

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Class Action and PAGA Settlement Agreement is entered into by and between
3 Plaintiff Tanya Garcia, individually and on behalf of all others similarly situated, and Defendant
4 DSM&T Co., Inc., and is approved by their respective counsel of record, subject to the terms and
5 conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means the Complaint originally filed by Plaintiff Tanya
8 Garcia entitled *Garcia v. DSM&T Co., Inc.*, Case No. CIVSB2206009, filed in San Bernardino
9 County Superior Court on March 16, 2022.

10 2. "PAGA Employees" for the PAGA claim include all non-exempt employees who
11 work or worked for Defendant in California from March 14, 2022 until June 14, 2023, or the date
12 that the Court grants preliminary approval of the settlement, whichever occurs first.

13 3. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean
14 this Class Action and PAGA Settlement Agreement, including any attached Exhibits.

15 4. "Class Claims" or "Released Class Claims" will include all claims that were pled
16 in the First Amended Complaint and all claims that could have been alleged in the First Amended
17 Complaint based on the facts alleged therein, including, claims for failure to pay minimum wages,
18 failure to pay overtime wages and/or failure to pay such wages at the correct rate(s) of pay, failure
19 to pay all sick time wages, meal and rest break violations, failure to provide accurate itemized
20 wage statements, failure to timely pay all wages upon separation of employment, and unfair and
21 unlawful business practices, including, but not limited to, claims for injunctive relief, liquidated
22 damages, penalties of any nature, interest, fees, costs.

23 5. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and
24 Jake Finkel of The Finkel Firm.

25 6. "Class Data" means information regarding Settlement Class Members compiled
26 from Defendant's records and provided to the Settlement Administrator in a Microsoft Excel
27 Spreadsheet, including each Settlement Class Member's full name; last known address; Social
28 Security Number; dates of employment; and additional information sufficient for the Settlement

1 Administrator to determine the number of Eligible Workweeks and Eligible Pay Periods worked
2 as non-exempt or hourly employees of Defendant during the Class Period and the PAGA Period
3 for each Settlement Class Member. At no time during the Settlement process will any Class
4 Member's address, Social Security number, or telephone number be filed with the Court, except
5 under seal as may be ordered.

6 7. "Class Period" and "Class Release Period" shall mean April 9, 2018, until June
7 14, 2023, or the date that the Court grants preliminary approval of the settlement, whichever
8 occurs first.

9 8. "Class Representative" or "Plaintiff" means and refers to Tanya Garcia.

10 9. "Complaint" refers to the operative First Amended Complaint filed on June 28,
11 2023, pursuant to Paragraph 48 below, in San Bernardino County Superior Court action entitled
12 *Garcia v. DSM&T, Co., Inc.*, Case No. CIVSB2206009.

13 10. "Court" means the California Superior Court, County of San Bernardino, or any
14 Court of competent jurisdiction.

15 11. "Defendant" means and refers to DSM&T Co., Inc.

16 12. "Defendant's Counsel" or "Defense Counsel" means and refers to Eric J. Gitig and
17 Nareg A. Kourouyan of Jackson Lewis, P.C.

18 13. "Effective Date" means the date when all of the following events have occurred:
19 (1) the Agreement has been executed by all Parties, Class Counsel and Defendant's Counsel; (2)
20 the Court has given preliminary approval to the Agreement; (3) the Notice has been given to the
21 putative members of the Settlement Class, providing them with an opportunity to object to the
22 terms of this Agreement or opt out of the settlement; (4) the Court has held a formal fairness
23 hearing and entered a final Order and Judgment certifying the Settlement Class and approving the
24 Agreement; and (5) in the event there are written objections filed prior to the final fairness hearing
25 which are not later withdrawn or denied, the later of the following events: five (5) business days
26 after the period for filing any appeal, writ or other appellate proceeding opposing the Court's final
27 Order approving the Agreement has elapsed without any appeal, writ or other appellate
28 proceeding having been filed; or, if any appeal, writ or other appellate proceeding opposing the

1 Court's final Order approving the Agreement has been filed, five (5) business days after any
2 appeal, writ or other appellate proceedings opposing the Agreement has been finally and
3 conclusively dismissed with no right to pursue further remedies or relief. "Final" means that the
4 Settlement has been granted "Final Approval" by the Court and the "Effective Date" has occurred.

5 14. "Final Approval" refers to the order of the Court granting final approval of this
6 Settlement Agreement and entering a judgment approving this Settlement on substantially the
7 same terms provided herein or as may be modified by subsequent agreement of the Parties or
8 order of the Court.

9 15. "Final Settlement Class" means, collectively, all Participating Class Members
10 (defined in Paragraph 26, *infra*) and all PAGA Employees (defined in Paragraph 2, *supra*).

11 16. "First Amended Complaint" means the First Amended Complaint Plaintiff filed
12 on June 28, 2023.

13 17. "Individual Settlement Amount" shall have the meaning ascribed to it in Paragraph
14 49(d) below.

15 18. "Net Settlement Amount" shall have the meaning ascribed to it in Paragraph 49(c)
16 below.

17 19. "Notice" means the notice of settlement of class action and PAGA settlement that
18 will be sent to the Settlement Class Members.

19 20. "Notice Response Deadline" is 45 calendar days from the date the Notice is mailed
20 to the Settlement Class Members.

21 21. "Objecting Settlement Class Member" means a Settlement Class Member, other
22 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
23 respect to the Class Claims pursuant to Paragraph 72(a) below.

24 22. "PAGA" shall refer to the California Labor Code Private Attorneys General Act
25 of 2004, California Labor Code Sections 2698–2699.5.

26 23. "PAGA Claims" or "Released PAGA Claims" include any and all claims for civil
27 penalties pursuant to PAGA based on the allegations stated in the PAGA Notice and that were or
28 could have been pled in the First Amended Complaint based on the facts alleged therein, including

claims for failure to pay minimum wages, failure to pay overtime wages and/or failure to pay such wages at the correct rate(s) of pay, failure to pay sick time wages, meal and rest break violations, failure to maintain accurate records, failure to provide accurate itemized wage statements, and failure to timely pay all wages during employment and upon separation of employment.

24. “PAGA Notice” shall refer to the notices sent by Plaintiff, by and through counsel, to the Labor Workforce Development Agency (“LWDA”) and to Defendant, alleging that Defendant engaged in violations of the California Labor Code and California Wage Order(s).

25. “PAGA Period” and “PAGA Release Period” shall mean March 14, 2022 until June 14, 2023, or the date that the Court grants preliminary approval of the settlement, whichever occurs first.

26. “Participating Class Member” means any and all Settlement Class Members who are deemed to participate and receive an Individual Settlement Amount for the Class Claims and who do not opt-out of the settlement of the Class Claims by submitting timely valid Requests for Exclusion.

27. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the PAGA Employees, and Defendant, collectively.

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

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

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

1 31. “Release” shall mean the release and discharge of the Class Claims by Plaintiff
2 and all of the Participating Class Members and the release and discharge of the PAGA Claims by
3 Plaintiff and all of the PAGA Employees.

4 32. “Released Parties” shall refer to Defendant and all its past, present, and/or future,
5 parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers,
6 directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity
7 which could be liable for any of the Released Class Claims or Released Class Claims, and
8 Defendant’s counsel of record in the Action.

9 33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 72(a)
10 below.

11 34. “Service Payment” or “Service Award” means the amount approved by the Court
12 to be paid to Class Representative of up to Ten Thousand Dollars (\$10,000.00), in addition to his
13 Individual Settlement Amount as a Participating Class Member.

14 35. “Settlement Administration Costs” means the costs payable from the Settlement
15 Amount to the Settlement Administrator for administering this Settlement, including, but not
16 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due
17 diligence, reporting and remittance obligations, distributing the Settlement Amount, and
18 providing necessary reports and declarations, as requested by the Parties. The Settlement
19 Administration Costs shall be paid from the Settlement Amount.

20 36. “Settlement Administrator” means and refers to ILYM Group, Inc., which the
21 Parties have mutually agreed will provide the Notice to the Class Members and distribute the
22 settlement amounts as described in this Agreement. The Parties, Class Counsel, and Defendant’s
23 Counsel each represent they do not have any financial interest in the Settlement Administrator or
24 otherwise have a relationship with the Settlement Administrator that could create a conflict of
25 interest.

26 37. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning
27 ascribed to it in Paragraph 49(a) below.

1 38. “Settlement Class Member” or “Class Member” refers to individual members of
2 the Settlement Class.

3 39. “Settlement Class” and “Settlement Class Members” refers to all persons who are
4 or were previously employed by Defendant in California classified as a non-exempt employee
5 during the Class Period.

6 40. “Workweeks Worked” for each Settlement Class Member and Aggrieved
7 Employee means any workweek during the Class Period and/or the PAGA Period, as applicable,
8 in which the Settlement Class Member and/or Aggrieved Employee was employed by Defendant
9 as a non-exempt employee in California. Workweeks Worked will be calculated by the
10 Settlement Administrator based on Defendant’s business records. Defendant and their Counsel
11 shall have no responsibility for validating or ensuring the accuracy of the Settlement
12 Administrator’s work. Defendant and Defendant’s Counsel shall not bear any responsibility for
13 any errors or omissions in the calculation or distribution of the Individual Settlement Payments,
14 Individual PAGA Payments, or any other distribution of monies contemplated by this Settlement
15 Agreement.

16 **B. General Terms**

17 41. On or about March 16, 2022, Plaintiff filed a class action complaint in the Court
18 against Defendant, including allegations of: (1) failure to pay minimum and overtime wages, (2)
19 meal period violations, (3) rest period violations, (4) waiting time penalties, and (5) unfair
20 competition.

21 42. On June 28, 2023, Plaintiff filed a First Amended Complaint to add class claims
22 and predicate violations to the PAGA claim for alleged failure to provide accurate and itemized
23 wage statements and to add a cause of action for PAGA penalties based on the underlying Labor
24 Code violations asserted in the PAGA Notice.

25 43. Defendant denies Plaintiff’s claims and allegations and contends that the Action
26 is not suitable for class certification and/or representative treatment.

27 44. Class Representative believes she can proceed with her class and representative
28 claims, that the Action is meritorious, and that class certification is appropriate.

1 45. The Parties have conducted a thorough investigation into the facts of the Action.
2 This includes conducting extensive exchange of informal discovery, including Defendant's
3 written policies and practices and the production of payroll and timekeeping records for
4 Settlement Class Members and PAGA Employees. Class Counsel is both knowledgeable about
5 and has done extensive research with respect to the applicable law and potential defenses to the
6 claims of the Settlement Class Members and PAGA Employees. Class Counsel has diligently
7 pursued an investigation of the Class Members' claims against Defendant. Based on the foregoing
8 data and on their own independent investigation and evaluation, Class Counsel is of the opinion
9 that the settlement with Defendant for the consideration and on the terms set forth in this
10 Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement
11 Class Members and PAGA Employees in light of all known facts and circumstances, including
12 the risk of significant delay and uncertainty associated with litigation, various defenses asserted
13 by Defendant, and numerous potential appellate issues.

14 46. On March 14, 2023, the Parties participated in mediation before Hon. Carl J. West
15 (Ret.), a highly experienced class action mediator. After a full-day mediation, the Parties reached
16 a settlement and entered into a Confidential Memorandum of Understanding. The Parties agree
17 that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length
18 negotiations between the Parties supervised by a highly experienced class action mediator. This
19 Agreement represents a compromise and settlement of highly disputed claims, and is intended to
20 settle, compromise and discharge the Released Claims against the Released Parties fully, finally,
21 and forever.

22 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
23 to be performed or judgments to be entered pursuant to the terms of the Settlement and
24 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
25 any statute or law or liability on the claims or allegations in the Action. The Parties further agree
26 that this Settlement Agreement cannot be used to support any claim for subsequent violation
27 penalties under the PAGA.
28

48. Stipulation for Class Certification and Representative Treatment. For settlement purposes only, Defendant will stipulate that the Settlement Class Members described herein who do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement class and that the PAGA Employees are appropriate for representative treatment for purposes of settlement. This stipulation to certification and representative treatment is in no way an admission that class action certification and/or representative treatment is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not class certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it will continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and representative treatment and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

49. First Amended Complaint: On June 28, 2023, Plaintiff filed a First Amended Complaint, adding all the class claims and predicate violations to the PAGA claim for alleged failure to provide accurate and itemized wage statements and to add a cause of action for PAGA penalties based on the underlying Labor Code violations asserted in the PAGA Notice. Plaintiff agrees that Defendant will have no obligation to file a responsive pleading to the First Amended Complaint, and that Plaintiff will not seek entry of a default judgment in the event Defendant does not file a responsive pleading by the applicable deadline.

50. The financial terms of the Settlement are as follows:

(a) Settlement Amount: The Parties agree to settle this Action for Nine Hundred Seventy-Five Thousand Dollars (\$975,000.00) (the "Settlement Amount"). The Settlement Amount is the maximum amount that will be paid by Defendant, and includes Individual

1 Settlement Amounts (as defined below in subparagraph (d) to this Paragraph), attorneys' fees of
2 Class Counsel of up to one third of the Settlement Amount (\$325,000.00), Plaintiff's reasonable
3 litigation costs and expenses not to exceed Twenty Thousand Dollars (\$20,000.00), the Service
4 Payment to Class Representative of up to Ten Thousand Dollars (\$10,000.00), all Settlement
5 Administration Costs, and payment to the PAGA Penalty Fund of Ten Thousand Dollars
6 (\$10,000.00) allocated with 75% to LWDA for PAGA penalties and the remaining 25% to eligible
7 PAGA Employees. Defendant shall separately pay the employers' share of applicable payroll
8 taxes.

9 (b) The Settlement is based on Defendant's representation at the mediation that the
10 extrapolated number of Workweeks is 28,570 from March 16, 2018, to March 14, 2023 (the
11 "Mediation Period"). If at the end of the Class Period the actual number of aggregate workweeks
12 worked by the Class Members during the Class Period exceeds this figure by more than 10% (i.e.,
13 if there are 31,427 or more aggregate workweeks worked by the Class Members), Defendant, at
14 its sole discretion, shall either: (i) increase the Maximum Settlement Amount on a proportional
15 basis for those workweeks worked in excess of 10% of the current 28,570 estimate (i.e., if there
16 is a 12% increase in the number of aggregate workweeks, Defendant shall increase the Maximum
17 Settlement Amount by 2%), or (ii) elect to cut off the Settlement Class as of the date the total
18 workweeks worked by Class Members during the Class Period exceeds 10% of the 28,570
19 estimate.

20 (c) Net Settlement Amount: The "Net Settlement Amount" is defined as the
21 Settlement Amount less attorneys' fees and litigation costs as approved and awarded by the Court,
22 the Service Payment to Class Representative as approved and awarded by the Court, the
23 Settlement Administration Costs as approved and awarded by the Court, and the Ten Thousand
24 Dollars (\$10,000) allocated to payment for PAGA penalties as described in paragraph 49(d)
25 below. In the event that the Court reduces the attorneys' fees and litigation costs or Service
26 Awards, Settlement Administration Costs, or either increases or decreases the amount allocated
27 to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly.
28

(d) Individual Settlement Amounts for the Settlement Class: The Settlement Administrator will use the Class Data provided by Defendant to calculate each Participating Class Member's and Aggrieved Employee's Individual Settlement Amounts based on the following formula:

i. PAGA Amount: Ten Thousand Dollars (\$10,000) of the Gross Settlement Amount has been designated to the PAGA claims. Twenty-five percent (25%) or Two Thousand Five Hundred Dollars (\$2,500), shall be paid out to PAGA Employees, while seventy-five percent (75%) or Seven Thousand Five Hundred Dollars (\$7,500), will be paid to the LWDA. Each PAGA Employee shall receive a portion of the Two Thousand Five Hundred Dollars (\$2,500) proportionate to the number of Pay Periods worked by the PAGA Employee during the PAGA Period compared to the total number of Pay Periods Worked by all PAGA Employees during the PAGA Period. All PAGA Employees will be entitled to payment for at least one Pay Period. PAGA Employees shall have their settlement amount for the Released PAGA claims paid one hundred percent (100%) as civil penalties for which no taxes will be withheld and for which a Form 1099 will be issued by the Settlement Administrator.

ii. Class Amount: The Net Settlement Amount shall be allocated to each Participating Class Member based on his/her/their proportionate Workweeks Worked during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's total Workweeks Worked during the Class Period, and the denominator of which is the total Workweeks Worked by all Participating Class Members during the Class Period. All Participating Class Members will be entitled to payment for at least one Workweek. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts will be allocated for tax purposes based on the allegations in the Action as follows: fifteen percent (15%) will be paid as wages subject to withholding of all applicable local, state, and federal taxes;

1 and eighty five percent (85%) will be paid as interest and as penalties (pursuant to, *e.g.*, California
2 Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement
3 Administrator will issue to each Participating Class Member an Internal Revenue Service Form
4 W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect
5 to the civil penalties and interest allocations.

6 (f) Service Payment to Class Representative: The amount awarded to Class
7 Representative as a Service Payment will be set by the Court in its discretion, not to exceed Ten
8 Thousand Dollars (\$10,000). Defendant agrees not to oppose this request. The Service Payment
9 to Class Representative will be paid out of the Gross Settlement Amount. Class Representative
10 will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
11 responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount
12 awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not
13 be a basis for Plaintiff or Class Counsel to void this Stipulation. Should the Court approve a lesser
14 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
15 be distributed to the Participating Class Members. In the event of any appeal of the amount of the
16 service awards (if any) approved by the Court after the exhaustion of any such appellate review,
17 additional amounts not awarded to Class Representative shall be added to the Net Settlement
18 Amount to be distributed to the Participating Class Members.

19 (g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class
20 Counsel to the Court for an award of attorneys' fees of up to one-third (33.33%) of the Settlement
21 Amount (approximately Three Hundred Twenty-Five Thousand Dollars (\$325,000.00), plus
22 reasonable litigation costs not to exceed Twenty Thousand Dollars (\$20,000.00) ("Attorneys'
23 Fees and Cost Award"). The Attorneys' Fee and Cost Award shall be paid from the Gross
24 Settlement Amount, and except for this award, Defendant shall have no further obligation to pay
25 any attorneys' fees, costs, or expenses to Class Counsel. Should the Court approve a lesser amount
26 than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount
27 to be distributed to the Participating Class Members. Any Court order awarding less than the
28 amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or

otherwise void the Settlement. In the event of any appeal of the amount of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and administration of the portion of the attorneys' fees and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional amounts not awarded as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or PAGA Employees. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel. Class Counsel represent that they do not represent any current or former employee of Defendant, other than Plaintiff.

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

(j) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Final Settlement Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Settlement Amounts described herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

(k) No Tax Advice: Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be

1 relied upon as such within the meaning of United States Treasury Department Circular 230 (31
2 CFR Part 10, as amended) or otherwise.

3 51. No Credit Towards Benefit Plans: The Individual Settlement Payments and
4 Individual PAGA Payments made to Participating Class Members and/or PAGA Employees
5 under this Settlement, as well as any other payment made pursuant to this Settlement, will not be
6 utilized to calculate any additional benefits under any benefit plans to which any Class Members
7 and/or PAGA Employees may be eligible, including but not limited to: profit-sharing plans,
8 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
9 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
10 affect in any manner the rights, contributions, or amounts to which any Class Member and/or
11 PAGA Employees may be entitled under benefit plans.

12 52. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
13 no circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement
14 Class Members will not have to make a claim to receive an Individual Settlement Amount.
15 Distributions, in the form of Individual Settlement Amounts, will be made directly to each Final
16 Settlement Class Member. The Settlement Administrator shall be responsible for accurately and
17 timely reporting any remittance obligations with respect to unclaimed funds as a result of a Final
18 Settlement Class Member not cashing an Individual Settlement Amount by the check cashing
19 deadline, as set forth herein. All funds remaining from uncashed checks after distribution of the
20 Net Settlement Amount to Participating Class Members shall be distributed to the Controller of
21 the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code
22 § 1500, et seq., for the benefit of those Class Members who did not cash their checks until such
23 time that they claim their property. The Parties agree that this disposition results in no "unpaid
24 residue" under California Civil Procedure Code § 384, as all payments to the Participating Class
25 Members will be paid out, whether or not these individuals cash their Settlement Checks.
26 Therefore, Defendant will not be required to pay any interest on such amounts.

27 53. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
28 adequate, and will so represent same to the Court.

D. Release by Plaintiff and the Final Settlement Class

54. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class Member, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Release Period.

55. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

56. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each PAGA Employee, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Release Period. The Parties agree that there is no statutory right for any PAGA Employee to opt out or object to the PAGA Amount or the associated release of the Released PAGA Claims.

57. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

58. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opt out of the Settlement for purposes of Class Claims.

59. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the PAGA Employees and the

1 LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the Released
2 PAGA Claims. The PAGA Employees and the LWDA shall be so notified in the Notice.

3 60. Class Representative, on behalf of herself and the Participating Settlement Class
4 Members, acknowledges and agrees that the Class Claims or Released Class Claims are disputed,
5 and that the payments set forth herein constitute payment of all sums allegedly due to him. Class
6 Representative, on behalf of herself and the Participating Settlement Class Members,
7 acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties
8 hereto. Section 206.5 provides in pertinent part as follows:

9 An employer shall not require the execution of any release of any claim or right on
10 account of wages due, or to become due, or made as an advance on wages to be
11 earned, unless payment of those wages has been made.

12 **E. Release by Class Representative**

13 61. As a material inducement to Defendant to enter into this Settlement Agreement, in
14 addition to Class Representative's release of the Released Class Claims and Released PAGA
15 Claims, as discussed in Paragraphs 53 and 55 above, Class Representative does hereby, for herself
16 and for her respective spouses, domestic partners, marital community, children, estates, trusts,
17 attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
18 conservators, guardians, assigns, and representatives, forever completely release and discharge
19 the Released Parties from any and all charges, complaints, claims, liabilities, obligations,
20 promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights,
21 demands, costs, losses, debts, and expenses (including for back wages, statutory penalties, civil
22 penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any
23 nature whatsoever, from the beginning of time through the execution of this Stipulation, whether
24 known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to
25 all claims arising out of, based upon, or relating to Class Representative's employment with
26 Defendant or the remuneration for or termination of such employment (collectively, the "Class
27 Representative's Claims").
28

62. Without limiting the generality of the foregoing, Class Representative also expressly releases any and all claims or rights whatsoever against Released Parties, including, but not limited to, all claims arising out of or relating to alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith and fair dealing (express or implied); any tort, including but not limited to, negligence, fraud, misrepresentation and violation of California Labor Code Section 970, negligent infliction of emotional distress, intentional infliction of emotional distress, defamation, “retaliation” claims and claims for violation of public policy, any claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and alleged “off the clock” work under federal and state law, including, but not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section 203, damages, or penalties pursuant to California Labor Code Section 226, meal period and rest break payments and penalties pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections 210, failure to indemnify for business expenses pursuant to Labor Code Section 2802, failure to provide one day of rest in seven pursuant to California Labor Code Sections 551 and 552, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200 *et seq.*, interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys’ fees and costs, including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code Section 2699 *et seq.*, and the alleged violation or breach of any other state or federal statute, rule, and or regulation; including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs, or attorneys’ fees in connection with any of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any “wrongful discharge,” “constructive discharge,” and “retaliation” claims; any claims relating to any breach of public policy; any legal

1 restrictions on Defendant's right to discharge employees; and any federal, state, or other
2 governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the
3 Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or
4 harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. §
5 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California Labor Code 1197.5
6 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq. (disability
7 discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. (family/medical
8 leave); (6) California Fair Employment and Housing Act, Cal. Government Code § 12900 *et seq.*
9 (discrimination or harassment in employment and/or housing, including discrimination or
10 harassment based on race, religious creed, color, national origin, ancestry, disability, marital
11 status, sex (including pregnancy), or age, including retaliation for reporting discrimination or
12 harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1 et seq.
13 (family/medical leave); (8) California Labor Code, including Section 1720 et seq., or any
14 Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion,
15 sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age
16 discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap
17 discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement Income Security
18 Act, 29 U.S.C. § 1000 *et seq.* (employee benefits); (14) the California Civil Code; (15) the
19 California Labor Code; (16) the California Constitution; (17) the National Labor Relations Act;
20 and (18) any other federal, state, or local statute or legislation.

21 63. Class Representative expressly waives and relinquishes all rights and benefits
22 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
23 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
24 of the State of California states:

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

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Class Representative, and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representatives knew of, as well as all claims that she does not know or suspect to exist in her favor against the Released Parties, or any of them, for the time period from the beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such Class Representative's claims.

F. Interim Stay of Proceedings

64. Pending completion of all of the prerequisites necessary to effectuate this Settlement, including amending the operative complaint, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement, including amending the Complaint as discussed in Paragraph 48 above.

G. Notice Process

65. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Final Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities, due diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

66. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been

1 fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in
2 good faith to resolve the dispute without the necessity of Court intervention. The Settlement
3 Administrator shall also be responsible for issuing to Plaintiff, Final Settlement Class Members,
4 and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law
5 for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
6 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties
7 to the appropriate government authorities.

8 67. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
9 Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
10 Administrator will run a check of the Class Members' addresses against those on file with the
11 U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement
12 Administrator will not be provided to Plaintiff or Class Counsel and it will remain confidential,
13 it shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone,
14 except as required by applicable tax authorities, pursuant to Defendant's express written consent,
15 or by order of the Court.

16 68. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
17 Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within
18 fourteen (14) calendar days following the Settlement Administrator's receipt of the Class Data.
19 The Settlement Administrator shall use standard devices, including a skip trace, to obtain
20 forwarding addresses of Settlement Class Members if any envelopes are returned.

21 69. Returned Notices. The Settlement Administrator will take steps to ensure that the
22 Notice is received by all Settlement Class Members, including utilization of the National Change
23 of Address Database maintained by the United States Postal Service to review the accuracy of
24 and, if possible, update a mailing address. If no forwarding address is provided, the Settlement
25 Administrator will promptly attempt to determine the correct address using a skip-trace, or other
26 search using the name, address, and/or Social Security number of the Class Member involved and
27 will then perform a single re-mailing. In the event the procedures in this Paragraph are followed
28 and the intended recipient of a Notice Packet still does not receive the Notice Packet, the Class

Member shall be bound by all terms of the Settlement and any Judgment entered by the Court if the Settlement is approved by the Court. Notices will be re-mailed to any Settlement Class Member for whom an updated address is located within five (5) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or ten (10) days after the remailing of the Notice.

70. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if an envelope has not been returned within thirty (30) days of the mailing that the Settlement Class Member received the Notice.

71. Disputes Regarding Class Data. Settlement Class Members are deemed to participate in the Settlement unless they opt-out. The Notice will inform Settlement Class Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks Worked during the Class Period and Pay Periods Worked during the PAGA Period. Settlement Class Members may dispute their Workweeks or Pay Periods Worked if they feel they were employed more workweeks in the Class Period or more pay periods in the PAGA Period in California than Defendant's records show by timely submitting evidence to the Settlement Administrator by the Notice Response Deadline. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks and Pay Periods Worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. All disputes will be decided within fourteen (14) days of the Notice Response Deadline. Settlement Class Members will have until the Notice Response Deadline to dispute Workweeks Worked, object, or opt out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Workweeks Worked for any Settlement

Class Member, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Amounts; accordingly, in no event will Defendant be required to increase the Gross Settlement Amount. All requests to opt out or disputes regarding Workweeks or Pay Periods Worked must be sent by Settlement Class Members on or before the Notice Response Deadline. The Settlement Administrator will have no obligation to accept requests to opt out or disputes regarding Workweeks or Pay Periods Worked that are not postmarked on or before the Notice Response Deadline.

72. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

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

(a) Requests for Exclusion from Participating Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating Settlement Class by submitting their written "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state in words to this effect:

"I wish to be excluded from the settlement class in the Garcia v. DSM&T Co., Inc. lawsuit. I understand that if I ask to be excluded from the settlement class, I will not receive any money from the settlement of the class claims in this lawsuit."

Any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance

1 with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked
2 by the Notice Response Deadline. Any Settlement Class Member who timely requests exclusion
3 in compliance with these requirements: (i) will not have any rights under this Agreement with
4 respect to the Class Claims, including the right to object, appeal, or comment on the Settlement;
5 (ii) will not be entitled to receive any payments under this Agreement with respect to Class
6 Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Class
7 Claims. However, to the extent the Settlement Class Member requesting exclusion is also a
8 PAGA Employee, the PAGA Employee will continue to receive any payments under this
9 Agreement with respect to the PAGA Claims and remain bound by the corresponding release of
10 the Released PAGA Claims.

11 If a Settlement Class Member's Request for Exclusion is defective under the requirements
12 of this Agreement, that Settlement Class Member will be given an opportunity to cure the defects,
13 as follows: (i) the Settlement Administrator will mail the Settlement Class Member a cure letter
14 within seven (7) days of receiving the defective Request for Exclusion to advise the Settlement
15 Class Member that his/her/their submission is defective and that the defect must be cured to render
16 the Request for Exclusion valid; (ii) the Settlement Class Member will have until either the
17 Response Deadline or seven (7) calendar days from the date of the cure letter, whichever date is
18 later, to postmark a revised Request for Exclusion. If the revised Request for Exclusion is not
19 postmarked within that period, it will be deemed untimely and invalid.

20 (b) Binding Effect on Final Settlement Class Members. Except for those
21 Settlement Class Members who exclude themselves in compliance with the procedures set forth
22 above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
23 for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
24 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided
25 herein, will be deemed to have waived all objections and oppositions to the fairness,
26 reasonableness, and adequacy of the Settlement.

27 (c) Objections to Settlement of Class Claims. Any Settlement Class Member,
28 other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims

1 and may appear at the Final Approval Hearing and object whether or not they have filed a written
2 objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement
3 Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice
4 Response Deadline at the address set forth in the Notice. Such objection shall include the full
5 name, address, telephone number, dates of employment with Defendant of the Objecting
6 Settlement Class Member, the case name and number, the basis for the objection, including any
7 legal support and each specific reason in support of the objection, as well as any documentation
8 or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by
9 counsel, the name and address of his/her/their counsel. If any Objecting Settlement Class Member
10 wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting
11 Settlement Class Member's written submission should include a request to be heard, and the Court
12 will determine whether Objecting Settlement Class Members will be permitted to speak. The
13 Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel
14 within three (3) days of receipt, and the Settlement Administrator shall attach the same to its
15 declaration of due diligence and file it with the Court prior to the Final Approval Hearing. Any
16 Participating Class Member who files an objection remains eligible to receive monetary
17 compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees,
18 costs, or expenses incurred by any Class Member and/or his/her/their counsel related to any
19 objections to the Settlement. Submitting an objection does not preserve the right to appeal a final
20 judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and
21 properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure
22 Section 663. Settlement Class Members and PAGA Employees may not object to or opt out of
23 the Settlement with respect to the PAGA Claims. At no time will any of the Parties or their
24 counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
25 Settlement or appeal from the Judgment. To the extent a timely Notice of Objection is withdrawn
26 before final approval, such an objection shall be treated as though no objection has been made.

27 (d) Failure to Object. Any Settlement Class Member who desires to object
28 with respect to the Class Claims but fails to timely submit a written objection waives any right to

1 object will be foreclosed from making any objection to this Settlement. Any Settlement Class
2 Member who does not timely and properly become a party of record by intervening or filing a
3 motion to vacate the judgment waives any and all rights to appeal from the Judgment, including
4 all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate
5 judgment, motion for new trial, a motion under California Code of Civil Procedure Section 473,
6 and extraordinary writs.

7 (e) Responses to Objections. Counsel for the Parties may file a response to any
8 objections submitted by Objecting Settlement Class Members at least five (5) court days before
9 the date of the Final Approval Hearing.

10 74. Settlement Class Members will have until the Notice Response Deadline to object
11 or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
12 Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or
13 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
14 Counsel or Defense Counsel.

15 75. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
16 the QSF of the Settlement Amount, as described in Paragraph 49(a) that is necessary to make all
17 payments required under this Settlement, within thirty-five (35) days after the Effective Date, plus
18 Defendant shall separately pay its share of employer payroll taxes as calculated and directed by
19 the Settlement Administrator.

20 76. Distribution of Funds. No later than seven (7) calendar days after deposit of the
21 payment into the QSF, the Settlement Administrator will mail the payments to the Participating
22 Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service
23 Payment to the Class Representatives, the payment to the LWDA for PAGA penalties, and will
24 pay itself the Settlement Administration Costs.

25 77. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall
26 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement
27 checks. If any Final Settlement Class Member's check is not cashed within that period, the check
28 will be void and a stop-payment will be issued. As stated more fully in Paragraph 51, above, all

1 unclaimed funds shall be sent to the California Unclaimed Property Fund in the name of the class
2 member. The release will be binding upon all Final Settlement Class Members who do not cash
3 their checks within the 180-day period. In the event that any settlement check is returned to the
4 Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within
5 five (5) business days of receipt of the returned settlement check, perform a skip trace to locate
6 the individual. If a new address is located by these means, the Administrator will have fourteen
7 (14) days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-issued
8 check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the
9 Settlement Administrator will have any liability for lost or stolen settlement checks, forged
10 signatures on settlement checks, or unauthorized negotiation of settlement checks. Without
11 limiting the foregoing, in the event a Final Settlement Class Member notifies the Settlement
12 Administrator that he/she/they believe that a settlement check has been lost or stolen, the
13 Settlement Administrator shall immediately stop payment on such check. If the check in question
14 has not been negotiated prior to the stop payment order, the Settlement Administrator will issue
15 a replacement check.

16 78. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff,
17 Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or
18 reports made in accordance with or pursuant to this Agreement. This provision does not, however,
19 prevent a Party from seeking enforcement of this Agreement.

20 79. Without prejudice to any other remedies, the Settlement Administrator shall agree
21 to be responsible for any breach of its obligations (whether committed by the Settlement
22 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from
23 and against all liabilities, claims, causes of action, costs and expenses (including legal fees and
24 expenses) arising out of any breach committed by the Settlement Administrator or its agents.

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

26 80. Within 30 days of execution of this Agreement, Plaintiff will move the Court for
27 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
28 accomplishing the following:

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

(b) Approving as to form and content the proposed Notice;

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

(d) Preliminarily approving this Settlement; and

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

81. In conjunction with the Preliminary Approval Hearing, Plaintiff will submit this Settlement Agreement, and will include the proposed Notice Packet, which will include the Notice of Class Action Settlement document and proposed Mailing Envelope.

82. In accordance with Section 2699(1)(2) of the California Labor Code, Plaintiff shall provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiff files his motion for Preliminary Approval of this Settlement with the Court

83. The proposed preliminary approval order is to be mutually agreed upon by the Parties prior to Plaintiff presenting the order to the Court. Plaintiff will also provide Defendant with the opportunity to review and comment upon drafts of all other pleadings to be filed in connection with the Motion for Preliminary Approval (e.g., notice of motion, memorandum of points and authorities, declarations) at least three (3) business days prior to filing such motion with the Court.

84. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

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

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

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and

adequate, and directing consummation of its terms and provisions;

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

(c) Entering judgment approving settlement, thereby permanently barring all Participating Class Members from prosecuting any Released Class Claims against any of the Released Parties and permanently barring all PAGA Employees and the LWDA from prosecuting any Released PAGA Claims against any of the Released Parties; and

(d) The proposed final approval order and judgement are to be mutually agreed upon by the Parties prior to Plaintiff presenting the order and judgment to the Court. Plaintiff will also provide Defendant with the opportunity to review and comment upon drafts of all other pleadings to be filed in connection with the Motion for Final Approval (e.g., notice of motion, memorandum of points and authorities, declarations) at least three (3) business days prior to filing such motion with the Court.

J. Voiding the Agreement

86. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement, the entire Settlement Agreement shall be rendered void and unenforceable as to all Parties herein at the option of either Party.

87. If ten percent (10%) or more of the Settlement Class Members timely submit a Request for Exclusion and/or if the combined workweeks worked by Settlement Class Members who timely exclude themselves amounts to more than ten percent (10%) of the total workweeks worked by all Settlement Class Members, Defendant shall have the option, in the exercise of its sole discretion, of terminating or modifying this Agreement without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercise such option under this paragraph, it shall be relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiff's Counsel and the Settlement Administrator within ten (10) days following Defendant's receipt of notice from the Settlement Administrator confirming

that 10% or more of the Settlement Class Members have opted out and/or that the combined workweeks worked by Settlement Class Members who timely exclude themselves amounts to more than 10% of the total workweeks worked by all Class Members. If Defendant exercises its option under this paragraph, Defendant shall be solely responsible for all Settlement Administration Costs incurred.

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

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

K. Other Terms

90. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released Claim.

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

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

93. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement

1 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement
2 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and
3 Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval
4 of the settlement and the final entry of judgment.

5 94. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
6 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
7 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
8 cause of action, or rights released and discharged by this Settlement Agreement.

9 95. No Admission. Defendant denies any and all liability to Plaintiff and/or any
10 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
11 that might have been asserted in this Action. Defendant further denies that this Action is
12 appropriate for class or representative treatment. Nonetheless, Defendant wishes to settle and
13 compromise to avoid further substantial expense and the inconvenience and distraction of
14 protracted litigation. Defendant also has taken into account the uncertainty and risks inherent in
15 litigation, and without conceding any infirmity in the defenses that they have asserted or could
16 assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims
17 be settled in the manner and upon the terms and conditions set forth in this Agreement.

18 96. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
19 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
20 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
21 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
22 Settlement Agreement with the intention of avoiding further disputes and litigation with the
23 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and
24 it, along with all related documents such as the notices, and motions for preliminary and final
25 approval, shall, pursuant to California Evidence Code Section 1152 and/or Federal Rule of
26 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to
27 approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for
28 class certification as part of this Settlement Agreement is for settlement purposes only and if, for

any reason the settlement is not approved, the stipulation will be of no force or effect.

97. Notices. 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:

To the Settlement Class Members and PAGA Employees:

Mehrdad Bokhour
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

To Defendant:

Eric J. Gitig
Eric.gitig@jacksonlewis.com
Nareg A. Kourouyan
Nareg.Kourouyan@jacksonlewis.com
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017
Tel: (213) 630-8242; Fax: (213) 689-0404

98. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

99. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this

1 Settlement Agreement is contractual and not merely a recital.

2 100. Modification. This Settlement Agreement may not be changed, altered, or
3 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
4 Settlement Agreement may not be discharged except by performance in accordance with its terms
5 or by a writing signed by all of the Parties hereto.

6 101. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
7 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
8 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
9 Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to
10 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
11 bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other
12 proceeding instituted by any person or entity other than Plaintiff or Defendant.

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

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

21 104. Choice of Law. This Settlement Agreement shall be governed by and construed,
22 enforced, and administered in accordance with the laws of the State of California, without regard
23 to its conflicts-of-law rules.

24 105. Integration Clause. This Settlement Agreement contains the entire agreement
25 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
26 or contemporaneous agreements, understandings, representations, and statements, whether oral
27 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
28 hereunder may be waived except in writing.

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

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

10 108. Plaintiff's Waiver of Right to Be Excluded. Plaintiff agrees that by signing this
11 Settlement Agreement, she will be bound by the terms herein, including the general release
12 described in Paragraphs 61 to 63 above. Plaintiff further agrees that, upon signing this Settlement
13 Agreement, she will not request to be excluded from this Settlement and that any such request for
14 exclusion by Plaintiff will be void and of no force or effect.

15 109. Plaintiff and Class Counsel agree that they will not issue any press releases, initiate
16 any contact with the press, respond to any press inquiry, post any new material on any internet
17 websites, or have any communication with the press about the Lawsuit, and/or the fact, amount,
18 or terms of the Settlement, including but not limited to postings on Class Counsel's website and
19 postings on any social media sites/outlets. Further, Class Counsel will not include or use the
20 Settlement for any marketing or promotional purposes, or for attempting to influence Defendant's
21 business relationships. Plaintiff and Class Counsel will not initiate any contact with the Class
22 Members or anyone else about the Settlement, except that: (a) Class Counsel, if contacted by a
23 Class Member, may respond that a settlement has been reached and that the details will be
24 communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by a
25 Settlement Class Member or PAGA Employee, may respond only that the Settlement Class
26 Member or PAGA Employee should contact Class Counsel. Nothing in this paragraph shall
27 prevent Class Counsel and Plaintiff from undertaking all required submissions to the LWDA as
28 required by the PAGA statute in connection with this Settlement.

110. Counterparts. This Settlement Agreement may be executed in counterparts, 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 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

APPROVAL AND EXECUTION BY PARTIES:

6/30/2023
Dated: July __, 2023

CLASS REPRESENTATIVE:

DocuSigned by:
Tanya Garcia
36984E62C17C4BE...

Tanya Garcia

Dated: July __, 2023

DEFENDANT:

DSM&T, CO., INC.

By
Its

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL**

3 6/30/2023

4 Dated: July ___, 2023

THE FINKEL FIRM

DocuSigned by:

Jake Finkel

39EA0BABD22841A...

Jake D. Finkel
Attorneys for Plaintiff

6 6/30/2023

7 Dated: July ___, 2023

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

D8D3643F271940F...

Mehrdad Bokhour
Attorneys for Plaintiff

12 Dated: July ___, 2023

DEFENDANT'S COUNSEL:

JACKSON LEWIS P.C.

Eric J. Gitig
Nareg A. Kourouyan
Attorneys for Defendant,
DSM&T, CO., Inc.