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19 **SUPERIOR COURT OF THE STATE CALIFORNIA**

20 **FOR THE COUNTY OF RIVERSIDE**

21 OSWALDO OCAMPO MONTES, as an
22 individual and on behalf of all employees
23 similarly situated,

24 Plaintiff,

25 v.

26 JEFF CARPENTER., a California Corporation;
27 and DOES 1 through 50, inclusive,

28 Defendants.

CASE NO. CVRI2302670

**JOINT STIPULATION OF CLASS AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

ASSIGNED FOR ALL PURPOSES TO:

Hon. Harold W. Hopp

Dept.: 10

Complaint Filed: May 23, 2023

**JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

This Joint Stipulation of Class and PAGA Representative Action Settlement ("Joint Stipulation

1.

JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

1 of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff
2 OSWALDO OCAMPO MONTES, individually, and on behalf of all others similarly situated,
3 (“Plaintiff” or “Class Representatives”), and Defendant JEFF CARPENTER, INC. (“Defendant”).
4 Plaintiff and Defendant are collectively referred to herein as “the Parties.” It is stipulated and agreed by
5 and among the undersigned Parties, this action shall be, and hereby is, ended, settled, resolved, and
6 concluded by agreement of Defendant to pay the Gross Settlement Amount (defined below) pursuant
7 to the terms and conditions of this Agreement, and subject to the approval of the Court. THE PARTIES
8 STIPULATE AND AGREE as follows:

9
10 **DEFINITIONS**

11 1. “Joint Stipulation of Settlement” or “Settlement” or “Agreement” means this Joint
12 Stipulation of Class and PAGA Representative Action Settlement, including the attached Exhibit(s).

13 2. For purposes of this Settlement, “Complaint” refers to the operative complaint, which is
14 the First Amended Complaint.

15 3. For purposes of this Settlement, this matter, entitled *Montes v. Jeff Carpenter.*, Case No.
16 CVRI2302670, is referred to herein as the “Action.”

17 4. For purposes of this Settlement, the “Class Period” is the period May 23, 2019 through
18 August 13, 2024, or preliminary approval of the settlement, whichever is earlier (“Class Period”).

19 5. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-
20 exempt employees of Defendant who worked in California during the Class Period. “Settlement Class
21 Members” are those Class Members who do not submit timely exclusion requests to the Settlement
22 Administrator.

23 6. For purposes of this Settlement, “Class Counsel” means JOSE GARAY, APLC.

24 7. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a
25 Class Member worked for Defendant locations in California during the Class Period.

26 8. For purposes of this Settlement, “Response Deadline” means forty-five (45) days after the
27 Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on
28 which Settlement Class Members may submit a request for exclusion or written objection to the

1 Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of forty-five (45)
2 calendar days after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be
3 extended only as expressly described herein.

4 9. For purposes of the Settlement, “Defendant’s Counsel” means LESTER, CANTRELL &
5 KRAUS, LLP.

6 10. For purposes of this Settlement, “PAGA Allocation” means the amount that the Parties
7 have agreed to allocate to resolution of the claim for violation of the Labor Code Private Attorneys
8 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that the PAGA
9 Allocation will be \$15,000 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent
10 (75%) of the PAGA Allocation will be paid to the LWDA (“PAGA Penalty Payment”), and Twenty Five
11 Percent (25%) of the PAGA Allocation will be included in the Net Settlement Amount for PAGA
12 Employees (“PAGA Settlement Payment”).

13 11. For purposes of this Settlement, “PAGA Period” is the period May 24, 2022 through
14 August 13, 2024, or preliminary approval of the settlement, whichever is earlier (“PAGA Period”).

15 12. For purposes of this Settlement, “PAGA Employee” means all Class Members that
16 worked at any time during the PAGA Period. It is stipulated by the Parties that, for purposes of this
17 Settlement, all PAGA Employees are “aggrieved employees” as defined pursuant to PAGA. PAGA
18 Employees cannot opt out of the settlement of the PAGA claim.

19 13. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods
20 each PAGA Employee worked during the PAGA Period.

21 14. For purposes of this Settlement, “PAGA Representatives” means Plaintiff.

22 15. For purposes of this Settlement, “Released PAGA Claims” means all claims asserted
23 through California Labor Code §§ 2698, *et seq.*, that were identified by the PAGA Representatives in the
24 Notice to the LWDA and are alleged in the Complaint. Plaintiff’s Notice to the LWDA is attached hereto
25 as **Exhibit “A”**.

26 16. For purposes of this Settlement, “Released PAGA Claims Period” means the period
27 between May 24, 2022 through August 13, 2024, or preliminary approval of the settlement, whichever is
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1 earlier.

2 17. For purposes of this Settlement, “Settlement Payments” means all of the payments to
3 Settlement Class Members (the “Settlement Class Payments”) and all of the payments to the PAGA
4 Employees (the “PAGA Settlement Payment”).

5 18. For purposes of this Settlement, “Final Order” means the final formal court order signed
6 by the Court following the final fairness and approval hearing in accordance with the terms herein,
7 approving this Agreement.

8 **STIPULATED BACKGROUND**

9 19. On May 23, 2023, Plaintiff filed a putative Class Action alleging the following labelled
10 causes of action: 1. Failure to Pay All Wages; 2. Meal Period Violations; 3. Rest Period Violations; 4.
11 Failure to Reimburse Business Expenses; 5. Failure to Provide Accurate Itemized Wage Statements; 6.
12 Failure to Pay Wages Due Upon Separation of Employment; 7. Unfair Business Practices; and, 8.
13 Enforcement of the Private Attorneys General Act of 2004. (The “Action.”).

14 20. Solely for purposes of settling this case, the parties agree that Plaintiff satisfied the
15 administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the
16 Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”) by submission
17 of the notice to the LWDA and Defendant.

18 21. Solely for purposes of settling this case, the Parties and their respective counsel stipulate
19 and agree that the requisites for establishing class certification with respect to the Class Members have
20 been met and are met. More specifically, the Parties stipulate and agree that:

21 (a) The Class is ascertainable and so numerous as to make it impracticable to join all
22 Class Members.

23 (b) There are common questions of law and fact including, but not limited to, the
24 following:

- 25 1) Whether or not Defendant paid proper wages and sick pay to the Class;
26 2) Whether or not Defendant provided meal periods to the Class;
27 3) Whether or not Defendant provided rest periods to the Class;
28

- 4) Whether or not Defendant paid compensation timely upon separation of employment to former Class Members;
 - 5) Whether or not Defendant paid compensation timely throughout Class Members' employment;
 - 6) Whether or not Defendant provided accurate itemized statements to the Class;
 - 7) Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203;
 - 8) Whether or not Defendant maintained requisite records;
 - 9) Whether or not Defendant paid proper meal period pay or rest period pay to the Class; and,
 - 10) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.
- (c) Plaintiff's claims are typical of the claims of the Class Members.
 - (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
 - (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
 - (f) With respect to the Class, questions of law and fact common to the members of the Class predominate over any questions affecting any individual member in such Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

22. Should, for whatever reason, the Settlement not become effective, class certification as part of the Settlement shall have no bearing on and shall not be admissible in connection with whether the Class Members and/or the class claims should be certified in a non-settlement context in this Action

1 or in any other lawsuit. Defendant expressly reserves its right to oppose class certification in this or any
2 other action should this Settlement not become effective.

3 23. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
4 claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling
5 this lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's
6 claims, Defendant contends, among other things, that it has complied at all times with the California Labor
7 Code and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect
8 to all claims, Defendant contends that it has complied at all times with the California Business and
9 Professions Code.

10 24. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
11 all disputes and claims arising from or related to the Complaint.

12 25. Class Counsel has conducted a thorough investigation into the facts of this Action,
13 including an extensive review of relevant documents, and has diligently pursued an investigation of the
14 claims of the Class and PAGA claims against Defendant. Based on its own independent investigation
15 and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration
16 and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in
17 the best interest of the Class and PAGA employees in light of all known facts and circumstances, including
18 the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by
19 Defendant, and numerous potential appellate issues.

20 26. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
21 preliminary and final approval of this Settlement.

22 27. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
23 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
24 Court.

25
26 **PRIMARY TERMS OF SETTLEMENT**

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

- 1 (a) It is agreed by and among the Settlement Class, PAGA Employees, and Defendant
2 that this case and any claims, damages, or causes of action arising out of the
3 disputes which are the subject of this case, be settled and compromised as between
4 the Settlement Class, PAGA Employees, and Defendant, subject to the terms and
5 conditions set forth in this Settlement and the approval of the Court.
- 6 (b) Effective Date: The "Effective Date" of the Settlement means the date by
7 when both of the following have occurred: (a) the Court enters a Judgment
8 on its Final Order Granting Final Approval of the Settlement; and (b) the
9 Judgment is final. The Judgment is final as of the latest of the following
10 occurrences: (a) if no Class Member objects to the Settlement, the day the
11 Court enters Judgment; (b) if one or more Class Members objects to the
12 Settlement, the day after the deadline for filing a notice of appeal from the
13 Judgment; or if a timely appeal from the Judgment is filed, the day after
14 the appellate court affirms the Judgment and issues a remittitur.
- 15 (c) Gross Settlement Amount: Defendant's maximum total payment under the
16 Settlement, including all attorney's fees and costs, the Service Payment to the
17 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
18 any other payments provided by this Settlement, is Two Hundred and One
19 Thousand Dollars and Zero Cents (\$215,000.00) ("Gross Settlement Amount"),
20 subject to the Escalator Clause and except that, to the extent that any portions of
21 the Class Members' Settlement Payments constitute wages, Defendant will be
22 separately responsible for any employer payroll taxes required by law, including
23 the employer FICA, FUTA, and SDI contributions.
- 24 (d) Escalator Clause: On May 15, 2024 the number of workweeks during the Class
25 Period is estimated to be 8,610. If the number of work weeks worked by class
26 members as of May 15, 2024 exceeds 8,610 (i.e., 10 % more than the number of
27 work weeks estimated by Defendant through May 15, 2024), then, at Defendant's
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option, the settlement will either increase by 1 % for every 1 % over the 10 % threshold, or the Class Period will end on the date the number of work weeks equals 8,610. (the “Escalator Clause”).

- (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.
- (f) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.
- (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$215,000.00) the following sums, subject to approval by the Court: (1) attorney’s fees (not to exceed 33 and 1/3% of the Gross Settlement Amount); (2) reasonable litigation costs according to proof; (3) the Service Payment to Plaintiff in the amount of \$10,000.00; (4) the PAGA Penalty Payment; and (5) costs of settlement administration (estimated not to exceed \$15,000). Settlement Payments to the Class Members and PAGA Employees will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.
- (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Members’ Settlement Payments constitute wages, Defendant will be separately responsible for any **employer** payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Except for any employer payroll taxes, it is understood and agreed that Defendant’s maximum total liability under this Settlement shall not exceed the Gross Settlement Amount. The Settlement Administrator will calculate and submit the Defendant’s employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.

- (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member (i.e., those Class Members who do not opt out of the Class Settlement, as defined above) will be paid a pro-rata share of the Net Settlement Amount, less the PAGA Settlement Payments totalling \$3,750.00, as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows:
$$\frac{\text{[Workweeks worked by a Settlement Class Member]}}{\text{[Sum of all Covered Workweeks worked by all Settlement Class Members]}} \times \text{[Net Settlement Amount - all PAGA Settlement Payments]} = \text{individual Settlement Payment for a Settlement Class Member.}$$
 Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members.
- (j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows:
$$\frac{\text{[PAGA Pay Periods worked by a PAGA Employee]}}{\text{[Sum of all PAGA Pay Periods worked by all PAGA Employees]}} \times \text{[PAGA Settlement Payment to Employees, i.e. \$3,750.00]} = \text{individual PAGA Employee's portion of the PAGA Settlement Payment.}$$
 PAGA Settlement Payments to PAGA

Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.

(k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 20% to wages, 80% to penalties and interest. The PAGA Settlement Payment shares to PAGA Employees will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Payment. The employer's share of payroll taxes and other required withholdings will be paid as set forth above, including but not limited to the Defendant's FICA and FUTA contributions, based on the payment of claims to the Class Members. IRS Forms 1099 will be issued to each Class Member reflecting the payments for penalties and interest. Class Members are responsible to pay appropriate taxes due on the Settlement Payments they receive. To the extent required by law, IRS Forms 1099 and W-2 will be issued to each Class Member with respect to such payments. All PAGA Settlement Payments will be allocated as 100% penalties.

(l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement Payments to individual Class Members shall be deemed to be paid to such Class Member solely in the year in which such payments actually are received by the Class Member. It is expressly understood and agreed that the receipt of such Settlement Payments will not entitle any Class Member to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement,

401(k) benefits or matching benefits or deferred compensation benefits. It is the intent that the Settlement Payments provided for in this Settlement are the sole payments to be made by Defendant to the Class Members, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Payments (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

(m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement Amount and reimbursement of litigation costs and expenses not to exceed \$20,000.00. Approved attorney's fees and litigation costs shall be paid at the same time Settlement Payments issue to the Settlement Class.

(n) Service Payment: Subject to Court approval, and in exchange for a general release, Defendant will not object to Class Counsel's application for a payment of \$10,000.00 to Plaintiff for service as a Class Representative ("Service Payment"). It is understood that the Service Payment is in addition to the individual Settlement Payment to which a Class Representative is entitled to along with the other Class Members. In exchange, Plaintiff has agreed to release all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution hereof ("Plaintiff's Released Claims"). Plaintiff and Defendant both stipulate and agree that each of them have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other provision

under federal or state law, which provides:

“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.”

Plaintiff’s general release provided herein is made with an express waiver and relinquishment of any claim, right, or benefit under California Civil Code § 1542.

The Parties understand that the General Release does not release any claims that they cannot lawfully release. It is also understood and agreed by Defendant that by this release Plaintiff is not waiving unemployment and/or any state disability insurance benefits pursuant to the terms of applicable state law, workers’ compensation claims, any rights which are not subject to waiver as a matter of law.

- (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.
- (p) Settlement Administrator: The Settlement Administrator will be **Phoenix Class Action Administration Solutions**.
- (q) Funding of Settlement Account: Defendant will fund the settlement account and distribute Gross Settlement Amount to the Settlement Administrator within fifteen (15) days of the Effective Date.
- (r) Distribution and Mailing of Settlement Payments: The Settlement Administrator shall mail the Settlement Payments to the Class Members within fourteen (14) calendar days of receipt of the Gross Settlement Amount from

Defendant, provided that the Settlement Administrator has delivered to the Parties an accounting of the amounts to be paid by Defendant pursuant to the terms of this Settlement.

(s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the proposed class action Settlement (“Notice”). For each Class Member, there will be pre-printed information on the mailed Notice, based on Defendant’s records, stating the Class Member’s Covered Workweeks during the Class Period and the estimated total Settlement Payment under the Settlement, including the Settlement Class Payment and the PAGA Settlement Payment that will be distributed irrespective of any exclusion request. The pre-printed information based on Defendant’s records shall be presumed to be correct. A Class Member may dispute the pre-printed information on the Notice as to his or her Covered Workweeks during the Class Period. Class Members must submit any dispute regarding the information on the Notice as to his or her Covered Workweeks within the Response Deadline.

(t) Settlement Notice Language: The Notice will issue in English and Spanish.

(u) Class Members Cannot Exclude Themselves from the Released PAGA Claims: Class Members submitting a request for exclusion will nevertheless receive their pro-rata share of the PAGA Settlement Payment. If the Court approves the compromise of the PAGA Claim, all Class Members are bound by the Court’s resolution of the PAGA Claim. Plaintiff shall serve a notice of settlement on the California Labor and Workforce Development Agency at or before the time Plaintiff files the motion for preliminary approval.

(v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of Defendant’s records used to calculate Covered Workweeks, the Parties’ counsel and the Settlement Administrator will review Defendant’s records and any

1 information, or documents submitted by the Class Member in an attempt to
2 resolve the dispute informally. If the dispute cannot be resolved informally by the
3 Parties' counsel and the Settlement Administrator, the dispute, and all documents
4 pertaining to the dispute, will be submitted to the Court for final resolution. The
5 Class Member must submit information or documents supporting his or her
6 position to the Settlement Administrator prior to the expiration of the Response
7 Deadline. Information or documents submitted after the expiration of the
8 Response Deadline will not be considered by the Settlement Administrator, unless
9 otherwise agreed to by the Parties.

- 10 (w) Right of Class Member to Request Exclusion from the Settlement: Any
11 Class Member may request to be excluded from the Class by returning a
12 request for exclusion to the Settlement Administrator within the Response
13 Deadline. The form of Request for Exclusion that will accompany the Notice is
14 attached hereto as **Exhibit "C."** The Request for Exclusion form accompanying
15 the Notice will be pre-printed with the Class Member's name and address to
16 facilitate identification by the Settlement Administrator. The Class Member must
17 sign the Request for Exclusion Notice and include the last four digits of their social
18 security number to confirm identity or Employee ID. If Class Member does not
19 have a social security number and does not know his Employee ID, he can contact
20 the Settlement Administrator to arrange for an alternate method of confirming
21 his/her identity. Any Class Member who timely requests exclusion in compliance
22 with these requirements (i) shall not have any rights under this Settlement other
23 than a right to receive a pro-rata share of the portion of the PAGA payment
24 allocated to the Class Members if the Class Member is also PAGA Employee; (ii)
25 shall not be entitled to receive any Settlement Payments under this Settlement
26 other than as stated in (i) in this paragraph; and (iii) shall not be bound by this
27 Settlement or the Court's Final Order and Final Judgment other than as it applies
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1 to the PAGA Claim.

- 2 (x) Right of Settlement Class Member to Object to The Settlement: Any Class
3 Member may object to the Settlement. To object, the Class Member may (1)
4 appear in person (including through an audio or video call appearance as allowed
5 by the Court) at the Final Approval Hearing to explain any objection, (2) have an
6 attorney object for the Class Member, or (3) submit a simple written brief or
7 statement of objection to the Settlement Administrator in the form attached hereto
8 as **Exhibit “D”**. If any Class Member chooses to submit a written objection not
9 in the form attached hereto as **Exhibit “D”**, the written objection should contain
10 sufficient information to confirm the identity of the objector and the basis of the
11 objection, including (1) the full name of the Settlement Class Member; (2) the
12 signature of the Settlement Class Member; (3) the grounds for the objection; and
13 (4) be postmarked within the Response Deadline to permit adequate time for
14 processing and review by the Parties of the written statement or objection. Class
15 Counsel shall ensure that any written objections are transmitted to the Court for
16 the Court’s review (either by Class Counsel or as an attachment to declaration
17 from the Settlement Administrator). Regardless of the form, an objection alone
18 will not satisfy the requirement that a Settlement Class Member must either make
19 a timely complaint in intervention before final judgment or by file a motion to set
20 aside and vacate the class judgment under Code of Civil Procedure § 663 to have
21 standing to appeal entry of judgment approving this Settlement, as is required
22 under the California Supreme Court decision of *Hernandez v. Restoration*
23 *Hardware*, 4 Cal. 5th 260 (2018). A Class Member who does not object prior to
24 or at the Final Approval Hearing, will be deemed to have waived any objections
25 and will be foreclosed from making any objections (whether at the Final Approval
26 Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class
27 Member does not formally intervene in the action or move to set aside any
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judgment and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement. Class Counsel and Defendant's Counsel may, at least five (5) calendar days (or some other number of days as the Court shall specify) before the final approval hearing, file responses to any written objections submitted to the Court.

THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES

29. Subject to the Court's approval, and subject to reconsideration by the Parties after a competitive bidding process, the Parties have agreed to the appointment of Phoenix Class Action Administration Solutions to perform the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice, both in English and Spanish, to the Class Members.

30. The Settlement Administrator will independently review the Covered Workweeks attributed to each Class Member and will calculate the estimated amounts due to each Class Member and the actual amounts due to each Settlement Class Member in accordance with this Settlement. The Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform its duties.

31. In accordance with the terms of this Settlement, and within fourteen (14) calendar days of receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out. Within fourteen (14) calendar days of receipt of the Gross Settlement Amount from Defendant the Settlement Administrator will also distribute the Service Payment to Plaintiff, attorney's fees and costs to Class counsel, PAGA penalty payment to LWDA and the Settlement Administrator's fees.

32. The Settlement Administrator will post the court orders granting preliminary and final

1 approval of the Settlement and final judgment approving the Settlement on the Settlement Administrator's
2 website for a period of not less than 90 calendar days after the final judgment is entered. The address of
3 that website will be included in the Notice.

4 **ATTORNEY'S FEES AND COSTS**

5 33. In consideration for resolving this matter and in exchange for the release of all claims by
6 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object
7 to Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement
8 Amount and litigation costs not to exceed \$20,000.00. The amounts set forth above will cover all work
9 performed and all fees and costs incurred to date, and all work to be performed and all fees and costs to
10 be incurred in connection with the approval by the Court of this Settlement and administration of the
11 Settlement.

12 **THE NOTICE PROCESS**

13 34. A Notice in approximately the form attached hereto as **Exhibit "B"**, the Request for
14 Exclusion in approximately the form attached hereto as **Exhibit "C"** and the Objection Form in
15 approximately the form attached hereto as **Exhibit "D"** (referred to jointly below as the "Notice packet")
16 and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by first
17 class mail. The Notice packet shall be translated into Spanish so that Spanish and English language
18 versions of the Notice packet are included in the mailing. Any returned envelopes from this mailing with
19 forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.
20

- 21 (a) Within 15 calendar days from the date of preliminary approval of this Settlement
22 by the Court, Defendant shall provide to the Settlement Administrator a class
23 database containing the following information for each Class Member: (1) name;
24 (2) last known address; (3) social security number; and (4) dates of employment
25 at Defendant's location in California. This database shall be based on Defendant's
26 payroll and other business records and shall be provided in a format acceptable to
27 the Settlement Administrator. Defendant agrees to consult with the Settlement
28 Administrator prior to the production date to ensure that the format will be

1 acceptable to the Settlement Administrator. The Settlement Administrator will
2 run a check of the Class Members' addresses against those on file with the U.S.
3 Postal Service's National Change of Address List; this check will be performed
4 only once per Class Member by the Settlement Administrator. Absent mutual
5 written agreement of counsel for the Parties or Court order, the Settlement
6 Administrator will keep this database confidential and secure and use it only for
7 the purposes described herein, and will return this database to Defendant upon
8 final approval of the settlement or destroy electronic records containing the
9 database after the Settlement is final and all payments are distributed as required
10 under this Agreement. However, Plaintiff's Counsel shall be entitled to review
11 anonymized data showing the workweeks worked by each Class Member, with
12 Class Member identity concealed through use of an employee number or number
13 assigned by the Settlement Administrator.
14

15 (b) Within 14 calendar days after the Class database is provided to the Settlement
16 Administrator, the Settlement Administrator will mail the Notices to the Class
17 Members by First Class United States mail.

18 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
19 the initial Response Deadline shall be resent to the forwarding address, if any, on
20 the returned envelope. A returned Notice will be forwarded by the Settlement
21 Administrator any time that a forwarding address is provided with the returned
22 mail. If there is no forwarding address, the Settlement Administrator will do a
23 computer search for a new address using the Class Member's social security
24 number or other information. In any instance where a Notice is re-mailed, that
25 Class Member will have until the extended Response Deadline as described
26 above. A letter prepared by the Settlement Administrator will be included in the
27 re-mailed Notice in that instance, stating the extended Response Deadline if
28 different than the original Response Deadline. Upon completion of these steps by

1 the Settlement Administrator, Defendant and the Settlement Administrator shall
2 be deemed to have satisfied their obligations to provide the Notice to the affected
3 Class Member. The affected Class Member shall remain a member of the
4 Settlement Class and shall be bound by all the terms of the Settlement and the
5 Court's Final Order and Final Judgment.

- 6 (d) Class Counsel shall provide to the Court, at least sixteen court days prior to the
7 final approval hearing, or such other date as set by the Court, a declaration by the
8 Settlement Administrator of due diligence and confirming mailing of the Notices.
9

10 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

11 35. As set forth above, each Class Member will have until the expiration of the applicable
12 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class
13 Member's Covered Workweek information on the Notice. No disputes will be honored if they are
14 submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute.
15 Each Class Member is responsible to maintain a copy of any documents sent to the Settlement
16 Administrator and a record of proof of mailing.

17 36. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
18 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and
19 PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and
20 negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will
21 automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member
22 within that time, and the Class Member's relevant claims will remain released by the Settlement.
23 Settlement Payment checks which have expired will not be reissued.

24 37. Funds from unclaimed, uncashed or abandoned Settlement Payment checks, based on a
25 180-day void date, shall be distributed to those class members who have cashed their checks.

26 38. Upon completion of its calculation of Settlement Payments, the Settlement Administrator
27 shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to
28 be made to Class Members (to be identified anonymously by employee number or other identifier). A

1 Declaration attesting to completion of all payment obligations will be provided to Class Counsel and
2 Defendant's Counsel and filed with the Court by Class Counsel.

3 **RELEASE BY THE CLASS**

4 39. Upon the final approval by the Court of this Settlement and Defendant's payment of all
5 sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this
6 Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid
7 and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

- 8 (a) **Identity of Released Parties.** The released parties are Defendant and its owners,
9 officers, directors, employees and agents (collectively "Releasees").
- 10 (b) **Date Release Becomes Effective.** The Released Claims will be released upon
11 the later of (1) the Settlement's Effective Date, or (2) the satisfaction of
12 Defendant's obligation to provide to the Settlement Administrator a sum in the
13 amount required to satisfy all required payments and distributions pursuant to this
14 Settlement and the Final Order and Judgment of final approval. Class Members
15 will not release the Released Claims or Released PAGA Claims until both the
16 Effective Date of the Settlement has occurred, **and** Defendant has paid all
17 amounts owing under the Settlement.
- 18 (c) **Claims Released by Settlement Class Members.** Each and every Class
19 Member, himself and each of their heirs, assigns and successors, unless he or she
20 has submitted a timely and valid Request for Exclusion (which will not effectuate
21 an opt-out from the release of Released PAGA Claims), hereby releases Releasees
22 from the following claims for the entire Class Period:
- 23 1) any and all claims stated in the Plaintiff's First Amended Complaint, or
24 that could have been stated based on the facts alleged in the First Amended
25 Complaint ("Released Claims"),
26 2) as to *all* Class Members employed during the Released PAGA Claims
27 Period, whether requesting exclusion from the Settlement or not, claims
28

arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA (**Exhibit A**) and the First Amended Complaint in this matter ("Released PAGA Claims").

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

40. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class and PAGA Representative Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class Representative's service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Certifying a Class;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice;
- (e) Preliminarily approving the Settlement, including Class and PAGA claims, subject only to the objections of Class Members as to the Class Settlement and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing Phoenix Class Action Administration Solutions as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

41. Defendant and its their counsel agree to cooperate to obtain approval of the Settlement, pursuant to the terms set forth herein.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

42. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed Final Order and judgment containing provisions sufficient to accomplish the following:

- (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 attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representative;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action as to all PAGA and Class Claims and related issues;
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirms that the State's claims for civil penalties pursuant to PAGA are also extinguished;
- (h) Directing the posting of the settlement documents provided in Paragraph 30 and final judgment on a website maintained by the Settlement Administrator for a period of not less than 90 calendar days after entry of final judgment.

Any revised final judgments will also be provided to Defendant's Counsel for review and approval before they are submitted to the Court.

NULLIFICATION AND TERMINATION

43. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payment or settlement money distribution terms; (c) the Court should for any reason fail to issue its Final Order or enter the final judgment; (d) the Final Order or final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

44. If 30% or more of the Class Members opt out of this Settlement, then Defendant in its sole discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than fifteen (15) days prior to the date of the Final Approval Hearing. If this option is exercised by Defendant, Defendant shall be solely responsible for the costs incurred by the Settlement Administrator for the settlement administration.

45. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

PARTIES' AUTHORITY

46. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

MUTUAL FULL COOPERATION

47. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as

1 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
2 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
3 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
4 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
5 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
6 Court's preliminary and final approval of this Settlement.

7
8 **NO PRIOR ASSIGNMENTS**

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

13 **NO ADMISSION OF LIABILITY**

14 49. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
15 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
16 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. The Defendant has
17 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
18 attendant inconvenience and expenses.

19 **ENFORCEMENT ACTIONS**

20 50. The Parties agree that following entry of the Final Approval Order and Judgment, this
21 Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing
22 jurisdiction of the Action over all parties and the Class Members to interpret and enforce the terms,
23 conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section
24 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other
25 proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
26 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
27 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
28 incurred in connection with any enforcement actions.

NOTICES

51. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall 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:

Class Counsel:

JOSE GARAY, APLC
Jose R. Garay (SBN: 200494)
249 E. Ocean Blvd. #814
Long Beach, CA 90802
Telephone: (949) 208-3400
Facsimile: (562) 590-8400
jose@garaylaw.com

Counsel for Defendant:

Matthew Kraus
mkraus@lc-lawyers.com
Nickolaus Buchholz
nbuchholz@lc-lawyers.com
**LESTER, CANTRELL & KRAUS,
LLP**
1770 Iowa Avenue, Suite 110
Riverside, California 92507
Telephone: (951) 300-2690
Facsimile: (951) 300-2694

CONSTRUCTION

52. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

53. 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 or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

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

INTEGRATION CLAUSE

55. This Settlement 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.

WAIVER OF APPEALS

56. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees, and the Final Order may be appealed if materially different from the proposed final order submitted by the Parties.

BINDING ON ASSIGNS

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

CLASS COUNSEL SIGNATORIES

58. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement. The Notice will advise all Class Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

COUNTERPARTS

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

CONFIDENTIALITY & PUBLIC COMMENT

60. The Class Representative and Class Counsel shall only disclose matters of public record other than to Class Members, who may receive information about the Settlement that is not in the public record after the Court has preliminarily approved the Settlement. Other than as to Class Members who

are allowed to discuss the terms or the fact of the settlement with their immediate family members, their respective accountants or lawyers as necessary for tax purposes; or other Class Members, the Parties and attorneys will keep the settlement confidential until the filing of the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement, other than in court filings.

FINAL JUDGMENT

61. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: 12 / 10 / 2024

By:

Oswaldo Ocampo Montes

OSWALDO
OCAMPO

Plaintiff's Counsel:

Dated: 12/10/2024

By:

JOSE GARAY, APLC



Jose R. Garay
Attorneys for Plaintiff Oswaldo Ocampo Montes

Defendant:

Dated:

Jeff Carpenter, Inc.

By:

Print Name

Signature

Title

are allowed to discuss the terms or the fact of the settlement with their immediate family members, their respective accountants or lawyers as necessary for tax purposes; or other Class Members, the Parties and attorneys will keep the settlement confidential until the filing of the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement, other than in court filings.

FINAL JUDGMENT

61. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: 12 / 10 / 2024

By:

OSWALDO
OCAMPO

Oswaldo Ocampo Montes

Plaintiff's Counsel:

Dated: 12/10/2024

By:

JOSE GARAY, APLC

Jose R. Garay
Attorneys for Plaintiff Oswaldo Ocampo Montes

Defendant:

Dated:

Jeff Carpenter, Inc.

By:

Jeff Carpenter

Print Name

Signature

Title

1 **Defendant's Counsel:**

2 Dated: 12/31/2024

LESTER, CANTRELL & KRAUS, LLP

3
4 By: 

Matthew Kraus

Nickolaus Buchholz

Attorneys for Defendant Jeff Carpenter, Inc.

LESTER, CANTRELL & KRAUS, LLP
1770 IOWA AVENUE, SUITE 110
RIVERSIDE, CALIFORNIA 92507

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Document History



SENT

12 / 10 / 2024

10:37:26 UTC-8

Sent for signature to OSWALDO MONTES (ooswaldo414@gmail.com)
from jose@garaylaw.com
IP: 162.125.31.49



VIEWED

12 / 10 / 2024

11:10:14 UTC-8

Viewed by OSWALDO MONTES (ooswaldo414@gmail.com)
IP: 166.196.79.39



SIGNED

12 / 10 / 2024

11:36:29 UTC-8

Signed by OSWALDO MONTES (ooswaldo414@gmail.com)
IP: 166.196.79.39



COMPLETED

12 / 10 / 2024

11:36:29 UTC-8

The document has been completed.