original class action
20 complaint was filed in the Court on April 14, 2023, and amended on July 18, 2023, to add PAGA
21 claims.

22 15. “Court” means the California Superior Court, County of Orange.

23 16. “Defendant” means and refers to Cummins Inc.

24 17. “Defendant’s Counsel” or “Defense Counsel” means and refers to Pascal
25 Benyamini and Amanda Semaan of Faegre Drinker Biddle & Reath LLP.

26 18. “Effective Date” means the date on which the Final Judgment entered by the
27 Court, upon final approval of the settlement, is no longer subject to appeal and thus becomes
28 final, and more specifically the later of: (a) the date of final affirmance on an appeal of the Final

Judgment; (b) the date of final dismissal with prejudice of the last pending appeal from the Final Judgment; or (c) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal from the Final Judgment (*i.e.*, 60 calendar days after the entry of Final Judgment, pursuant to California Rules of Court 8.104 and California Code of Civil Procedure section 904.1). The Parties intend that the Final Approval Order, which the Court will be requested to enter pursuant to this Settlement, will encompass an order entering Final Judgment or, if required by the Court, the Final Judgment may be entered separately.

19. “Escalator Clause:” Defendant represents that there are approximately 665 Class Members who worked approximately 90,000 Workweeks from April 14, 2019 through July 26, 2024. If the number of Workweeks worked by all Class Members as of the Preliminary Approval Date exceeds 99,000 (*i.e.*, 90,000 + 10%), then the GSA shall be increased by a pro rata amount for each additional Workweek over 99,000 Workweeks. Notwithstanding the foregoing, in the event that the total number of Workweeks reaches 99,001 prior to the Preliminary Approval Date, Defendant has the option of electing to have the Class Period and the PAGA Period run through the date Defendant determines the total number of Workweeks has reached 99,000 (the “New Class Period End Date”). In the event Cummins exercises this option, then no additional sums above the GSA will be due. Fifteen (15) days prior to the scheduled preliminary approval hearing, Defendant will make all reasonable efforts to determine if the Escalator Clause is likely to be triggered, and if so, Defendant shall (1) make a selection as to whether it will increase the GSA or end the respective periods at 99,000 Workweeks, (2) advise Class Counsel of its selection at least five (5) days prior to the preliminary approval hearing, (3) assist Class Counsel in preparing a supplemental brief advising of its decision and the projected adjustments to the GSA and/or estimated New Class Period End Date, and (4) be prepared to provide sufficient information to the Court at the preliminary approval hearing, advising of the estimated new GSA or estimated New Class Period End Date.

20. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a Final Judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the

Parties.

21. “Gross Settlement Amount” or “GSA” is \$2,000,000.00, which is the total maximum amount that Defendant will be required to pay under this Agreement, unless increased pursuant to the Escalator Clause, and except for Defendant’s obligation to separately fund its share of payroll taxes on the wage portion of Individual Class Payments, as further discussed in Paragraph 48 below.

22. “Individual Class Payment” refers to each Participating Class Member’s share of the Net Settlement Amount, as further discussed in Paragraph 48(c) below.

23. “Individual PAGA Payment” refers to the pro rata share of an Aggrieved Employee’s payment from the 25% of PAGA Penalties, as further discussed in Paragraph 48(h) below.

24. “LWDA Notice Letter” refers to Plaintiff’s April 13, 2023, letter to the LWDA notifying it and Defendant that Plaintiff intended to pursue claims against Defendant under PAGA for violation of California Labor Code §§ 200, 201, 202, 203, 204, 204.1, 208, 210, 218.6, 221-223, 225.5, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2699 et seq.

25. “Net Settlement Amount” is the Gross Settlement Amount less the court-approved Attorneys’ Fees and Costs Award, the court-approved Service Payment to the Class Representative, the court-approved Administration Costs, and PAGA Penalties, as further discussed in Paragraph 48(b) below.

26. “Notice Packet” means the Class Notice (which is a notice of proposed class and representative action settlement that will be sent to the Class Members and which will advise each Class Member of the settlement, including how his or her Individual Class Payment and if applicable Individual PAGA Payment will be calculated, Class Member rights and deadlines to be excluded from the Class and will further advise of the setting of a Final Approval Hearing), the Request for Exclusion Form, Dispute Form and Objection Form.

27. “PAGA Penalties” means the amount that the Parties have agreed to pay allocated to PAGA civil penalties, 75% of which will be paid to the Labor and Workforce Development

Agency (“LWDA”), and 25% of which will be allocated for Individual PAGA Payments, as required by the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

28. “PAGA Period” is deemed to be any time during the period of April 13, 2022, through the Preliminary Approval Date or, alternatively, the New Class Period End Date, as defined in Paragraph 19.

29. “Participating Class Member” means any and all Class Members who do not opt-out by submitting a valid and timely Request for Exclusion. Only Participating Class Members will receive an Individual Class Payment.

30. “Parties” or “Settling Parties” mean Plaintiff and Defendant, collectively.

31. “Pay Periods” or “Pay Periods Worked” means any and all pay periods during the PAGA Period in which an Aggrieved Employee worked at least one day for Defendant in California.

32. “Preliminary Approval Date” means the date the Court approves the Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

33. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Class Notice to the Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs.

34. “QSF” means the Qualified Settlement Fund set up by the Administrator for the benefit of the Final Class, and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code Sec. 468.

35. “Released Class Claims” or “Class Claims” means any and all claims, rights, demands, liabilities, and causes of action that were alleged, or reasonably could have been alleged, whether contingent or accrued, during the Class Period, based on the facts stated in the Complaint, including: (a) failure to pay minimum and straight time wages; (b) failure to pay overtime wages; (c) failure to provide meal periods or compensation in lieu thereof; (d) failure to

1 provide rest periods or compensation in lieu thereof; (e) failure to reimburse business expenses;
2 (f) failure to timely pay all wages during employment; (g) failure to timely pay all wages due
3 upon separation of employment; (h) failure to furnish accurate itemized wage statements; and (i)
4 violations of California's Unfair Competition Law, which were premised on violations of Labor
5 Code §§ 200, 201, 202, 203, 204, 204.1, 208, 210, 218.6, 221-223, 225.5, 226, 226.3, 226.7, 256,
6 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and 2802, and applicable
7 Industrial Welfare Commission Wage Orders, including any penalties, damages, restitution,
8 losses, disgorgement, liquidated damages, interest, attorneys' fees, fines, debts, obligations, costs
9 and expenses relating to these claims.

10 36. "Released PAGA Claims" means any and all claims or causes of action for PAGA
11 penalties, that were alleged, or reasonably could have been alleged, whether contingent or
12 accrued, during the PAGA Period, in the Complaint and/or in the LWDA Notice Letter, based on
13 the facts stated in the Complaint and in the LWDA Notice Letter, including: (a) failure to pay
14 minimum and straight time wages; (b) failure to pay overtime wages; (c) failure to provide meal
15 periods or compensation in lieu thereof; (d) failure to provide rest periods or compensation in
16 lieu thereof; (e) failure to reimburse business expenses; (f) failure to furnish accurate itemized
17 wage statements; (g) failure to timely pay all wages during employment; (h) failure to timely pay
18 all wages due upon separation of employment; and (i) failure to furnish accurate itemized wage
19 statements, which were premised on violations of Labor Code §§ 200, 201, 202, 203, 204, 204.1,
20 208, 210, 218.6, 221-223, 225.5, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194,
21 1194.2, 1197, 1197.1, 1198, 1199 and 2802, and applicable Industrial Welfare Commission
22 Wage Orders.

23 37. "Released Parties" means Defendant and its present and former directors, officers,
24 shareholders, owners, attorneys, insurers, reinsurers, employees, predecessors, successors,
25 assigns, parent company, subsidiaries, and affiliates.

26 38. "Request for Exclusion" means and refers to a valid and timely request for
27 exclusion from the Settlement of the Released Class Claims, which may be submitted by any
28 Class Member, other than Plaintiff, pursuant to Paragraph 72(a) below.

39. “Response Deadline” is 60 calendar days from the date the Class Notice is mailed to the Class Members.

40. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to the Class Representative, Matthew Norton, from the GSA in addition to his Individual Class Payment as a Participating Class Member and Individual PAGA Payment as an Aggrieved Employee.

41. “Workweeks” or “Weeks Worked” means any and all workweeks during the Class Period in which the Class Member worked at least one day for Defendant in California.

B. General Terms

40. On April 13, 2023, Plaintiff filed a letter to the LWDA notifying it and Defendant that Plaintiff intended to pursue claims against Defendant under PAGA for violation of California Labor Code §§ 200, 201, 202, 203, 204, 204.1, 208, 210, 218.6, 221-223, 225.5, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2699 et seq. (“LWDA Notice Letter”).

41. On April 14, 2023, Plaintiff filed a class action complaint with the Court against Defendant. The LWDA declined to assert jurisdiction over the PAGA Claims, so on July 18, 2023, Plaintiff amended the complaint to add PAGA claims. The operative Complaint alleges class and representative PAGA claims, including: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to reimburse business expenses; (6) failure to timely pay final wages; (7) failure to provide accurate itemized wage statements; and (8) unfair and unlawful competition pursuant to Business and Professions Code §17200 et seq., and (9) related claims under PAGA.

42. Defendant denies any and all liability or wrongdoing of any kind associated with the claims asserted in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or representative treatment.

43. The Class Representative believes he can proceed with his representative and class claims, that the Action is meritorious, and that class certification is appropriate.

1 44. The Parties have conducted a thorough investigation into the facts of the Action.
2 This includes conducting an extensive exchange of informal discovery, including a significant
3 portion of payroll and timekeeping records for Class Members, relevant policy documents, class
4 size and workweek information, information regarding hourly rates, and a sampling of the Class
5 Members timekeeping and payroll data consisting of over 85,000 shifts and 16,000 workweeks.
6 Class Counsel is both knowledgeable about and has done extensive research with respect to the
7 applicable law and potential defenses to the claims of the Class. Class Counsel has diligently
8 pursued an investigation of the Class Members' claims against Defendant. Based on the
9 foregoing data and on their own independent investigation and evaluation, Class Counsel is of
10 the opinion that the settlement with Defendant for the consideration and on the terms set forth in
11 this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class
12 Members in light of all known facts and circumstances, including the risk of significant delay
13 and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous
14 potential appellate issues.

15 45. On July 26, 2024, Plaintiff and Defendant participated in a full-day mediation
16 with Steve Rottman, Esq., who is one of the most respected class action wage-and-hour
17 mediators in California. At the conclusion of mediation, Mr. Rottman issued a mediator's
18 proposal which was accepted by the Parties.

19 46. This Settlement is a compromise and settlement of highly disputed claims. The
20 Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or
21 Final Judgment to be entered pursuant to the terms of the Settlement and Agreement, shall be
22 construed as an admission by Defendant of any wrongdoing or violation of any statute or law or
23 liability on the claims or allegations in the Action.

24 47. Stipulation to Class Certification and Representative Treatment. For settlement
25 purposes only, Plaintiff and Defendant will stipulate and agree that class certification and
26 representative treatment is for purposes of this Settlement only. This stipulation is in no way an
27 admission that class action certification and/or representative treatment is proper and shall not be
28 admissible in this or in any other action except for the sole purposes of enforcing this

1 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
2 stipulation to class certification and representative treatment as part of the Settlement shall
3 become null and void ab initio and shall have no bearing on, and shall not be admissible in
4 connection with, the issue of whether certification and representative treatment would be
5 appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that
6 it would continue to oppose class certification, representative treatment and the substantive
7 merits of the case through trial and appeal (if necessary) should the Court fail to issue Final
8 Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue
9 class certification, representative treatment and a trial should the Court fail to issue Final
10 Approval.

11 **C. Terms of Settlement**

12 48. The financial terms of the Settlement are as follows:

13 (a) Gross Settlement Amount: The Parties agree to settle this Action for the
14 Gross Settlement Amount, unless increased pursuant to the Escalator Clause, and except for
15 Defendant's obligation to separately pay its share of payroll taxes on the wage portion of the
16 Individual Class Payments, which is the maximum amount that will be paid by Defendant and
17 includes Individual Class Payments, Class Counsel's Attorneys' Fees and Costs Award, the
18 Service Payment to the Class Representative, Administration Costs, and PAGA Penalties.

19 (b) Net Settlement Amount: The Net Settlement Amount is the Gross
20 Settlement Amount less the court-approved Attorneys' Fees and Costs Award, the court-
21 approved Service Payment to the Class Representative, the court-approved Administration Costs,
22 and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service
23 Payment to the Class Representative, or Administration Costs, or either increases or decreases
24 the amount allocated to the PAGA Penalties, the Net Settlement Amount shall be increased or
25 decreased accordingly without any additional monies required by Defendant.

26 (c) Calculation of Individual Class Payments: The Individual Class Payment
27 for each Participating Class Member will be calculated by the Administrator using the Class Data
28 provided by Defendant as follows: Compensable workweeks will be all Weeks Worked by

1 Participating Class Members during the Class Period. The dollars per compensable workweek
2 will be calculated by dividing the total Weeks Worked by Participating Class Members into the
3 Net Settlement Amount to determine a per workweek value ("Workweek Value"). The
4 Workweek Value will be multiplied by the number of Weeks Worked by a Participating Class
5 Member during the Class Period to determine the Individual Class Payment for a Participating
6 Class Member. All Participating Class Members will be entitled to payment for at least one
7 Workweek.

8 (d) Allocation of Individual Class and PAGA Payments: The Individual Class
9 Payments to Participating Class Members will be allocated as follows: 25% will be allocated as
10 wages subject to withholding of all applicable local, state and federal taxes; and 75% will be
11 allocated for interest and statutory penalties (including waiting time penalties) pursuant to,
12 applicable California Labor Code sections from which no taxes will be withheld. The
13 Administrator will issue to each Participating Class Member an Internal Revenue Service Form
14 W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with
15 respect to the penalties and interest allocations.

16 (e) Service Payment to Class Representative: The amount, if any, awarded to
17 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
18 exceed \$5,000, in recognition of the service that Plaintiff performed on behalf of the Class and in
19 return for executing a general release with Defendant as to Class Representative's Released
20 Claims as defined below. Defendant agrees not to oppose this request. The Service Payment to
21 Plaintiff will be paid out of the GSA. The Class Representative will be issued an IRS Form 1099
22 in connection with this payment. Plaintiff shall be solely and legally responsible to pay all
23 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
24 Payment to Plaintiff as Class Representative less than the requested amount shall not be a basis
25 for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount
26 for the Service Payment, the difference shall be added to the Net Settlement Amount to be
27 distributed to the Participating Class Members.

1 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
2 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the Gross
3 Settlement Amount, plus reasonable litigation costs not to exceed \$30,000 ("Attorney's Fees and
4 Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys'
5 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
6 paid from the Gross Settlement Amount, and, except for this award, Defendant shall have no
7 further obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the
8 Court approve a lesser amount than what is sought by Class Counsel, the difference shall be
9 added to the Net Settlement Amount to be distributed to the Participating Class Members. Any
10 Court order awarding less than the amount sought by Class Counsel shall not be grounds to
11 rescind the Settlement Agreement or otherwise void the Settlement. The Administrator shall
12 issue to Class Counsel an IRS Form 1099 reflecting the amount of Attorney's Fees and Cost
13 Award awarded by the Court.

14 (g) Administration Costs: The fees and other charges of the Administrator
15 will be paid from the Gross Settlement Amount, not to exceed \$8,000 unless approved by all
16 Parties and the Court.

17 (h) PAGA Penalties: The Parties agree that \$100,000 is allocated to PAGA
18 Penalties and is to be paid from the GSA, subject to the Court's approval. Of this amount,
19 \$75,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the Private
20 Attorney General Act of 2004 ("PAGA") and \$25,000 (25%) will be paid to the Aggrieved
21 Employees based upon the number of Pay Periods Worked by each Aggrieved Employee during
22 the PAGA Period, which will be treated entirely as civil penalties and shall be reported as
23 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
24 Settlement by submitting a copy of this Settlement Agreement to the LWDA at the same time as
25 they submit this Settlement Agreement to the Court for Preliminary Approval, as required by
26 California Labor Code § 2699(1)(2). Within ten (10) days following the Final Approval Order,
27 Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the
28 Court to the LWDA, as required by California Labor Code § 2699(1)(3).

1 (i) Tax Liability: Class Counsel, Defendant, and Defense Counsel make no
2 representations as to the tax treatment or legal effect of settlement amounts called for hereunder,
3 and Plaintiff and the Class Members are not relying on any statement or representation by Class
4 Counsel or Defendant or Defense Counsel in this regard. Plaintiff, Participating Class Members,
5 and Aggrieved Employees understand and agree that they will be solely responsible for the
6 payment of any taxes and penalties assessed on their respective Individual Class Payments and
7 Individual PAGA Payments, described herein. The portion of Individual Class Payments
8 deemed payment for settlement of claims for wages and expenses shall be reported on Form W-2
9 with respect to the year of payment as wage income to the Class Member by the Administrator
10 on behalf of the QSF. The Administrator shall issue IRS Form 1099 if required for the remaining
11 portion of the Individual Class Payment and for any Individual PAGA Payment. If the Code, the
12 regulations promulgated thereunder, or other applicable tax law, is changed after the date of this
13 Agreement, the processes set forth in this Section may be modified in a manner to bring
14 Defendant into compliance with any such changes. Plaintiff, Participating Class Members, and
15 Aggrieved Employees understand and agree that they will be solely responsible for the payment
16 of any taxes and penalties assessed on their respective payments described herein.

17 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
18 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
19 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
20 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
21 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
22 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
23 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
24 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
25 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
26 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
27 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
28 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX

1 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
2 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
3 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
4 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
5 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
6 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
7 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
8 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
9 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
10 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
11 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
12 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

13 49. No Credit Toward Benefit Plans. The Individual Class Payments made to
14 Participating Class Members under this Agreement, as well as any other payments made
15 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
16 benefit plans to which any Class Members may be eligible, including, but not limited to: profit-
17 sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans, vacation
18 plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention
19 that this Settlement will not affect any rights, contributions, or amounts to which any Class
20 Members may be entitled under any benefit plans. The Parties agree that the amounts paid
21 pursuant to this Settlement are not for days or hours worked, and shall not be included toward
22 any regular rate of pay calculation, or any benefit vesting or accrual purpose.

23 50. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
24 no circumstances will any portion of the Settlement Amount revert to Defendant. Participating
25 Class Members and Aggrieved Employees will not have to make a claim in order to receive an
26 Individual Class Payment or Individual PAGA Payment. Distributions, in the form of Individual
27 Class Payments or Individual PAGA Payments will be made directly to each Participating Class
28 Member and Aggrieved Employee. The Administrator shall be responsible for accurately and

1 timely reporting and remittance obligations with respect to unclaimed funds as a result of a
2 Participating Class Member and/or Aggrieved Employee not cashing any checks delivered
3 pursuant to the Settlement by the check cashing deadline, as set forth herein.

4 51. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
5 adequate, and will so represent same to the Court.

6 **D. Release by Participating Class Members**

7 52. Upon the Effective Date occurring and Defendant's funding of the Gross
8 Settlement Amount, Plaintiff and the Participating Class Members on behalf of
9 himself/themselves and his/their respective former and present representatives, agents, attorneys,
10 heirs, administrators, successors, and assigns, will forever completely release and discharge the
11 Released Parties of the Released Class Claims for the duration of the Class Period. The Released
12 Class Claims shall be binding on all Participating Class Members regardless of whether each
13 individual has personal knowledge of each Released Class Claim.

14 53. Participating Class Members do not release any other claims, including claims for
15 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
16 unemployment insurance, disability, social security, workers' compensation, or claims based on
17 facts occurring outside the Class Period.

18 **E. Release of PAGA Claims**

19 54. Upon the Effective Date occurring and Defendant's funding of the Gross
20 Settlement Amount, the State of California, the LWDA, and Plaintiff and all Aggrieved
21 Employees on behalf of himself/themselves and his/their respective former and present
22 representatives, agents, attorneys, heirs, administrators, successors, and assigns, are deemed to
23 release the Released Parties of the Released PAGA Claims for the duration of the PAGA Period.
24 The Released PAGA Claims shall be binding on all Aggrieved Employees regardless of whether
25 each individual has personal knowledge of each Released PAGA Claim.

26 55. Regardless of whether a Class Member and/or Aggrieved Employee submits a
27 valid Request for Exclusion, neither Plaintiff nor any Aggrieved Employee shall have the right to
28 opt-out or otherwise exclude themselves from the Released PAGA Claims.

1 56. It is the intent of the Parties that the Final Judgment shall have full equitable and
2 collateral estoppel and res judicata effect to the fullest extent permitted by law.

3 **E. Release by Plaintiff and Class Representative**

4 57. As a material inducement to Defendant to enter into this Settlement Agreement
5 and in consideration of the Service Award, and in addition to the Plaintiff's release of the
6 Released Class Claims and Released PAGA Claims, Plaintiff does hereby, for himself and for his
7 respective spouses, domestic partners, marital community, children, estates, attorneys, heirs,
8 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
9 guardians, personal representatives, and assigns forever and completely release and discharge
10 and covenants not to sue the Released Parties with respect to any and all claims, demands, liens,
11 agreements, contracts, covenants, actions, suits, causes of action, wages, obligations, debts,
12 liquidated damages, penalties, interest, costs, expenses, attorneys' fees, damages, judgments,
13 orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known
14 or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff now owns or holds
15 or has at any time heretofore owned or held as against said Released Parties, or any of them.
16 Such released claims include specifically, but not exclusively and without limiting the generality
17 of the foregoing, any and all claims, demands, agreements, obligations and causes of action,
18 known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to
19 all claims arising out of, based upon, or relating to Plaintiff's employment with Defendant or the
20 remuneration for or termination of such employment, as alleged in the Complaint, arising out of
21 or in any way connected with any transactions, occurrences, acts or omissions set forth, or facts
22 alleged, in any and all charges, complaints, claims or pleadings filed by Plaintiff against any
23 Released Party prior to the date hereof with any city, county, state or federal agency,
24 commission, office or tribunal whatsoever; or arising out of or in any way connected with any
25 transactions, occurrences, acts or omissions occurring prior to the date hereof, including
26 specifically without limiting the generality of the foregoing any claim under Title VII of the
27 Civil Rights Act of 1964, the Age Discrimination in Employment Act (29 U.S.C. Section 621 *et*
28 *seq.*), the Americans with Disabilities Act, the Employee Retirement Income Security Act, the

1 National Labor Relations Act, the Fair Labor Standards Act, the Family and Medical Leave Act,
2 the California Constitution, the California Labor Code, the California Civil Code, the California
3 Government Code, the California Business & Professions Code, the California Family Rights
4 Act, the California Fair Employment and Housing Act, or any other federal, state, or local statute
5 or regulation (collectively, the “Class Representative’s Released Claims”).

6 58. Plaintiff agrees that there is a risk that any injury that he may have suffered by
7 reason of the Released Parties’ relationship with him might not now be known, and there is a
8 further risk that said injuries, whether known or unknown at the date of this Settlement
9 Agreement, might possibly become progressively worse, and that as a result thereof further
10 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
11 discharge the Released Parties, and understands that by the execution of this Settlement
12 Agreement no further claims for any such injuries that existed at the time of the execution of this
13 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
14 period from the beginning of time to the execution of this Settlement Agreement.

15 59. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
16 Section 1542 of the Civil Code of the State of California and does so understanding and
17 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
18 of the State of California states:

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

24 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
25 full and complete release and discharge of all parties, Plaintiff expressly acknowledges that this
26 Settlement Agreement is intended to include in its effect, without limitation, all claims against
27 the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on
28 behalf of or against the other at the time of execution of this Settlement Agreement, including,

1 but not limited to, any and all claims relating to or arising from Plaintiff's employment. The
2 only claims not covered by this release are claims that cannot be released by private or court
3 approved agreement under applicable law.

4 **F. Interim Stay of Proceedings**

5 60. Pending completion of all of the prerequisites necessary to effectuate this
6 Settlement, the Parties agree, subject to the Court's approval, to a stay of all proceedings in the
7 Action except such as are necessary to effectuate the Settlement.

8 **G. Notice Process**

9 61. Appointment of Administrator. The Parties have agreed to the appointment of the
10 Administrator to perform the duties of a settlement administrator, including mailing the Notice
11 Packet, using standard devices to obtain forwarding addresses, independently reviewing and
12 verifying documentation associated with any claims or opt-out requests, resolving any disputes
13 regarding the calculation or application of the formula for determining the Individual Settlement
14 Payments, drafting and mailing the settlement checks to Participating Class Members, and
15 Aggrieved Employees, issuing W-2 and 1099 Tax Forms, performing unclaimed funds due
16 diligence, reporting and performing remittance obligations, and performing such other tasks as
17 set forth herein or as the Parties mutually agree or that the Court orders.

18 62. Additional Duties of the Administrator. The Administrator shall upload and
19 maintain on its website the following non-inclusive list of documents: the Settlement Agreement,
20 the Notice Packet, the Motion for Preliminary Approval, the Order granting Preliminary
21 Approval, the Motion for Final Approval, and the Order granting Final Approval. These
22 documents shall be accessible by the Class via URL link that will be provided in the Notice.

23 63. Disputes Regarding Settlement Administration. Any and all disputes relating to
24 administration of the Settlement by the Administrator (except for disputes regarding Class Data)
25 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
26 and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that
27 all payments and obligations contemplated by this Settlement Agreement have been fully carried
28 out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to

1 resolve the dispute without the necessity of Court intervention. The Administrator shall also be
2 responsible for issuing to Plaintiff, Participating Class Members, Aggrieved Employees, and
3 Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for all amounts
4 paid pursuant to this Agreement. The Administrator shall also be responsible for setting up all
5 necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate
6 government authorities.

7 64. Class Data. Within twenty (20) days after entry of the Preliminary Approval
8 Order, Defendant shall provide the Class Data to the Administrator. The Administrator will run a
9 check of the Class Members' addresses against those on file with the U.S. Postal Service's
10 National Change of Address List. The Class Data provided to the Administrator will remain
11 confidential, will be used solely for purposes of administration of the Settlement, and will not be
12 used or disclosed to anyone, except as required by applicable tax authorities, pursuant to
13 Defendant's express written consent, or by order of the Court. Although Class Counsel will not
14 be provided with the Class Data, nothing herein shall prevent Class Counsel from responding to
15 inquiries or requests from Class Members regarding the Action and Settlement.

16 65. Potential Triggering of the Escalator Clause. The Administrator will inform the
17 Parties within five (5) days of receipt of the Class Data if the Escalator Clause has been triggered
18 and, if so, the potential new GSA and whether the Administrator will seek an adjustment of the
19 Administration Costs. Within five (5) days of this notification from the Administrator,
20 Defendant shall make its selection and, if Defendant elects to shorten the Class Period, it shall
21 advise the Administrator and Class Counsel of the New Class Period End Date and upload the
22 revised Class Data that does not exceed 99,000 total Workweeks through the New Class Period
23 End Date.

24 66. Total Workweeks. At least five (5) days prior to mailing the Notice Packet, the
25 Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel containing a
26 preliminary calculation of all payments to be paid from the Settlement Amount, including the
27 estimated Individual Class Payments to each Class Member and Individual PAGA Payments to
28 each Aggrieved Employee (a person's name shall be redacted and a control number used in place

1 of the name).

2 67. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the
3 Administrator to the Class Members, by first class mail in English and Spanish within twenty
4 (20) calendar days following the Administrator's receipt of the Class Data. The Administrator
5 shall use standard devices, including a skip trace, to obtain forwarding addresses of Class
6 Members if any envelopes are returned.

7 68. Returned Notices of Settlement. The Administrator will take steps to ensure that
8 the Notice Packet is received by all Class Members, including utilization of the National Change
9 of Address Database maintained by the United States Postal Service to review the accuracy of
10 and, if possible, update a mailing address. Notice Packets will be re-mailed to any Class
11 Member for whom an updated address is located within ten (10) calendar days following both
12 the Administrator learning of the failed mailing and its receipt of the updated address. The re-
13 mailed Notice Packet shall be identical to the original Notice Packet, except that it shall notify
14 the Class Member that the exclusion (opt-out) request or objection must be returned by the later
15 of the Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

16 69. Presumption Regarding Receipt of Notice Packet. It will be conclusively
17 presumed that if an envelope has not been returned undeliverable to Administrator by the
18 Response Deadline that the Class Member received the Notice Packet.

19 70. Disputes Regarding Information Class Notices. Class Members are deemed to
20 participate in the Settlement, unless they opt-out by submitting a timely and valid Request for
21 Exclusion, and Aggrieved Employees may not opt out of the Released PAGA Claims. The Class
22 Notice will inform Class Members of his/her estimated Individual Class and PAGA Payment, the
23 number of Weeks Worked during the Class Period and the number of Pay Periods Worked
24 during the PAGA Period. Class Members may dispute their Weeks Worked or Pay Periods by
25 returning the Dispute Form to the Administrator by the Response Deadline if they feel they
26 should be credited with more time than Defendant's records. Defendant's records will be
27 presumed determinative absent reliable evidence to rebut Defendant's records, but the
28 Administrator will evaluate the evidence submitted by the Class Member and provide the

evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith with the Administrator to determine the Class Member's actual number of Weeks Worked and Pay Periods Worked. The Administrator shall attach all Disputes to its Declaration of Due Diligence along with any evidence submitted, and include an initial recommendation in its declaration as to the number of Workweeks and/or Pay Periods to be credited for any disputing Class Members. However, the Court shall have the right to review any decision and make a final decision, which will be binding upon the Class Members and the Parties. In the event that the Administrator increases the number of Workweeks for any Class Member or Pay Periods for an Aggrieved Employee, then the Administrator will recalculate the Participating Class Members' Individual Class Payments from the Net Settlement Amount and/or the Aggrieved Employees' Individual PAGA Payment.

71. Declaration of Due Diligence. The Administrator shall provide counsel for the Parties with a draft declaration of due diligence within 10 days of the Response Deadline.

72. Class Members' Rights. Each Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Released Class Claims, and the ability to opt-out or request exclusion from the Settlement with respect to the Released Class Claims. The Class Notice will inform the Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement with respect to the Released Class Claims in accordance with the following guidelines:

(a) Requests for Exclusion from Participating in the Class. Any Class Member, other than Plaintiff, may request to be excluded from the Class by submitting a Request for Exclusion Form included within the Notice Packet. The Request for Exclusion Form must be mailed to the Administrator and postmarked on or before the Response Deadline in order to be timely, unless the Parties otherwise agree in writing. Any such Request must be made in accordance with the terms set forth in the Notice Packet. The Administrator shall attach each Request for Exclusion to its declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement as to the Class Action

1 Settlement, including the right to object to or otherwise challenge the Settlement; (ii) will not be
2 entitled to receive any Individual Class Payment under this Agreement; and (iii) will not be
3 bound by the Class Action Settlement including the Released Class Claims. Any Class Member
4 who is an Aggrieved Employee who requests timely exclusion will still be bound by the PAGA
5 Settlement and Judgment including the Released PAGA Claims to the fullest extent permitted by
6 law and will receive an Individual PAGA Payment. The Parties and their counsel shall not
7 encourage or solicit Class members to submit requests for exclusion or objections, directly or
8 indirectly, through any means.

9 (b) Binding Effect on Participating Class Members. Except for those Class
10 Members who exclude themselves in compliance with the procedures set forth above, all Class
11 Members will: (i) be deemed to be Participating Class Members for all purposes under this
12 Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and
13 the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to
14 have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
15 Settlement.

16 (c) Objections to Settlement of the Released Class Claims. Any Class
17 Member, other than Plaintiff, who does not submit a valid and timely Request for Exclusion may
18 object to the terms of this Agreement by completing an Objection Form provided within the
19 Notice Packet. To object, the Class Member must mail the Objection to the Administrator,
20 postmarked by the Response Deadline in order to be timely, unless the Parties otherwise agree in
21 writing. Alternatively, the Class Member may elect to make an oral objection at the Final
22 Approval hearing; objecting Class Members are not required to file a notice of intent to appear in
23 advance. The Court will consider all oral objections made in person or through counsel at the
24 Final Approval Hearing regardless of whether a written objection has been submitted.
25 Additionally, any objection must be made in accordance with the terms set forth in the Notice
26 Packet. The Administrator shall provide any written objections to Class Counsel and Defense
27 Counsel within three (3) days of receipt, and the Administrator shall attach the same to its
28 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any

1 Participating Class Member who files an objection remains eligible to receive an Individual
2 Class Payment. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses
3 incurred by any Class Member and/or his or her counsel related to any objections to the
4 Settlement. Submitting an objection does not preserve the right to appeal a Final Judgment.
5 Rather, the right to appeal is preserved by becoming a party of record by timely and properly
6 intervening or filing a motion to vacate the Final Judgment under Code of Civil Procedure § 663.

7 (d) Failure to Object. Any Class Member who does not timely and properly
8 become a party of record by intervening or filing a motion to vacate the Final Judgment waives
9 any and all rights to appeal from the Judgment, including all rights to any post-Final Judgment
10 proceeding and appellate proceeding, such as a motion to vacate Final Judgment, motion for new
11 trial, a motion under California Code of Civil Procedure section 473, and extraordinary writs.

12 (e) Responses to Objections. Counsel for the Parties may file a response to
13 any objections submitted by objecting Class Members at least five (5) court days before the date
14 of the Final Approval Hearing.

15 (f) Class Members will have until the Response Deadline to object or submit
16 a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose
17 jointly to Class Counsel and Defendant's counsel what objections or Requests for Exclusion
18 were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense
19 Counsel.

20 (g) Defective Submissions. If a Class Member's Request for Exclusion or
21 objection is defective as to the requirements listed herein, that Class Member will be given an
22 opportunity to cure the defect(s). The Administrator will mail the Class Member a cure letter
23 within three (3) business days of receiving the defective submission to advise the Class Member
24 that his or her submission is defective and that the defect must be cured to render the Request for
25 Exclusion or objection valid. The Class Member will have the later of (i) the Response Deadline
26 or (ii) fifteen (15) calendar days from the date of the cure letter to postmark or fax a revised
27 Request for Exclusion or objection. If the revised Request for Exclusion or objection is not
28 postmarked or received by fax within that period, it will be deemed untimely and disregarded.

1 73. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
2 the QSF of the Gross Settlement Amount within twenty (20) calendar days after the Effective
3 Date, plus pay its share of payroll taxes on the wage portion of the Individual Class Payment.
4 The Administrator (and not Defendant) shall issue the applicable W-2s and IRS Form 1099
5 reflecting all payments to the Participating Class Members and Aggrieved Employees.

6 74. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
7 Gross Settlement Amount into the QSF, the Administrator shall mail the Individual Class
8 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
9 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service
10 Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, and will
11 pay itself the Administration Costs from the Settlement Amount in accordance with the
12 percentages set forth herein.

13 75. Deadline for Cashing Settlement Checks. Participating Class Members and
14 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
15 their settlement checks. If any Participating Class Member's or Aggrieved Employee's check is
16 not cashed within that period, the check will be void and a stop-payment will be issued, and the
17 Administrator shall issue the unclaimed funds to the California State Controller's Office in the
18 name of the Class Member or Aggrieved Employee. The release will be binding upon all
19 Participating Class Members and Aggrieved Employees who do not cash their checks within the
20 180-day period. In the event that any settlement check is returned to the Administrator within
21 180 days of mailing, the Administrator will, within five (5) business days of receipt of the
22 returned settlement check, perform a skip trace to locate the individual, and notify Defense
23 Counsel and Class Counsel of the results. If a new address is located by these means, the
24 Administrator will have ten (10) business days to re-issue the check. Neither Defendant,
25 Defense Counsel, Class Counsel, Plaintiff, nor the Administrator will have any liability for lost
26 or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation
27 of settlement checks. Without limiting the foregoing, in the event a Participating Class Member
28 or Aggrieved Employee notifies the Administrator that he or she believes that a settlement check

has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check.

H. Duties of the Parties Prior to the Court's Approval

76. After execution of this Settlement Agreement, and on or after November 23, 2024, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on fees, costs and the Service Payment;

(b) Approving as to form and content of the proposed Class Notice, attached hereto Exhibit A;

(c) Directing the mailing of the Class Notice by first class mail to the Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class solely for purposes of this Settlement.

77. Reallocation of Settlement Proceeds. In the event the Court does not, on its first hearing, approve this Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement without any additional monies due by Defendant, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

78. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,

1 and the payment to the Administrator for costs of administering the settlement; and

2 (c) Entering Final Judgment approving settlement, thereby permanently
3 barring all Participating Class Members from prosecuting any Released Class Claims against any
4 of the Released Parties and permanently barring all Aggrieved Employees and the LWDA from
5 prosecuting any Released PAGA Claims against any of the Released Parties.

6 79. Final Judgment. The Administrator shall give the Participating Class Members
7 and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter that will
8 be included with the Individual Settlement Payments.

9 **J. Voiding the Agreement**

10 80. Defendant will have, in its sole discretion, the right to void and withdraw from the
11 Settlement if more than five percent (5%) of Class Members submit a timely and valid Request
12 for Exclusion to the Administrator.

13 81. All Parties, signatories, and their counsel shall not encourage opt-outs or
14 objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or
15 indirectly, through any means.

16 82. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
17 have no further obligations under the Settlement, including any obligation by Defendant to pay
18 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
19 Settlement.

20 83. If the Settlement is voided or fails for any reason, any costs incurred by the
21 Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in
22 this Agreement.

23 **K. Other Terms**

24 84. Waiver. The waiver by one Party of any breach of this Agreement by another
25 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

26 85. Parties' Authority. The signatories hereto represent that they are fully authorized
27 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.
28

1 86. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
2 accomplish the terms of this Agreement, including but not limited to, execution of such
3 documents and to take such other action as may reasonably be necessary to implement the terms
4 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
5 contemplated by this Agreement and any other efforts that may become necessary by order of the
6 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
7 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
8 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
9 preliminary and final approval of the settlement, and the entry of the Final Judgment.

10 87. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
11 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
12 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
13 cause of action or rights released and discharged by this Agreement.

14 88. No Admission. Defendant denies any and all liability to Plaintiff and/or any Class
15 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
16 asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle
17 and compromise the matters at issue in the Complaint to avoid further substantial expense and
18 the inconvenience and distraction of protracted and burdensome litigation. Defendant has taken
19 into account the uncertainty and risks inherent in litigation, and without conceding the validity of
20 any claims or any infirmity in the defenses that it has asserted or could assert in the Action, has
21 determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and
22 upon the terms and conditions set forth in this Agreement.

23 89. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
24 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
25 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
26 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
27 Agreement with the intention of avoiding further disputes and litigation with the attendant
28 inconvenience and expenses. This Agreement is a settlement document, and it, along with all

1 related documents such as the notices, and motions for preliminary and final approval, shall,
2 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
3 inadmissible in evidence in any proceeding, except that the Settlement may be filed and used in
4 this litigation or any related litigation as necessary to approve, interpret, or enforce this
5 Settlement, or in any subsequent action against or by Defendant to support a stay of such
6 subsequent action, or to establish a defense of res judicata, collateral estoppel, release, good faith
7 settlement, Final Judgment bar, or reduction, or any other theory of claim preclusion or issue
8 preclusion or similar defense or counterclaim. The stipulation for class certification as part of
9 this Agreement is for settlement purposes only and if, for any reason the settlement is not
10 approved, the stipulation will be of no force or effect.

11 90. No Publicity. The Parties will not publicize the Settlement or disclose it to third
12 parties prior to the Court granting Preliminary Approval, except as required or necessary to
13 effectuate its terms and comply with law.

14 91. Notices. Unless otherwise specifically provided herein, all notices, demands, or
15 other communications pursuant to this Agreement shall be in writing and shall be deemed to
16 have been duly given as of the third business day after mailing by United States registered or
17 certified mail, return receipt requested, addressed:

18 To the Class Members and Aggrieved Employees:

19 Brian J. Mankin
20 *brian@lmlfirm.com*
21 LAUBY, MANKIN & LAUBY LLP
22 5198 Arlington Avenue, PMB 513
23 Riverside, CA 92504
24 Tel: (951) 320-1444 | Fax: (951) 320-1445

25 ///

26 ///

27 ///

28 ///

To Defendant:

Pascal Benyamini
pascal.benyamini@faegredrinker.com
Amanda Semaan
amanda.semaan@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
1800 Century Park East, Suite 1500
Los Angeles, CA 90067
Tel: (310) 203-4000 | Fax: (310) 229-1285

92. Construction. 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 and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

93. Captions and Interpretations. 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 Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

94. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by 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 all of the Parties hereto.

95. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute they are unable to resolve informally. During this period, the

Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

96. Court Retains Jurisdiction. The Parties agree that upon the entry of Final Judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this Agreement.

97. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this Agreement is intended by the Parties to be, and shall be, enforceable, binding, and admissible in a court of law.

98. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California.

99. Integration Clause. 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.

100. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

101. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Class Member.

102. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this

1 Settlement Agreement valid and enforceable.

2 103. Counterparts. This Settlement Agreement may be executed in counterparts, and
3 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
4 deemed an original, and, when taken together with other signed counterparts, shall constitute one
5 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
6 Electronic signatures shall have the same force and effect as an original.

7
8 Dated: Nov 11, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

9 
10 Matt. Norton (Nov 11, 2024 01:14 PST)

11 Matthew Norton

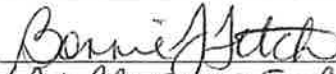
12 Dated: Nov 11, 2024

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

13
14 
15 Brian J. Mankin
16 Attorneys for Plaintiff

17 Dated: NOV 25, 2024

DEFENDANT:
CUMMINS INC.

18
19
20
21 By: 
22 Its: VP + PRESIDENT - CUMMINS

DISTRIBUTION SEGMENT

23
24 Dated: 11/26/2024

DEFENDANT'S COUNSEL:
FAEGRE DRINKER BIDDLE & REATH LLP

25
26 
27 Pascal Benyamini
28 Attorneys for Defendant

END OF DOCUMENT