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on behalf of himself and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

OSCAR MOCTEZUMA, an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

DIRECT LINE GLOBAL, LLC., a California
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 23CV033075

[Assigned for all purposes to the Hon. Tara
Desautels in Dept. 23]

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

ACTION FILED: May 10, 2023
TRIAL DATE: None set

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This Joint Stipulation Re: Class Action and Representative Action Settlement (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff OSCAR MOCTEZUMA (“Plaintiff”), on behalf of himself and all others similarly situated and aggrieved, on one hand; and defendant DIRECT LINE GLOBAL, LLC (“Defendant”), on the other hand, in the lawsuit entitled *Oscar Moctezuma v. Direct Line Global, LLC*, filed in Alameda County Superior Court, Case No. 23CV033075. Plaintiff and Defendant shall be, at times, collectively referred to as the “Parties.” This Agreement is intended by the Parties to fully, finally and forever resolve the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1. DEFINITIONS

A. “Action” means the action entitled *Oscar Moctezuma v. Direct Line Global, LLC*, filed in Alameda County Superior Court, Case No. 23CV033075.

B. “Aggrieved Employees” means all persons currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees during the PAGA Period in the State of California.

C. “Class Counsel” means David D. Bibiyan, Jeffrey D. Klein and Vedang J. Patel of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

D. “Class Members,” “Settlement Class,” or “Settlement Class Members” means all persons currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees during the Class Period in the State of California.

E. “Class Period” means the period from August 3, 2018 through February 14, 2024.

F. “Class Notice” means and refers to the notice sent to Class Members after preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this Agreement.

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1 **G. “Court”** means the Superior Court of the State of California for the County of
2 Alameda.

3 **H. “Defendant”** means defendant Direct Line Global, LLC.

4 **I. “Employer Taxes”** means employer-funded taxes and contributions imposed on
5 the wage portions of the Individual Settlement Payments under the Federal Insurance
6 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
7 and contributions required of employers, such as for unemployment insurance.

8 **J. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
9 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
10 objector, 60 days from the date of the Final Approval and Judgment; or (3) to the extent any
11 appeals have been filed, the date on which they have been resolved or exhausted.

12 **K. “General Release”** means the broader release of claims by Plaintiff, which is in
13 addition to Plaintiff’s limited release of claims as a Participating Class Member.

14 **L. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Eight
15 Hundred Ninety-One Thousand Two Hundred Fifty Dollars and Zero Cents (\$891,250.00),¹
16 which shall be paid by Defendant, from which all payments for the Individual Settlement
17 Payments to Participating Class Members, the Court-approved amounts for attorneys’ fees and
18 reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration
19 Costs, the Service Award, the PAGA Payment and the LWDA Payment shall be paid. It expressly
20 excludes Employer’s Share of Payroll Taxes, which shall be paid by Defendant, separate, apart
21 and in addition to the Gross Settlement Amount.

22 **M. “Individual PAGA Payment”** means a payment made to an Aggrieved Employee
23 for his or her share of the PAGA Payment, which may be in addition to his or her Individual
24 Settlement Share if he or she is also a Participating Class Member.

25 **N. “Individual Settlement Payment”** means a payment to a Participating Class
26 Member of his or her net share of the Net Settlement Amount.

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¹ As may be increased in accordance with Paragraph 17 below.

1 **O. “Individual Settlement Share”** means the gross amount of the Net Settlement
2 Amount that a Participating Class Member is projected to receive based on the number of
3 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
4 shall be reflected in his or her Class Notice.

5 **P. “LWDA Payment”** means the payment to the State of California Labor and
6 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
7 amount allocated toward penalties under the PAGA, all of which is to be paid from the Gross
8 Settlement Amount. The Parties have agreed that Fifty Thousand Dollars and Zero Cents
9 (\$50,000.00) shall be allocated toward PAGA penalties, of which Thirty Seven Thousand Five
10 Hundred Dollars and Zero Cents (\$37,500.00) will be paid to the LWDA (*i.e.*, the LWDA
11 Payment) and Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) will be paid
12 to Aggrieved Employees on a *pro rata* basis based on the Pay Periods worked in the PAGA
13 Period, as further set out herein (*i.e.* the PAGA Payment).

14 **Q. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
15 that is available for distribution to the Participating Class Members after deductions for the Court-
16 approved allocations for Settlement Administration Costs, Service Award to Plaintiff, an award
17 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
18 Payment and the PAGA Payment.

19 **R. “Operative Complaint”** means the First Amended Complaint to be filed in the
20 Action.

21 **S. “PAGA Payment”** is the 25% portion of the Fifty Thousand Dollars and Zero
22 Cents (\$50,000.00) that is allocated toward PAGA penalties (Twelve Thousand Five Hundred
23 Dollars and Zero Cents (\$12,500.00)) that will be paid to Aggrieved Employees on a *pro rata*
24 basis based on the Pay Periods worked as non-exempt, hourly paid employees in California in
25 the PAGA Period, which would be in addition to their Individual Settlement Payment if they are
26 Participating Class Members, as well.

27 **T. “PAGA Period”** means the period from February 8, 2021 through February 14,
28 2024.

1 **T. “Participating Class Members”** means all Settlement Class Members who do
2 not submit a timely and valid Request for Exclusion.

3 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
4 Settlement Amount that a Participating Class Member is eligible to receive based on the number
5 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
6 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
7 may be entitled if he or she is also an Aggrieved Employee.

8 **V. “Pay Period”** means any pay period during which an Aggrieved Employee
9 worked for Defendant for at least one day during the PAGA Period, based on dates of
10 employment (*i.e.* hire dates, re-hire dates (as applicable), and termination dates (as applicable)).

11 **W. “Plaintiff,” “Named Plaintiff” or “Class Representative”** shall refer to plaintiff
12 Oscar Moctezuma.

13 **W. “Preliminary Approval Date”** means the date on which the Court enters an Order
14 granting preliminary approval of the Settlement.

15 **X. “Released Parties”** shall mean Defendant and its past, present and/or future,
16 direct and/or indirect, owners, officers, directors, members, managers, employees, agents,
17 representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successor, and
18 assigns, including but not limited to S.M.G. Extol LLC.

19 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
20 any Requests for Exclusion, Objections or Workweek Disputes to the Settlement Administrator,
21 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
22 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
23 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing
24 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
25 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
26 shall be the exclusive means for determining whether a Request for Exclusion, Objection or
27 Workweek Dispute was submitted by the Response Deadline.

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1 **Z. “Request for Exclusion”** means a written request to be excluded from the
2 Settlement Class pursuant to Paragraph 9(C) below.

3 **AA. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
4 Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), which, subject to Court approval,
5 will be paid out of the Gross Settlement Amount.

6 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
7 Administrator in administration of the Settlement, including, but not limited to, translating the
8 Class Notice to Spanish, distribution of the Class Notice to the Settlement Class in English and
9 Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual
10 PAGA Payments and Participating Individual Settlement Shares, as well as associated taxes and
11 withholdings, providing declarations, generating Individual Settlement Payment checks and
12 related tax reporting forms, doing administrative work related to unclaimed checks, transmitting
13 payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement
14 of litigation costs and expenses, to Plaintiff for his Service Award and to the LWDA for the
15 LWDA Payment, providing weekly reports of opt-outs, objections and related information, and
16 any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to
17 the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed
18 \$8,950.00. If the actual amount of the Settlement Administration Costs is less than \$8,950.00,
19 the difference between \$8,950.00 and the actual Settlement Administration Costs shall be a part
20 of the Net Settlement Amount. If the Settlement Administration Costs exceed \$8,950.00, then
21 such excess will be paid solely from the Gross Settlement Amount and Defendant will not be
22 responsible for paying any additional funds in order to pay these additional costs.

23 **CC. “Settlement Administrator”** means the Third-Party Administrator selected by
24 Plaintiff that will be responsible for the administration of the Settlement including, without
25 limitation, translating the Class Notice in Spanish, distribution of the Individual Settlement
26 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
27 this Agreement.
28

1 **DD.** “**Workweeks**” means any week during the Class Period in which any Class
2 Member performed any work for Defendant at least one day, based on hire dates, termination
3 dates (as applicable), and re-hire date(s) (as applicable).

4 **2. BACKGROUND**

5 **A.** On May 10, 2023, Plaintiff filed a putative wage-and-hour class action, alleging
6 causes of action against Defendant for: (1) failure to pay overtime wages; (2) failure to pay
7 minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure
8 to provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon
9 separation; (6) failure to provide accurate wage statements; (7) failure to timely pay wages during
10 employment; (8) failure to indemnify for business expenses; (9) failure to pay unused vested
11 vacation time; (10) engaging in unfair competition (the “Action”).

12 **B.** On May 11, 2023, Plaintiff filed with the LWDA and served on Defendant a notice
13 under Labor Code section 2699.3, stating that Plaintiff intended to serve as a proxy of the LWDA
14 to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations
15 (the “PAGA Notice”).

16 **C.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
17 mediation, in which Plaintiff was provided with, among other things: (1) Plaintiff’s time and
18 payroll records; (2) Defendant’s wage and hour policy documents, such as Employee Handbook
19 and Union Employee Handbook; (3) collective bargaining agreements (CBAs) between
20 Defendant and Communication Workers of America Union (operative from 2018 to 2023 and
21 operative as of mediation); and (4) Plaintiff’s personnel file. Thereafter, Plaintiff was also
22 provided with time and payroll records of putative class members and putative class data points,
23 such as the number of putative class members, the number of putative class members separated
24 from employment during the waiting time penalty period, the average regular rate of pay during
25 the Class Period, the number of Workweeks during the Class Period, the number of shifts during
26 the Class Period, and the number of Pay Periods during the PAGA Period.

27 **D.** On February 14, 2024, the Parties participated in a full-day mediation with Jeffrey
28 Ross, Esquire, a well-regarded mediator, experienced in mediating complex labor and

1 employment matters. With the aid of the mediator's evaluation, the Parties reached the Settlement
2 to resolve the Action. As part of this Agreement, the Parties agree to stipulate to Plaintiff's filing
3 of a First Amended Complaint in the Action, adding all PAGA claims brought in the PAGA
4 Notice for purposes of this Settlement. The First Amended Complaint in the Action is the
5 "Operative Complaint."

6 **E.** Class Counsel have conducted significant investigation of the law and facts
7 relating to the claims asserted in the Action and the PAGA Notice, and have concluded that the
8 Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Settlement
9 Class, taking into account the sharply contested issues involved, the expense and time necessary
10 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
11 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
12 learned through discovery regarding Plaintiff's allegations, and the substantial benefits to be
13 received by Settlement Class Members.

14 **F.** Defendant has concluded that, because of the substantial expense of defending
15 against the Action, the length of time necessary to resolve the issues presented herein, the
16 inconvenience involved and the concomitant disruption to its business operations, it is in its best
17 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
18 claims asserted against them in the Action and the PAGA Notice. However, Defendant
19 nevertheless desires to settle the Action for the purpose of avoiding the burden, expense and
20 uncertainty of continuing litigation, and for the purpose of putting to rest the controversies
21 engendered by the Action.

22 **G.** This Agreement is intended to and does effectuate the full, final, and complete
23 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
24 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
25 and Aggrieved Employees.

26 **3. JURISDICTION**

27 The Court has jurisdiction over the Parties and the subject matter of the Action. The
28 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the

1 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
2 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
3 pursuant to California Rules of Court, rule 3.769, subdivision (h).

4 **4. STIPULATION OF CLASS CERTIFICATION**

5 The Parties stipulate to the certification of the Settlement Class under this Agreement for
6 purposes of settlement only.

7 **5. AMENDED COMPLAINT AND MOTIONS FOR APPROVAL OF**
8 **SETTLEMENT**

9 The Parties hereby stipulate to Plaintiff's filing of a First Amended Complaint in the
10 Action, adding all PAGA claims brought in the PAGA Notice for purposes of this Settlement.
11 The Parties hereby expressly agree that whether or not the Court finally approves the Settlement,
12 Plaintiff's PAGA claims from the PAGA Notice will be effectively added into the Action and
13 will relate back to the date on which Plaintiff filed the PAGA Notice.

14 After full execution of this Agreement, Plaintiff will move for an order granting
15 preliminary approval of the Settlement, approving and directing the mailing of the proposed
16 Notice of Proposed Class Action Settlement and Date for Final Approval Hearing ("Class
17 Notice") attached hereto as **Exhibit "A,"** conditionally certifying the Settlement Class for
18 settlement purposes only, and approving the deadlines proposed by the Parties for the submission
19 of Requests for Exclusion, Workweek Disputes and Objections. If and when the Court
20 preliminarily approves the Settlement, and after administration of the Class Notice in a manner
21 consistent with the Court's Preliminary Approval Order, Plaintiff will move for an order finally
22 approving the Settlement and seek entry of a Judgment in line with this Settlement. The Parties
23 may both respond to any Objections lodged to final approval of the Settlement up to five (5) court
24 days before the Final Approval Hearing.

25 **6. STATEMENT OF NO ADMISSION**

26 Defendant denies any wrongdoing of any sort and further denies any liability to Plaintiff
27 and the Settlement Class and Aggrieved Employees with respect to any claims or allegations
28 asserted in the Action and the PAGA Notice. This Agreement shall not be deemed an admission

1 by Defendant of any claims or allegations asserted in the Action or the PAGA Notice. Except as
2 set forth elsewhere herein, in the event that this Agreement is not approved by the Court or any
3 appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed
4 to have waived, limited or affected in any way any claims, rights or remedies, or defenses in the
5 Action or the PAGA Notice, and Defendant will not be deemed to have waived, limited or
6 affected in any way any of their objections or defenses in the Action and the PAGA Notice. The
7 Parties shall not stipulate to class certification and shall be restored to their respective positions
8 in the Action prior to the entry of this Settlement. Payment of wages under this Settlement neither
9 extends nor alter the Class Members' period of employment with Defendant for any purpose.

10 **7. RELEASE OF CLAIMS**

11 **A. Release by All Participating Class Members**

12 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
13 of Judgment and payment by Defendant to the Settlement Administrator of the full Gross
14 Settlement Amount and Employers' share of payroll taxes to effectuate the Settlement, Plaintiff
15 and all Participating Class Members, release all claims, rights, demands, damages, liabilities, and
16 causes of action, in law or in equity, arising at any time during the Class Period for the claims
17 that were alleged or reasonably could have been alleged based on the facts stated in the Operative
18 Complaint, including, but not limited to: (a) all claims for failure to pay overtime wages; (b) all
19 claims for failure to pay minimum wages, including claims for failure to pay employees at the
20 appropriate regular rate of pay; (c) all claims for failure to provide compliant meal periods or
21 compensation in lieu thereof; (d) all claims for failure to provide compliant rest periods or
22 compensation in lieu thereof; (e) all claims for failure to pay all wages due upon separation from
23 employment; (f) all claims for failure to provide accurate wage statements; (g) all claims for
24 failure to timely pay wages during employment; (h) all claims for failure to indemnify for
25 business expenses; (i) all claims for failure to pay unused vested vacation time; and (j) all claims
26 asserted through California Business & Profession Code section 17200, *et seq.*, arising out of the
27 Labor Code violations referenced in the Operative Complaint (the "Class Released Claims").

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1 **B. Release by All Aggrieved Employees**

2 For Aggrieved Employees and, to the extent permitted by law, the State of California, the
3 release includes for the duration of the PAGA Period, all claims for PAGA civil penalties asserted
4 in the Operative Complaint and the PAGA Notice or that could have been based on the factual
5 allegations asserted in the Operative Complaint and the PAGA Notice for PAGA civil penalties,
6 including, pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and 2699, in
7 connection with alleged violations of Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 226,
8 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5,
9 2802, and 2810.5 (the “PAGA Released Claims”). The Class Released Claims and the PAGA
10 Released Claims shall be referred to herein as the “Released Claims.”

11 **C. Claims Not Released**

12 The releases above expressly exclude all other claims, including claims for vested
13 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
14 compensation, and any other claims outside of the Class Released Claims of Participating Class
15 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
16 Employees (and, to the extent permitted by law, the State of California) arising outside of the
17 PAGA Period.

18 **D. General Release**

19 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
20 of Judgment and payment by Defendant to the Settlement Administrator selected of the full Gross
21 Settlement Amount and Employer’s share of payroll taxes necessary to effectuate the Settlement,
22 in addition to the Released Claims, Plaintiff makes the additional following General Release:
23 Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of
24 action of every nature and description whatsoever, known or unknown, asserted or that might
25 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
26 law or regulation arising out of, relating to, or in connection with any act or omission of the
27 Released Parties through the date of full execution of this Agreement in connection with
28 Plaintiff’s employment with Defendant or termination thereof, except for any and all other claims

that may not be released as a matter of law through this Agreement. To the extent of the General Release provided herein, Plaintiff stipulates and agrees that, upon entry of an Order granting Final Approval of the Settlement, entry of Judgment and payment by Defendant to the Settlement Administrator selected of the full Gross Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, he shall 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 similar 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.

8. SETTLEMENT ADMINISTRATOR

A. Plaintiff, through Class Counsel, has selected ILYM Group, Inc. to administer the Settlement, which includes, but is not limited to, translating the Class Notice to Spanish, distributing, and responding to inquiries about the Class Notice, and calculating all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement Administrator, currently estimated to be \$8,950.00, will be paid from the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is less than \$8,950.00, the difference between \$8,950.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$8,950.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for paying any additional funds in order to pay these additional costs.

9. NOTICE, WORKWEEK DISPUTE, OBJECTION AND EXCLUSION PROCESS

A. Notice to the Settlement Class Members

(1) Within seven (7) calendar days after the Preliminary Approval Date, Defendant's Counsel shall provide the Settlement Administrator with information with respect to each Settlement Class Member, including his or her: (1) name; (2) last known address(es) currently in Defendant's possession, custody or control; (3) last known telephone number(s)

1 currently in Defendant's possession, custody or control; (4) last known Social Security
2 Number(s) in Defendant's possession, custody or control; and (5) the dates of employment, *i.e.*,
3 hire dates and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class
4 Member ("Class List"). The Settlement Administrator shall perform an address search using the
5 United States Postal Service National Change of Address ("NCOA") database and update the
6 addresses contained on the Class List with the newly found addresses, if any. Within seven (7)
7 calendar days or soon thereafter of receiving the Class List from Defendant, the Settlement
8 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
9 Members via first-class regular U.S. Mail using the most current mailing address information
10 available. The Settlement Administrator shall maintain the Class List and digital copies of all the
11 Settlement Administrator's records evidencing the giving of notice to any Settlement Class
12 Member for at least four (4) years from the Final Approval Date.

13 (2) The Class Notice will set forth:

- 14 (a) the Settlement Class Member's estimated Individual
15 Settlement Payment and Individual PAGA Payment,
16 and the basis for each;
- 17 (b) the information required by California Rules of Court,
18 rule 3.766, subdivision (d);
- 19 (c) the material terms of the Settlement;
- 20 (d) the proposed Settlement Administration Costs;
- 21 (e) the definition of the Settlement Class;
- 22 (f) a statement that the Court has preliminarily approved
23 the Settlement;
- 24 (g) how the Settlement Class Member can obtain
25 additional information, including contact information
26 for Class Counsel;
- 27 (h) information regarding opt-out and objection
28 procedures;

1 (i) the date and location of the Final Approval Hearing;
2 and

3 (j) that the Settlement Class Member must notify the
4 Settlement Administrator no later than the Response
5 Deadline if the Settlement Class Member disputes the
6 accuracy of the number of Workweeks worked as set
7 forth on his or her Class Notice (“Workweek Dispute”).
8 If a Settlement Class Member fails to timely dispute the
9 number of Workweeks attributed to him or her in
10 conformity with the instructions in the Class Notice,
11 then he or she shall be deemed to have waived any
12 objection to its accuracy and any claim to any
13 additional settlement payment based on different data.

14 (3) If a Class Notice from the initial notice mailing is returned as
15 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
16 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
17 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
18 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
19 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
20 Member within three (3) business days. Further, any Class Notices that are returned to the
21 Settlement Administrator with a forwarding address before the Response Deadline shall be
22 promptly re-mailed to the forwarding address affixed thereto.

23 (4) No later than seven (7) calendar days from the Response Deadline, the
24 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
25 completion of the notice process, including the number of attempts to obtain valid mailing
26 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
27 and copies of all Requests for Exclusion and Objections received by the Settlement
28 Administrator.

1 **B. Objections**

2 Only Participating Class Members may object to the Settlement. In order for any
3 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
4 do so by mailing a written objection to the Settlement Administrator at the address provided on
5 the Class Notice no later than the Response Deadline. The Settlement Administrator shall email
6 a copy of the Objection forthwith to Class Counsel and Defendant's Counsel and attach copies
7 of all Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in
8 support of Plaintiff's Motion for Final Approval. The Objection should set forth in writing: (1)
9 the Objector's name; (2) the Objector's address; (3) the last four digits of the Objector's Social
10 Security Number; (4) the Objector's signature; (5) a statement of whether the Objector plans to
11 appear at the Final Approval Hearing; and (6) the reason(s) for the Objection, along with
12 whatever legal authority, if any, the Objector asserts in support of the Objection. If a Settlement
13 Class Member objects to the Settlement, the Settlement Class Member will remain a member of
14 the Settlement Class and if the Court approves this Agreement, the Settlement Class Member
15 will be bound by the terms of the Settlement in the same way and to the same extent as a
16 Settlement Class Member who does not object. The date of mailing of the Class Notice to the
17 objecting Settlement Class Member shall be conclusively determined according to the records of
18 the Settlement Administrator. Settlement Class Members need not object in writing to be heard
19 at the Final Approval Hearing; they may object or comment in person at the hearing at their own
20 expense. Class Counsel and Defendant's Counsel may respond to any objection lodged with the
21 Court up to five (5) court days before the Final Approval Hearing.

22 **C. Requesting Exclusion**

23 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
24 Settlement by mailing a written request to be excluded from the Settlement ("Request for
25 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
26 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last
27 four (4) digits of the Class Member's Social Security Number; (3) the Class Member's signature;
28 and (4) the following statement: "Please exclude me from the Settlement Class in the *Oscar*

1 *Moctezuma v. Direct Line Global, LLC* matter,” or any statement of similar meaning standing
2 for the proposition that the Class Member does not wish to participate in the Settlement. The
3 Settlement Administrator shall immediately provide copies of all Requests for Exclusion
4 to Defendant’s Counsel and shall report the number of Requests for Exclusions that it receives,
5 to the Court, in its declaration to be provided in advance of the Final Approval Hearing. If
6 requested by the Court, Defendants shall cooperate in providing the identities and copies of the
7 Requests for Exclusion to the Court as well as identifying the individuals who submitted the valid
8 Requests for Exclusion on the order granting final approval and Judgment. Any Settlement Class
9 Member who requests exclusion using this procedure will not be entitled to receive any payment
10 from the Settlement and will not be bound by the Settlement Agreement or have any right to
11 object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not
12 opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound
13 by all terms of the Settlement, including those pertaining to the Released Claims, as well as any
14 Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A
15 Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a
16 Settlement Class Member submits an Objection and a Request for Exclusion, the Request for
17 Exclusion will control, and the Objection will be overruled. Settlement Class Members who
18 worked during the PAGA Period as Aggrieved Employees that submit a valid Request for
19 Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA
20 Payments, and will be bound by the release of the PAGA Released Claims.

21 **D. Disputes Regarding Settlement Class Members’ Workweek Data**

22 Each Settlement Class Member may dispute the number of Workweeks attributed to him
23 or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to
24 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
25 Response Deadline. The Settlement Administrator shall immediately provide copies of all
26 disputes counsel for Defendant and shall immediately attempt to resolve all such disputes directly
27 with relevant Settlement Class Member(s) with the assistance of Defendant. If the dispute cannot
28 be resolved in this manner, the Court shall adjudicate the dispute.

10. **INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
PAGA PAYMENTS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks worked during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Pay Periods worked during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

A. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement Administrator will determine the total number of Pay Periods worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Pay Periods"), as well as the aggregate number of Pay Periods worked by all Aggrieved Employees during the PAGA Period ("PAGA Workweeks").

B. To determine each Settlement Class Member's Individual Settlement Share, the Settlement Administrator will use the following formula: Individual Settlement Share = (Settlement Class Member's Workweeks worked ÷ Class Workweeks) × Net Settlement Amount.

C. To determine each Participating Class Member's Participating Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Workweeks worked by all Participating Class Members during the Class Period ("Participating Class Workweeks") and use the following formula: Individual Settlement Share = (Participating Class Member's Workweeks worked ÷ Participating Class Workweeks) × Net Settlement Amount.

1 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
2 to Participating Class Members by way of check and is referred to as “Individual Settlement
3 Payment(s)”.

4 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
5 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
6 PAGA Payment = (Aggrieved Employee’s PAGA Pay Periods worked ÷ PAGA Pay Periods)
7 x \$12,500 (the PAGA Payment).

8 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
9 to Participating Class Members and/or Aggrieved Employees by way of check. When a
10 Participating Class Member is also an Aggrieved Employee, one check may be issued that
11 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

12 **11. DISTRIBUTION OF PAYMENTS**

13 **A. Distribution of Individual Settlement Payments**

14 Participating Class Members will receive an Individual Settlement Payment. Individual
15 Settlement Payment checks shall remain valid and negotiable for one hundred and eighty (180)
16 calendar days after the date of their issuance. Thereafter, checks for such payments shall be
17 canceled and funds associated with such checks shall be transmitted to the California Controller’s
18 Office, Unclaimed Property Fund.

19 **B. Funding of Settlement**

20 Defendant shall, within fourteen (14) business days of the Final Approval Date make
21 payment of the Gross Settlement Amount (as the same may be increased pursuant to Paragraph
22 17 of this Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal
23 Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account
24 (“QSA”) with an FDIC insured banking institution, for distribution in accordance with this
25 Agreement and the Court’s Orders, and subject to the conditions described herein.

26 In the event of an appeal of the order granting final approval, Defendant will not be
27 required to fund any portion of the settlement until sixty (60) days after all appeals are exhausted
28 and the order granting final approval becomes final.

1 **C. Time for Distribution**

2 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
3 Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator
4 shall distribute all payments due from the QSA for: (1) the Service Award to Plaintiff, as
5 specified in this Agreement and approved by the Court; (2) the Attorneys' Fees and Costs Award
6 to be paid to Class Counsel, as specified in this Agreement and approved by the Court; (3) the
7 Settlement Administrator Costs, as specified in this Agreement and approved the Court; (4) the
8 LWDA Payment, as specified in this Agreement and approved by the Court; (5) Individual
9 PAGA Payments to Aggrieved Employees, as specified in this Agreement and approved by the
10 Court; and (6) Individual Settlement Payments to Participating Class Members, less applicable
11 taxes and withholdings, as specified in this Agreement and approved by the Court. All interest
12 accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to
13 Participating Class Members based on the number of Workweeks worked by them in the Class
14 Period.

15 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

16 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
17 fees of up to one-third (1/3) of the Gross Settlement Amount, which, unless escalated pursuant
18 to Paragraph 17 of this Agreement, amounts to Two Hundred Ninety-Seven Thousand Eighty-
19 Three Dollars and Thirty-Three Cents (\$297,083.33). Class Counsel shall further apply for, and
20 Defendant shall not oppose, an application or motion by Class Counsel for reimbursement of
21 actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration
22 testimony in an amount up to Thirty Thousand Dollars and Zero Cents (\$30,000.00). Awards of
23 attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and future
24 attorneys' fees and costs necessary to prosecute, settle and obtain Final Approval of the
25 settlement in Action. The "future" aspect of the amounts stated herein includes, without
26 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
27 There will be no additional charge of any kind to either the Settlement Class Members or request
28 for additional consideration from Defendant for such work unless, Defendant materially breach

1 this Agreement, including any term regarding funding, and further efforts are necessary from
2 Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce
3 the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
4 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
5 be a part of the Net Settlement Amount.

6 **13. SERVICE AWARD TO PLAINTIFF**

7 Named Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an
8 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to
9 Plaintiff, for participation in and assistance with the Action. Any Service Award and additional
10 consideration awarded and/or paid to Plaintiff shall be paid from the Gross Settlement Amount
11 and shall be reported on an IRS Form 1099. If the Court approves the Service Award in less than
12 the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement
13 Amount.

14 **14. TAXATION AND ALLOCATION**

15 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
16 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
17 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
18 agree that the employees' share of taxes and withholdings with respect to the wage portion of the
19 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
20 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
21 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
22 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
23 be made pursuant to applicable state and/or local withholding codes or regulations.

24 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
25 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
26 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
27 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
28

1 set forth in this Section may be modified in a manner to bring Defendant into compliance with
2 any such changes.

3 c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to
4 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of
5 payroll taxes as described above.

6 d. Neither Counsel for Plaintiff nor Defendant intend anything contained in this
7 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
8 be relied upon as such within the meaning of United States Treasury Department Circular 230
9 (31 C.F.R. Part 10, as amended) or otherwise.

10 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

11 The Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the
12 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
13 (75%) of the amount allocated toward PAGA penalties (\$37,500.00) will be paid to the LWDA
14 and twenty-five percent (25%) or \$12,500.00 will be distributed to Aggrieved Employees on a
15 *pro rata* basis based upon their respective Pay Periods worked as Aggrieved Employees during
16 the PAGA Period.

17 **16. COURT APPROVAL**

18 This Agreement is contingent upon an order by the Court granting Final Approval of the
19 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
20 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
21 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
22 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
23 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
24 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
25 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
26 the Settlement Agreement being voided or not approved, and which control in such an event.

27 **17. INCREASE IN WORKWEEKS**

28

Defendant represents that there are no more than 35,650 Workweeks worked by Class Members during the Class Period. In the event the number of Workweeks during the Class Period increases by more than 5%, or an additional 1,782 Workweeks worked, then the Gross Settlement Amount shall be increased proportionally by the Workweeks worked in excess of 35,650 multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$891,250.00) by 35,650. The Parties agree that the Workweek Value amounts to and the settlement amounts to \$25.00 per Workweek (\$891,250.00 / 35,650 Workweeks). Thus, for example, should there be 40,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by \$108,750.00 (40,000 Workweeks – 35,650 Workweeks x \$25.00/Workweek). Alternatively, in the event the number of Workweeks during the Class Period exceeds 35,650, instead of increasing the Gross Settlement Amount, the Parties may end the Class Period on the date the number of Workweeks reaches 35,650. The Party making this election shall notify the other of their election no later than seven (7) calendar days after receiving sufficient information from the Settlement Administrator regarding the total number of Workweeks during the Class Period.

18. DEFENDANT’S RIGHT TO WITHDRAW

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten percent (10%) of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement, provided Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven (7) calendar days after the Administrator sends the final Exclusion List to Defense Counsel. Late elections will have no effect.

19. NOTICE OF JUDGMENT

1 In addition to any duties set out herein, the Settlement Administrator shall provide
2 notice of the Final Judgment entered in the Action by posting the same on its website for a
3 period of no less than four (4) years.

4 **20. MISCELLANEOUS PROVISIONS**

5 **A. Interpretation of the Agreement**

6 This Agreement constitutes the entire agreement between the Parties with respect to its
7 subject matter. Except as expressly provided herein, this Agreement has not been executed in
8 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
9 written representations or terms shall modify, vary, or contradict its terms. In entering into this
10 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
11 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
12 enforced under the laws of the State of California, both in its procedural and substantive aspects,
13 without regard to its conflict of law provisions. Any claim arising out of or relating to the
14 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
15 Court of the State of California for the County of Alameda, and Plaintiff and Defendant hereby
16 consent to the personal jurisdiction of the Court in the Action over it solely in connection
17 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties, and
18 each of them, participated in the negotiation and drafting of this Agreement had available to them
19 the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant may
20 claim that any ambiguity in this Agreement should be construed against the other. The Agreement
21 may be modified only by a writing signed by counsel for the Parties and approved by the Court.

22 **B. Further Cooperation**

23 The Parties and their respective attorneys shall proceed diligently to prepare and execute
24 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
25 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
26 will not take any action inconsistent with this Agreement, including, without limitation,
27 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
28 Party has taken actions inconsistent with the Settlement, including, without limitation,

1 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
2 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
3 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
4 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
5 opt-outs and/or objections.

6 **C. Counterparts**

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

10 **E. Authority**

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

13 **F. No Third-Party Beneficiaries**

14 Plaintiff, Participating Class Members, Aggrieved Employees, the State of California,
15 Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-
16 party beneficiaries.

17 **G. Deadlines Falling on Weekends or Holidays**

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

20 **H. Jurisdiction of the Court**

21 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
22 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
23 of this Settlement Agreement and all orders and judgments entered in connection therewith,
24 and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
25 interpreting, implementing, and enforcing the settlement embodied in this Settlement
26 Agreement and all orders and judgments entered in connection therewith.

27 **I. Severability**

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

///

IT IS SO AGREED:

Dated: 03/27, 2024

Oscar Moctezuma

Oscar Moctezuma (Mar 27, 2024 16:19 PDT)

OSCAR MOCTEZUMA
Plaintiff and Class Representative

Dated: _____, 2024

DIRECT LINE GLOBAL, LLC
Defendant

By: _____
Its: _____

AGREED AS TO FORM:

Dated: 4/12, 2024

Vedang J. Patel

DAVID D. BIBIYAN
JEFFREY D. KLEIN
VEDANG J. PATEL
Counsel for Plaintiff OSCAR MOCTEZUMA

Dated: _____, 2024

SHANNON B. NAKABAYASHI
ISABELLA L. SHIN
Counsel for Defendant DIRECT LINE
GLOBAL, LLC

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

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IT IS SO AGREED:

Dated: _____, 2024

OSCAR MOCTEZUMA
Plaintiff and Class Representative

Dated: 3/27/2024, 2024

William Nelligan

DIRECT LINE GLOBAL, LLC
Defendant
By: William Nelligan
Its: CEO

AGREED AS TO FORM:

Dated: _____, 2024

DAVID D. BIBIYAN
JEFFREY D. KLEIN
VEDANG J. PATEL
Counsel for Plaintiff OSCAR MOCTEZUMA

Dated: March 28, 2024

Shannon Nakabayashi

SHANNON B. NAKABAYASHI
ISABELLA L. SHIN
Counsel for Defendant DIRECT LINE
GLOBAL, LLC