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16 **UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 **Paula Norton**, individually and on behalf of
19 all similarly situated individuals,

20 Plaintiff,
21 vs.

22 **Strategic Staffing Solutions-S3, L.L.C.**, a
23 Florida limited liability company; **Cynthia J.**
24 **Pasky**, an individual; and **Does 1-100**,
25 inclusive;

26 Defendants.
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CASE NO. 3-23-cv-06648-JSC

Assigned to Honorable Jaqueline Scott
Corley

CLASS ACTION

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

Complaint Filed: November 7, 2023
Removal Date: December 28, 2023

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1 This Joint Stipulation of Settlement and Release of Class and PAGA Action
2 (“Agreement” or “Settlement Agreement”) is made and entered into by and between
3 Plaintiff Paula Norton (“Plaintiff” or “Class Representative”), as an individual and on
4 behalf of all others similarly situated, and Defendants Strategic Staffing Solutions-S3 and
5 Cynthia J. Pasky (“Defendants”). Plaintiff and Defendants may be referred to herein as
6 the “Parties,” singularly as a “Party,” or by their designated names.

7 This Agreement is subject to the approval of the Court and is made for the sole
8 purpose of attempting to consummate settlement of the Action on a class-wide basis
9 subject to the following terms and conditions.

10 This Settlement Agreement shall be binding on Plaintiff, the Settlement Class, and
11 the Aggrieved Employees, on the one hand, and Defendants, on the other hand, subject
12 to the terms and conditions hereof and the approval of the Court.

13 RECITALS

14 1. Plaintiff filed her complaint on November 7, 2023 against Defendants in the
15 San Francisco County Superior Court. Plaintiff’s lawsuit, entitled *Paula Norton v. Strategic*
16 *Staffing Solutions-S3, L.L.C., et al.*, Case Number No. CGC-23-610255 (“Action”), sets forth
17 the following class-wide causes of action: (1) failure to pay minimum wages; (2) failure to
18 pay overtime wages; (3) failure to provide meal periods or premium pay in lieu thereof;
19 (4) failure to provide rest periods or premium pay in lieu thereof; (5) failure to reimburse
20 necessary business expenses; (6) failure to provide and maintain accurate payroll records;
21 (7) failure to pay wages when due; (8) civil penalties under the Private Attorneys General
22 Act of 2004 (“PAGA”), Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”); and (9) Unlawful Business
23 Practices, Cal. Bus. & Prof. Code §§ 17200, *et seq.* The case was removed to the United
24 States District Court, Northern District Of California, on December 28, 2023. On June 26,
25 2024, a First Amended Complaint was filed by Plaintiff alleging additional claims for
26 violation of California Business and Professions Code section 16600, 16600.1, and
27 16600.3

28 2. Defendants deny all material allegations set forth in the Action and have

1 asserted numerous affirmative and other defenses in response to the Class, PAGA, and
2 individual claims. Defendants contend they have complied with the California Labor Code,
3 the California Business & Professions Code, the applicable IWC Wage Orders, and all other
4 applicable California and Federal law. Nonetheless, Defendants have concluded that
5 further litigation would be protracted and expensive, and would also divert Defendants'
6 resources away from its core mission. Defendants have therefore concluded that it is
7 desirable that the litigation be resolved upon the terms and conditions set forth in this
8 Stipulation.

9 3. On September 6, 2024, the Parties participated in a full-day of mediation
10 with Judge Peter D. Lichtman of Signature Resolution (the "Mediator"), a well-respected
11 mediator in the field of employment law and wage-and-hour class actions. After a full-
12 day of mediation, the Parties agreed to the principal terms of a class action and PAGA
13 settlement and entered into a Memorandum of Agreement ("MOA") setting forth those
14 terms, which have now been expanded upon in this Stipulation.

15 4. Counsel for Plaintiff ("Class Counsel") conducted a significant investigation
16 during the prosecution of the Action. This investigation included, among other things, (a)
17 numerous telephonic and Zoom conferences with Plaintiff; (b) inspection and analysis of
18 numerous payroll and policy documents and other information produced by Plaintiff and
19 Defendants, including formal and informal discovery and responses and production; (c)
20 analysis of the legal positions taken by Defendants; (d) investigation into the viability of
21 class treatment of the claims asserted in the Action; (e) analysis of potential class-wide
22 damages, including information sufficient to understand Defendants' potential defenses
23 to Plaintiff's claims; (f) research of the applicable law with respect to the claims asserted
24 in the Action and the potential defenses thereto; (g) assembling and analyzing of data for
25 calculating damages; (h) conducted telephonic conferences with potential witnesses and
26 obtained declarations from several Class Members, and (i) hired the services of an expert
27 to analyse and prepare Defendants' exposure.

28 5. The extensive formal and informal discovery conducted in this matter, as

1 well as discussions between counsel, have been adequate to give the Class
2 Representative and Class Counsel a sound understanding of the merits of their positions
3 and to evaluate the risks of continued litigation and the value of the Settlement Class'
4 claims. The formal discovery and investigation conducted in this Action and the
5 information exchanged by the Parties through formal and informal discovery and
6 settlement discussions are sufficient to reliably assess the merits of the Parties'
7 respective positions and to compromise the issues on a fair and equitable basis.

8 6. The settlement discussions before, during, and after mediation were
9 conducted at arm's length and the settlement of the Action is the result of an informed
10 and detailed analysis of Defendants' potential liability in relation to the costs and risks
11 associated with continued litigation.

12 7. Plaintiff and Class Counsel believe that the claims, causes of action,
13 allegations, and contentions asserted in the Action have merit. However, Plaintiff and
14 Class Counsel recognize and acknowledge the expense and delay of continued lengthy
15 proceedings necessary to prosecute the Action against Defendants through trial and
16 appeals. Class Counsel has taken into account: 1) the uncertain outcome of the litigation;
17 2) the risk of continued litigation in complex actions such as this lawsuit; 3) the difficulties
18 and delays inherent in such litigation; 4) the potential difficulty of obtaining certification
19 of the Action; and 5) the potential risk of trying the claims of the class. Class Counsel is
20 mindful of the potential problems of proof under, and possible defenses to, the claims
21 alleged in the Action and litigation of those claims on a class-wide basis.

22 8. Class Counsel believes that the Settlement set forth in this Settlement
23 Agreement confers substantial benefits upon Plaintiff and the Class Members, and that
24 an independent review of this Settlement Agreement by the Court in the approval
25 process will confirm this conclusion. Based on their own independent investigation and
26 evaluation, Class Counsel has determined that the Settlement set forth in the Stipulation
27 is in the best interests of Plaintiff and the Class Members.

28 9. Based on the data and documents produced during formal and informal

1 discovery and in response to Plaintiff's Labor Code sections 226 and 1198.5 records
2 request, Class Counsel's own independent investigation and evaluation, and the
3 Mediator's efforts, Class Counsel believes that Plaintiff's settlement with Defendants for
4 the consideration provided and on the terms set forth in this Settlement Agreement is
5 fair, reasonable, and adequate, and is in the best interest of the Class Members in light
6 of all known facts and circumstances, including the risk of significant delay and
7 uncertainty associated with litigation, various defenses asserted by Defendants, the
8 contested legal and factual issues involved, and potential appellate issues.

9 10. This Settlement Agreement is made and entered into by and between
10 Plaintiff individually and on behalf of all other allegedly similarly situated Aggrieved
11 Employees and Settlement Class Members on the one hand, and Defendants on the other
12 hand. This Settlement Agreement is subject to the terms and conditions hereof, as well
13 as the Court's approval. The Parties expressly acknowledge that this Agreement is
14 entered into solely for the purpose of compromising disputed claims and that nothing
15 herein is an admission of any liability or wrongdoing by Defendants. If, for any reason the
16 Settlement Agreement is not approved, it will be of no force or effect, and the Parties
17 shall be returned to their original respective positions.

18 11. The Parties agree to abide by the terms of the Settlement Agreement in
19 good faith and to support the Settlement Agreement fully and to use their best efforts to
20 defend this Settlement Agreement from any legal challenge, whether by appeal or
21 collateral attack.

22 DEFINITIONS

23 The following definitions are applicable to this Settlement Agreement. Definitions
24 contained elsewhere in this Settlement Agreement will also be effective:

25 12. "**Action**" means *Paula Norton v. Strategic Staffing Solutions-S3, et al.* N.D.
26 Cal. Case No. 3:23-cv-06648-JSC, originally filed in San Francisco Superior Court on
27 November 7, 2023, Case Number No. CGC-23-610255, and removed to the United States
28 District Court, Northern District of California on December 28, 2023.

1 13. **“Aggrieved Employees”** means those Class Members who worked for
2 Defendants within the **PAGA Period**.

3 14. **“Class Counsel’s Fees and Costs”** means attorneys’ fees agreed upon by the
4 Parties and approved by the Court for Class Counsel’s litigation and resolution of this
5 Action. Class Counsel’s Fees and Costs shall include all costs incurred and to be incurred
6 by Class Counsel in the Action, including, but not limited to, costs associated with
7 documenting the Settlement, securing the Court’s approval of the Settlement,
8 responding to any objections to the settlement and appeals arising therefrom,
9 administering the Settlement, and obtaining entry of a Judgment terminating this Action,
10 and expenses for any experts. Class Counsel will request attorneys’ fees not in excess of
11 one-third of the Maximum Settlement Amount (i.e., up to One-Million Seven-Hundred
12 Fifty Thousand Dollars and Zero Cents (\$1,750,000.00)).¹ The Class Counsel’s Fees and
13 Costs will also mean and include the additional reimbursement of Class Counsel’s actual
14 reasonable costs incurred in connection with Class Counsel’s litigation and settlement of
15 the Action, up to Fifty Thousand Dollars and Zero Cents (\$50,000.00), subject to the
16 Court’s approval. Defendants agree not to oppose Class Counsel’s request for fees and
17 reimbursement of costs as set forth above.

18 15. **“Class Counsel”** means Elliot J. Siegel of King & Siegel LLP and Xavier Villegas
19 of Law Office of Xavier Villegas, APC.

20 16. **“Class List”** means a complete list of all Class Members that Defendants will
21 diligently and in good faith compile from their records and provide to the Settlement
22 Administrator within five (5) calendar days after Preliminary Approval of this Settlement.
23 The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will
24 include, to the extent in the possession of Defendants or their agents, Class Members’
25 names; last-known addresses; last-known telephone numbers; last-known email address;

26 _____
27 ¹ For the avoidance of doubt, if the Escalator Clause is triggered and the Gross Settlement
28 Amount increases, Class Counsel shall have the right to seek attorney’s fees up to one-third of
the increased Gross Settlement Amount

1 social security numbers; start dates of employment; end dates of employment; number
2 of weeks worked by each Class Member during the Class Period; the number of pay
3 periods worked by each Aggrieved Employee during the PAGA Period.

4 17. **“Class Member(s)”** or **“Settlement Class”** or the **“Class”** means either of the
5 following two Classes:

6 A. *Non-Exempt Class: “All non-exempt persons who worked at least one 3.5-hour*
7 *shift for Defendants, whether as a direct-hire or agency employee, in the State*
8 *of California during the Release Period.”*

9 B. *Exempt Class: “All persons who worked at least one 3.5-hour shift for*
10 *Defendants in the State of California and were classified as an exempt employee*
11 *during the Release Period.”*

12 18. **“Class Size Representation”**: Defendants represent that there are 115 Non-
13 Exempt Class Members and 326 Exempt Class Members (i.e., a total of 441 Settlement
14 Class Members) during the period from November 7, 2019 through September 6, 2024
15 and that these Class Members worked a combined 23,298 workweeks during that same
16 period. This representation is a material term for Plaintiff entering into this Stipulation.

17 19. **“Class Period”** is the period from November 7, 2019 to the lesser of 90 days
18 from the date of mediation (September 6, 2024) or the date of the Court’s Preliminary
19 approval of the Settlement.

20 20. **“Class Representative”** means Plaintiff Paula Norton who will seek to be
21 appointed as the representative for the Settlement Class.

22 21. **“Class Representative Enhancement Payment”** means the amounts to be
23 paid to Plaintiff in recognition of her efforts and work in prosecuting the Action on behalf
24 of Class Members and negotiating the Settlement. Defendants agree not to dispute that
25 the Class Representative will be paid, subject to Court approval, up to Thirty-Five
26 Thousand Dollars and Zero Cents (\$35,000.00) from the Maximum Settlement Amount
27 for her services on behalf of the class, subject to the Court granting Final Approval of this
28 Settlement Agreement. Should the Court reduce the Class Representative Enhancement

1 Payment, any such reduction shall revert to the Net Settlement distributed to
2 Participating Class Members.

3 22. **"Court"** means the United States District Court, Northern District of
4 California.

5 23. **"Defendants"** means Strategic Staffing Solutions-S3, L.L.C. and Cynthia J.
6 Pasky, collectively or individually.

7 24. **"Effective Date"** means the date on which the settlement embodied in this
8 Settlement Agreement shall become effective and is the date after all of the following
9 events have occurred: (i) this Settlement Agreement has been executed by Plaintiff and
10 Defendants; (ii) the Court has given Preliminary Approval to the Settlement, including
11 approving a provisional Settlement Class; (iii) notice has been given to the putative
12 members of the Settlement Class, providing them with an opportunity to object to the
13 terms of the Settlement or to opt-out of the Settlement; and (iv) *either* (1) the Court has
14 held a formal fairness hearing and, having heard no objections to the Settlement, has
15 given Final Approval to the Settlement, including entering a final order and judgment
16 certifying the Class and approving this Settlement Agreement; or (2) in the event there
17 are oral or written objections filed prior to or at the formal fairness hearing which are not
18 later withdrawn or denied, the later of the following events: (a) five (5) business days
19 after the period for filing any appeal, writ, or other appellate proceeding opposing the
20 Court's Final Approval of the Settlement have elapsed without any appeal, writ, or other
21 appellate proceeding having been filed; or (b) five (5) business days have elapsed
22 following the final and conclusive dismissal or resolution of any appeal, writ, or other
23 appellate proceeding opposing the Settlement, with no right to pursue further appellate
24 remedies or relief.

25 25. **"Individual Class Payment"** means each Participating Class Member's share
26 of the Net Settlement Amount, to be distributed to the Class Members who do not submit
27 a valid Request for Exclusion, to be paid without the need to submit a claim.

28 26. **"Individual PAGA Payment"** means each Aggrieved Employee's pro rata

1 share of the 25% of the Labor and Workforce Development Agency Payment allocated to
2 the Aggrieved Employees. Aggrieved Employees will receive their Individual PAGA
3 Payment regardless of whether they submit a valid Request for Exclusion.

4 27. **“Labor and Workforce Development Agency Payment”** means the amount
5 that the Parties have agreed that Defendants will pay in connection with Plaintiff’s Labor
6 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”))
7 cause of action. The Parties have agreed that Five-Hundred Fifty Thousand Dollars and
8 Zero Cents (\$550,000.00) of the Maximum Settlement Amount will be allocated to the
9 resolution of the Aggrieved Employees’ claims arising under PAGA (“PAGA Settlement
10 Amount”). Pursuant to PAGA, Seventy-Five Percent (75%), or Four-Hundred Twelve
11 Thousand Five-Hundred Dollars and Zero Cents (\$412,500.00), of the PAGA Settlement
12 Amount will be paid to the California Labor and Workforce Development Agency
13 (“LWDA”), and Twenty-Five Percent (25%), or One-Hundred Thirty-Seven Thousand Five-
14 Hundred Dollars and Zero Cents (\$137,500.00), of the PAGA Settlement Amount will be
15 paid to the Class Members, as allegedly Aggrieved Employees, as part of the Net
16 Settlement Amount.

17 28. **“Maximum Settlement Amount”** means the maximum settlement amount
18 of Five-Million Two-Hundred Fifty Thousand Dollars and Zero Cents (\$5,250,000.00) to be
19 paid by Defendants in full satisfaction of all claims arising from the Action. The Maximum
20 Settlement Amount shall include all Individual Class Payments to Participating Class
21 Members, Individual PAGA Payments, the Class Representative Enhancement Payment,
22 Settlement Administration Costs to the Settlement Administrator, the Labor and
23 Workforce Development Agency Payment, and the Class Counsel’s Fees and Costs. The
24 MSA shall not include employer-side payroll, which Defendants agree that it is
25 responsible for and are to be paid in addition to the Maximum Settlement Amount. The
26 Maximum Settlement Amount is non-reversionary.

27 29. **“Net Settlement Amount”** means the portion of the Maximum Settlement
28 Amount remaining after deduction of the approved Class Representative Enhancement

1 Payment, Settlement Administration Costs, Labor and Workforce Development Agency
2 Payment, and Class Counsel's Fees and Costs. The Net Settlement Amount will be
3 distributed to Participating Class Members and Individual PAGA Payment.

4 30. **"Notice of Objection"** means a Class Member's valid and timely written
5 objection to the Settlement Agreement. For the Notice of Objection to be valid, it must
6 comply with Federal Rule of Civil Procedure 23(e)(5) and must be mailed or otherwise
7 submitted to the Court.

8 31. **"Notice Packet"** or **"Notice"** means the Notice of Class Action Settlement
9 and Share Form, substantially in the form attached as **Exhibit A**.

10 32. **"PAGA Period"** shall run from November 7, 2022 to the lesser of 90 days
11 from the date of mediation (September 6, 2024) or the date of the Court's Preliminary
12 approval of the Settlement. There are an estimated 3,797 pay periods in the PAGA Period.

13 33. **"PAGA Release Period"** means the period from November 7, 2022 to the
14 lesser of 90 days from the date of mediation (September 6, 2024) or the date of the
15 Court's Preliminary approval of the Settlement.

16 34. **"Participating Class Members"** means all Class Members who do not submit
17 valid and timely Requests for Exclusion.

18 35. **"Parties"** means Plaintiff and Defendants, collectively.

19 36. **"Plaintiff"** or **"Named Plaintiff"** or **"Class Representative"** means Paula
20 Norton.

21 37. **"Preliminary Approval"** means the Court order granting preliminary
22 approval of the Settlement in an order in substantially the same form as the order
23 attached as **Exhibit B**.

24 38. **"Final Approval"** means the Court granting final approval of the Settlement
25 and entering final judgement in an order in substantially the same form as the order
26 attached as **Exhibit C**.

27 39. **"Released Claims"** means those claims asserted in the Complaint or that
28 reasonably could have been alleged based on the factual allegations contained in the

operative complaint or LWDA letter, including but not limited to all of the following claims for relief: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods or premium pay in lieu thereof, (4) failure to provide rest periods or premium pay in lieu thereof, (5) failure to reimburse necessary business expenses (6) failure to provide and maintain accurate payroll records, (7) failure to pay wages when due, (8) Illegal Noncompete Agreements; (9) civil penalties under the Private Attorneys General Act (“PAGA”), and (10) unfair business practices. It is the intent of the Parties that the judgment entered by the Court upon Final Approval of the Settlement shall have *res judicata* and/or collateral estoppel effect and be final and binding upon Plaintiff and all Participating Class Members regarding all of the Released Claims. The Release will only take effect upon the latter of the Effective Date and full funding of the MSA by Defendants.

40. “**Release Period**” is the period from November 7, 2019 to the lesser of 90 days from the date of mediation (September 6, 2024) or the date of the Court’s Preliminary approval of the Settlement..

41. “**Released PAGA Claims**” means the release of claims by Aggrieved Employees for civil penalties under PAGA asserted in the Complaint or LWDA letter, or that could have reasonably been alleged based on the factual allegations contained in the Operative Complaint and PAGA Notice. The Released PAGA Claims shall be release through the PAGA Release Period. No Aggrieved Employee may opt out of the PAGA Release and will be bound by this Release regardless of whether they cash their Individual PAGA Payment. The Release will only take effect upon the latter of the Effective Date and full funding of the MSA by Defendants.

42. “**Released Parties**” shall mean Defendants S3 and Cynthia J. Pasky, as well as their subsidiaries and/or parent corporations, divisions, affiliates, past and present officers, predecessors, directors, employees, agents, shareholders, fiduciaries, representatives, attorneys, insurers, benefit plans, private investigators and each and all of the foregoing persons' heirs, assigns, executors, administrators and successors, or any

1 of them.

2 43. **“Request for Exclusion”** means a timely letter submitted by a Class Member
3 indicating a request to be excluded from the Settlement. The Request for Exclusion shall
4 include the Class Member’s name and information needed to be properly identified and
5 indicate the desire to opt out of the settlement. Such information could include the name,
6 address, telephone number, and the last four digits of the Social Security Number of the
7 Class Member requesting exclusion. It must be returned by first class mail or equivalent
8 to the Settlement Administrator at the specified address and be postmarked on or before
9 the Response Deadline. The date of the postmark on the return mailing envelope will be
10 the exclusive means to determine whether a Request for Exclusion has been timely
11 submitted. A Class Member who does not request exclusion from the Settlement will be
12 deemed a Participating Class Member and will be bound by all terms of the Settlement,
13 if the Settlement is granted Final Approval by the Court.

14 44. **“Response Deadline”** means the deadline by which Class Members must
15 postmark to the Settlement Administrator valid Share Forms, Requests for Exclusion, or
16 file and serve objections to the Settlement. The Response Deadline will be 35 calendar
17 days from the initial mailing of the Notice Packet by the Settlement Administrator, unless
18 the that day falls on a Sunday or federal holiday, in which case the Response Deadline
19 will be extended to the next day on which the U.S. Postal Service is open. The Response
20 Deadline for Objections or Requests for Exclusion will be extended fifteen (15) calendar
21 days for any Class Member who is re-mailed a Notice Packet by the Settlement
22 Administrator, unless the 15th day falls on a Sunday or federal holiday, in which case the
23 Response Deadline will be extended to the next day on which the U.S. Postal Service is
24 open. The Response Deadline may also be extended by agreement between Class Counsel
25 and Defendants or by Order of the Court. Under no circumstances, however, will the
26 Settlement Administrator have the authority to extend the deadline for Class Members
27 to submit a Request for Exclusion, or objection to the Settlement other than as provided
28 herein.

1 45. “**Settlement**” or “**Stipulation**” means the Parties’ agreement to resolve the
2 Action on terms and conditions as set forth in this Settlement Agreement.

3 46. “**Settlement Administrator**” means a third-party class action settlement
4 claims administrator selected by the Parties and approved by the Court for purposes of
5 administering this Settlement. The Parties each represent that they will not select a
6 Settlement Administrator in which either Party has any financial interest or other
7 relationship that could create a conflict of interest.

8 47. “**Settlement Administration Costs**” means the costs payable from the
9 Maximum Settlement Amount to the Settlement Administrator for administering this
10 Settlement, including, but not limited to, printing, distributing, and tracking documents
11 for this Settlement, calculating estimated amounts per Class Member, tax reporting,
12 distributing the appropriate settlement amounts, and providing necessary reports and
13 declarations, and other duties and responsibilities set forth herein to process this
14 Settlement, and as requested by the Parties. The Settlement Administration Costs will be
15 paid from the Maximum Settlement Amount and shall not exceed \$50,000.

16 48. “**Workweeks**” means the number of weeks worked by each Class Member
17 as a non-exempt employee during the Class Period. Workweeks are determined by
18 calculating the number of days each Class Member worked during the Class Period and
19 dividing by seven (7). Partial workweeks will not be counted, meaning incomplete
20 workweeks will be rounded down; however, a Class Member who worked only one day
21 during the Class Period will be credited with having worked one Workweek for purposes
22 of the Settlement. For purposes of calculating Class Member Payments, Workweeks
23 worked by exempt employees shall be weighted at 5:1 to the workweeks worked by non-
24 exempt employees to account for the difference in their factual and legal claims and the
25 minimum payment to any given Class Member shall be no less than \$25 dollars.

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CLASS CERTIFICATION

49. Solely for purposes of settling the Action, the Parties stipulate and agree that the requisites for establishing class certification with respect to the Settlement Class have been met and are met. If the Settlement is not approved by the Court, Defendants retain all rights and opportunities to contest class certification on all issues in the Action. More specifically, the Parties stipulate and agree for purposes of this Settlement only that:

a. The Settlement Class is ascertainable and so numerous as to make it impracticable to join all Class Members;

b. There are common questions of law and fact including, but not limited to, the following:

- i. Whether Defendants have a common policy and/or practice of misclassifying non-exempt employees as exempt;
- ii. Whether Defendants have a common policy and/or practice of misclassifying non-exempt employees as exempt under an administrative exemption;
- iii. Whether Defendants have a common policy and/or practice of misclassifying non-exempt employees as exempt under an executive exemption;
- iv. Whether Defendants have a common policy and/or practice of misclassifying non-exempt employees as exempt under a professional exemption;
- v. Whether Defendants have a common policy and/or practice of misclassifying non-exempt employees as exempt under a salary exemption;
- vi. Whether Defendants have a common policy and/or practice employing recruiters, and/or other employees classified by Defendants as exempt, who are misclassified as exempt because they do not perform work

- 1 directly related to management policies or general business operations of
2 Defendants or Defendants' customers;
- 3 vii. Whether Defendants have a common policy and/or practice employing
4 recruiters, and/or other employees classified by Defendants as exempt,
5 who are misclassified as exempt because they do not customarily and
6 regularly exercise discretion and independent judgment;
- 7 viii. Whether Defendants have a common policy and/or practice employing
8 recruiters, and/or other employees classified by Defendants as exempt,
9 who are misclassified as exempt because they do not regularly and
10 directly assist a proprietor, or an employee employed in a bona fide
11 executive or administrative capacity;
- 12 ix. Whether Defendants have a common policy and/or practice employing
13 recruiters, and/or other employees classified by Defendants as exempt,
14 who are misclassified as exempt because they do not perform only
15 general supervision work along specialized or technical lines requiring
16 special training, experience, or knowledge;
- 17 x. Whether Defendants have a common policy and/or practice employing
18 recruiters, and/or other employees classified by Defendants as exempt,
19 who are misclassified as exempt because they are not primarily engaged
20 in duties that meet the tests of the exemption;
- 21 xi. Whether Defendants incentive payment structure is a commission;
- 22 xii. Whether Defendants have a common policy and/or practice employing
23 recruiters, and/or other employees classified by Defendants as exempt,
24 who are misclassified as exempt because they did not earn a monthly
25 salary equivalent to no less than two (2) times the state minimum wage
26 for full-time employment as full-time employment is defined by Labor
27 Code Section 515(c) as 40 hours per week;
- 28 xiii. Whether Defendants have a common policy and/or practice employing

1 recruiters, and/or other employees classified by Defendants as exempt,
2 who are misclassified as exempt because they did not earn the minimum
3 hourly, weekly, monthly, or other monetary thresholds for IT technology
4 workers;

5 xiv. Whether Defendants have a common policy and/or practice of failing to
6 accurately record non-exempt employees' time;

7 xv. Whether Defendants have a common policy and/or practice of failing to
8 accurately compensate non-exempt employees for all time worked;

9 xvi. Whether Defendants have a common policy and/or practice of rounding
10 non-exempt employees' time records to the detriment of those
11 employees;

12 xvii. Whether Defendants unlawfully and/or willfully failed to compensate
13 Plaintiff and Class Members at a minimum wage for all hours worked as a
14 result of its rounding policies;

15 xviii. Whether Defendants unlawfully required Plaintiff and Class Members to
16 remain under Defendants' control and direction while off-the-clock;

17 xix. Whether Defendants unlawfully and/or willfully failed to compensate
18 Plaintiff and Class Members at a minimum wage for all hours worked;

19 xx. Whether Defendants unlawfully and/or willfully failed to compensate
20 Plaintiff and Class Members required overtime wages;

21 xxi. Whether Defendants have a common policy and/or practice by which
22 they implemented an "auto-deduct" of 30 minutes or more for employees
23 for meal periods regardless of whether employees took a meal period or
24 its actual length;

25 xxii. Whether Defendants' auto-deduct policy and practice unlawfully deprives
26 employees of wages earned;

27 xxiii. Whether Defendants have a common policy and/or practice of depriving
28 Plaintiff and Class Members of compliant, off-duty meal and/or rest

- 1 periods;
- 2 xxiv. Whether Defendants unlawfully and/or willfully deprived Plaintiff and
- 3 Class Members of compliant, off-duty meal and/or rest periods;
- 4 xxv. Whether Defendants paid Plaintiff and Class Members all required
- 5 premium wages for non-compliant meal and/or rest periods;
- 6 xxvi. Whether Defendants have a common policy and/or practice of failing to
- 7 pay employees wages earned in violation of Labor Code section 227.3;
- 8 xxvii. Whether Defendants unlawfully and/or willfully deprived Plaintiff and
- 9 Class Members of earned wages in violation of Labor Code section 227.3;
- 10 xxviii. Whether Defendants have a common policy and/or practice of failing to
- 11 pay employees earned pay time off;
- 12 xxix. Whether Defendants unlawfully and/or willfully deprived Plaintiff and
- 13 Class Members of earned paid time off wages;
- 14 xxx. Whether Defendants have a common policy and/or practice of failing to
- 15 pay employees earned vacation wages;
- 16 xxxi. Whether Defendants unlawfully and/or willfully deprived Plaintiff and
- 17 Class Members of earned vacation wages;
- 18 xxxii. Whether Defendants operated under a common unlawful policy and/or
- 19 practice of requiring employees to forfeit their earned vacation wages;
- 20 xxxiii. Whether Defendants have a common policy and/or practice of failing to
- 21 reimburse employees for necessary business expenditures;
- 22 xxxiv. Whether Defendants have a common policy and/or practice of failing to
- 23 maintain accurate payroll records in the State of California;
- 24 xxxv. Whether Defendants unlawfully and/or willfully failed to maintain
- 25 accurate payroll records in the State of California;
- 26 xxxvi. Whether Defendants have a policy and/or practice of failing to provide
- 27 accurate wage statements reflecting hours worked and wages earned to
- 28 Plaintiff and Class Members;

- 1 xxxvii. Whether Defendants unlawfully and/or willfully failed to provide accurate
- 2 wage statements reflecting hours worked and wages earned to Plaintiff
- 3 and Class Members;
- 4 xxxviii. Whether Defendants have a policy and/or practice of failing to timely pay
- 5 wages during employment in violation of Labor Code §§ 204, 210.
- 6 xxxix. Whether Defendants have a policy and/or practice of failing to pay
- 7 Plaintiff and Class Members final wages owed upon termination;
- 8 xl. Whether Defendants unlawfully and/or willfully failed to promptly pay
- 9 compensation due to Plaintiff and Class Members upon termination of
- 10 employment in violation of Labor Code §§ 201, 202, and 203;
- 11 xli. Whether Plaintiff and Class Members sustained damages as a result of
- 12 any of the aforementioned violations, and, if so, the proper measure of
- 13 those damages, including interest, penalties, costs, attorneys' fees, and
- 14 equitable relief;
- 15 xlii. Whether Defendants violated the Unfair Competition Law, Cal. Bus. &
- 16 Prof. Code § 17200, *et seq.*, by violating the above provisions of law; and
- 17 xliii. Whether Defendants violated the Unfair Competition Law, Cal. Bus. &
- 18 Prof. Code § 17200, *et seq.*, by treating Plaintiff and Class Members
- 19 unfairly by depriving them of meal and/or rest periods, failing to provide
- 20 them with compensation in lieu of meal and/or rest periods, failing to pay
- 21 all regular and overtime wages earned, failing to pay wages upon
- 22 termination, failing to furnish accurate and timely itemized wage
- 23 statements upon payment of wages, and failing to pay all compensation
- 24 due upon discharge.
- 25 c. That the Class Representative's claims are typical of the claims of the
- 26 members of the Settlement Class.
- 27 d. That the Class Representative and Class Counsel will fairly and adequately
- 28 protect the interests of the Settlement Class.

1 e. That the prosecution of separate actions by individual members of the
2 Settlement Class would create the risk of inconsistent or varying adjudications, which
3 would establish incompatible standards of conduct.

4 f. That questions of law and fact common to the members of the Settlement
5 Class predominate over any questions affecting any individual member in such Class, and
6 that a class action is superior to other available means for the fair and efficient
7 adjudication of the controversy.

8 g. The Parties agree that this stipulation regarding class certification is for the
9 sole purpose of facilitating settlement approval. Should the Court ultimately deny
10 settlement approval, the Parties agree that Defendants maintain and have the right to
11 contend that class certification, for all the issues enumerated herein, is improper based
12 upon all defenses available to Defendants prior to execution of this Stipulation.

13 **TERMS OF AGREEMENT**

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

16 50. Funding of the Maximum Settlement Amount. Within seven (7) calendar
17 days after the Effective Date, the Settlement Administrator will provide the Parties with
18 an accounting of the amounts to be paid by Defendants pursuant to the terms of the
19 Settlement, including the amount of the employer contribution for payroll taxes to be
20 paid by Defendants. Within fourteen (14) days of receiving the final accounting of funds
21 by the Settlement Administrator, Defendants will make the required deposit of the
22 Maximum Settlement Amount in the amount of \$5,250,000 ("Maximum Settlement
23 Amount");²

24 51. Within seven (7) calendar days of the funding of the Maximum Settlement
25

26
27 ² This payment shall be deposited into a Qualified Settlement Fund to be established by
28 the Settlement Administrator to be held in trust pending final approval of this Settlement. Should
final approval of this settlement not be granted for any reason, Defendants shall be entitled to
return of this deposit within 30 days of such event.

1 Amount, the Settlement Administrator will issue payments to: (a) Class Representative;
2 (b) Class Counsel; (c) the Participating Class Members; (d) the Labor and Workforce
3 Development Agency; and (e) the Settlement Administrator.

4 52. Class Counsel's Fees and Costs. Defendants agree not to oppose or impede
5 any application or motion by Class Counsel for Class Counsel's Fees and Costs of up to
6 one-third of the Maximum Settlement Amount, or \$1,750,000.00, plus the
7 reimbursement of actual reasonable costs and expenses incurred in connection with Class
8 Counsel's litigation and settlement of the Action, up to Fifty Thousand Dollars and Zero
9 Cents (\$50,000), both of which will be paid from the Maximum Settlement Amount.

10 53. Class Representative Enhancement Payment. In recognition of her efforts
11 and work in prosecuting the Action on behalf of Class Members and the Aggrieved
12 Employees and in negotiating the Settlement, Defendants agree not to oppose or impede
13 any application or motion for a Class Representative Enhancement Payment of up to a
14 total of Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) to the Class
15 Representative, subject to the Court's approval. The Class Representative Enhancement
16 Payment, which will be paid from the Maximum Settlement Amount, is in addition to the
17 payment to which she is entitled as Settlement Class Member or is entitled to as part of
18 Plaintiff's Individual Class Payment.

19 54. Settlement Administration Costs. The Settlement Administrator will be paid
20 for the reasonable costs of administration of the Settlement and distribution of payments
21 from the Maximum Settlement Amount, which is capped at no more than \$50,000.00.
22 These costs, which will be paid from the Maximum Settlement Amount, will include, for
23 instance, costs incurred for the required tax reporting on the Individual Class Payments,
24 the issuing of W-2 and 1099 IRS Forms, distributing the Notice Packet, calculating Class
25 Members' workweeks, and calculating and distributing the Maximum Settlement Amount
26 and Class Counsel's Fees and Costs, and providing necessary reports and declarations.

27 55. Labor and Workforce Development Agency Payment. Subject to Court
28 approval, the Parties agree that the amount of Five-Hundred Fifty Thousand Dollars and

1 Zero Cents (\$550,000.00) of the Maximum Settlement Amount will be allocated to the
2 resolution of the Aggrieved Employees' claims arising under PAGA ("PAGA Settlement
3 Amount"). Pursuant to PAGA, Seventy-Five Percent (75%), or Four-Hundred Twelve
4 Thousand Five-Hundred Dollars and Zero Cents (\$412,500.00), of the PAGA Settlement
5 Amount will be paid to the California Labor and Workforce Development Agency
6 ("LWDA"), and Twenty-Five Percent (25%), or One-Hundred Thirty-Seven Thousand Five-
7 Hundred Dollars and Zero Cents (\$137,500.00), will be distributed to allegedly Aggrieved
8 Employees. Class Counsel shall be responsible for giving any required notice of this
9 Settlement to the LWDA.

10 56. Settlement Administration Cost Decreases. Any portion of the estimated or
11 designated Settlement Administration Costs which are not required to fulfill the total
12 Settlement Administration Costs will become part of the Net Settlement Amount.

13 57. Individual Class Payment and Individual PAGA Payment Calculations.
14 Individual Class Payments will be calculated and apportioned from the Net Settlement
15 Amount based on the Workweeks a Participating Class Member worked during the Class
16 Period. Individual PAGA Payments will be separately calculated and apportioned from the
17 portion of the PAGA amount intended for Aggrieved Employees. Specific calculations of
18 Individual Class Payments and Individual PAGA Payments will be made as follows:

19 a. The Settlement Administrator will calculate the number of
20 Workweeks per Participating Class Member during the Class Period based on
21 records in Defendants' possession, custody, or control.³ Workweeks are
22 determined by identifying each week an employee actually worked based on
23 Defendants' timekeeping and/or payroll data. A Class Member who worked only
24 one day during the Class Period will be credited with having worked one Workweek

25
26 ³ Defendants' Workweek data will be presumed to be correct unless a particular Class
27 Member proves otherwise to the Settlement Administrator by credible written evidence. All
28 Workweek disputes will be resolved and decided by the Settlement Administrator in consultation
with Class Counsel and counsel for Defendants. The Settlement Administrator's decision on all
Workweek disputes will be final and non-appealable.

1 for purposes of the Settlement. Partial workweeks will not be counted, meaning
2 incomplete workweeks will be rounded down.

3 b. The Settlement Administrator will calculate the total Workweeks for
4 all Settlement Class Members by adding the number of Workweeks worked by
5 each Settlement Class Member during the Class Period.

6 c. The respective Workweeks for each Settlement Class Member will be
7 divided by the total Workweeks for each Settlement Class Member, resulting in
8 the Payment Ratio for each Settlement Class Member.

9 d. Each Settlement Class Member's Payment Ratio will then be
10 multiplied by the Net Settlement Amount to calculate each Settlement Class
11 Member's estimated Individual Class Payments. However, workweeks worked by
12 exempt employees shall be weighted at 5:1 to the workweeks worked by non-
13 exempt employees to account for the difference in their legal claims and the
14 minimum payment to any given Class Member shall be no less than \$25 dollars.

15 e. Using the Class Data, the Settlement Administrator will calculate the
16 total number of pay periods in the PAGA Period and will divide each Aggrieved
17 Employees' individual number of eligible pay periods in the PAGA Period to
18 determine their pro rata portion of the portion of the PAGA payment allocated to
19 Aggrieved Employees. Partial pay periods will not be counted, meaning incomplete
20 pay periods will be rounded down; however, an Aggrieved Employee who worked
21 only one day during the PAGA Period will be credited with having worked one pay
22 period for purposes of the Settlement.

23 58. Confirmatory Discovery. Within fifteen (15) calendar days of execution of
24 this Agreement, Defendants will provide Plaintiff with reasonable confirmatory discovery
25 to allow Plaintiff to verify the information relied upon in agreeing to settle, including all
26 time and payroll records for each Class Member, as well as a redacted copy of their
27 mediation brief containing the legal and factual support for any alleged defenses to
28 certification or merits. Defendants shall further not object to Class Counsel being

1 provided with the Class List prior to final approval being granted. Plaintiff's counsel
2 agrees to treat the personal contact information as strictly confidential.

3 59. Limited Confidentiality. The Parties agree not to issue press releases,
4 communicate with, or respond to, any media or publication entities concerning the
5 Settlement, including the fact of the Settlement, its terms or contents, and the
6 negotiations underlying the Settlement prior to final approval and Entry of Judgment,
7 except as required by law or as shall be contractually required to effectuate the terms of
8 the Settlement as set forth herein. Nothing stated herein shall prohibit Class Counsel from
9 discussing the Settlement, the fact of Settlement, and its terms and conditions: (i) with
10 Class Members and/or (ii) in court filings, including in their respective firm resumes,
11 and/or (iii) in all necessary motions and supporting memoranda related to preliminary
12 and final approval of the Settlement or for other class action settlements. This provision
13 also does not limit Class Counsel (i) from complying with ethical obligations; or (ii) from
14 posting a neutral description of publicly available facts regarding the Settlement,
15 provided that such posting does not expressly identify Defendants by name.

16 60. Class Member Communications. Defendants will instruct its officers,
17 directors, and managers that, should they be contacted by Class Members or persons
18 who believe they may be Class Members in relation to this Agreement, such officers,
19 directors, and exempt managers should make no comment except those necessary to
20 direct the employees to the Settlement Administrator and the Class Notice, or Class
21 Counsel, and to provide such Class Members with contact information for the Settlement
22 Administrator and Class Counsel. Defendants agree not to discourage or prevent Class
23 Members from exercising any of their rights or obligations pursuant to this Agreement.
24 At no time will any of the Parties or their counsel take any action to encourage, support,
25 require, or induce Class Members to object to the Settlement Agreement, opt-out from
26 the Settlement, or appeal from the Order and Judgment.

27 61. Settlement Awards Do Not Trigger Additional Benefits. All Individual Class
28 Payments to Participating Class Members shall be deemed to be paid to such Participating

1 Class Members solely in the year in which such payments are received by the Participating
2 Class Members. It is expressly understood and agreed that the receipt of such Individual
3 Class Payments will not entitle any Participating Class Member to additional
4 compensation or benefits under any company bonus, commission, or other
5 compensation or benefit plan or agreement in place during the period covered by the
6 Settlement, nor will it entitle any Participating Class Member to any increased retirement,
7 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of
8 the Parties to this Settlement that the Individual Class Payments provided for in this
9 Settlement are the sole payments to be made by Defendants to the Participating Class
10 Members, and that the Participating Class Members are not entitled to any new or
11 additional compensation or benefits as a result of having received the Individual
12 Settlement Payments (notwithstanding any contrary language or agreement in any
13 benefit or compensation plan document that might have been in effect during the period
14 covered by this Settlement).

15 62. Settlement Administration Process. The Parties agree to cooperate in the
16 administration of the Settlement and to make all reasonable efforts to control and
17 minimize the costs and expenses incurred in administration of the Settlement.

18 63. Delivery of the Class List. Within five (5) calendar days of Preliminary
19 Approval, Defendants will provide the Class List to the Settlement Administrator.

20 64. Notice by First-Class U.S. Mail. Within five (5) calendar days following
21 receipt of the Class List, the Settlement Administrator will mail a Notice Packet,
22 substantially in the form attached hereto as **Exhibit A**, to all Class Members via regular
23 First-Class U.S. Mail, using the most current, known mailing addresses identified in the
24 Class List. Each Notice Packet will provide: (a) information regarding the nature of the
25 Action; (b) a summary of the Settlement's principal terms; (c) the Settlement Class
26 definition; (d) each Class Member's estimated Individual Class Payment and the formula
27 for calculating Individual Class Payments; (e) the dates which comprise the Class Period;
28 (f) instructions on how to submit valid Requests for Exclusion or objections; (g) the

1 deadlines by which the Class Member must fax or postmark Requests for Exclusions or
2 file and serve objections to the Settlement; (h) the claims to be released, as set forth
3 herein; and (i) the date for the Final Approval Hearing. The Settlement Administrator will
4 also create a website that lists key deadlines and has links to the notice, claim form (if
5 any), preliminary approval order, motions for preliminary and final approval and for
6 attorneys' fees, and any other important documents in the case.

7 65. Confirmation of Contact Information in the Class Lists. Prior to mailing, the
8 Settlement Administrator will perform a search based on the National Change of Address
9 Database for information to update and correct for any known or identifiable address
10 changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable
11 on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail
12 to the forwarding address affixed thereto and the Settlement Administrator will indicate
13 the date of such re-mailing on the Notice Packet. If no forwarding address is provided,
14 the Settlement Administrator will promptly attempt to determine the correct address
15 using a skip-trace, or other search using the name, address and/or Social Security number
16 of the Class Member involved and will then perform a single re-mailing. Those Class
17 Members who receive a re-mailed Notice Packet, whether by skip-trace or by request,
18 will have between the later of: (a) an additional fifteen (15) calendar days; or (b) the
19 Response Deadline to fax or postmark a Request for Exclusion, or file and serve an
20 objection to the Settlement.

21 66. The Settlement Administrator shall exercise its best judgment to determine
22 the current mailing address for each Class Member. The address identified by the
23 Settlement Administrator as the current mailing address shall be presumed to be the best
24 mailing address for each Class Member.

25 67. Disputed Information on Notice Packets. Class Members and Aggrieved
26 Employees will have an opportunity to dispute the information provided in their Notice
27 Packets. To the extent Class Members/Aggrieved Employees dispute the number of
28 weeks he/she worked during the Class Period or PAGA Period, or the amount of their

1 Individual Class Payment or Individual PAGA Payment, Class Members may produce
2 evidence to the Settlement Administrator showing that such information is inaccurate.
3 Any disputes, along with supporting documentation, must be postmarked on or before
4 the Response Deadline. Absent evidence rebutting Defendants' records, Defendants'
5 records will be presumed determinative. However, if a Class Member or Aggrieved
6 Employee produces evidence to the contrary, the Settlement Administrator will evaluate
7 the evidence submitted by the Class Member/Aggrieved Employee in consultation with
8 Class Counsel and counsel for Defendants and will make the final decision as to the
9 Individual Class Payment/Individual PAGA Payment to which the Class
10 Member/Aggrieved Employee may be entitled with input from Class and Defendants'
11 Counsel. This determination shall be binding on the Class Member and Aggrieved
12 Employee.

13 68. Request for Exclusion Procedures. Any Class Member wishing to opt-out
14 from the Settlement Agreement must sign and postmark a written Request for Exclusion
15 to the Settlement Administrator within the Response Deadline. The date of the postmark
16 on the return mailing envelope will be the exclusive means to determine whether a
17 Request for Exclusion has been timely submitted. All Requests for Exclusion will be
18 submitted to the Settlement Administrator, who will certify jointly to Class Counsel and
19 Defendants' Counsel the Requests for Exclusion that were timely submitted. Any Class
20 Member who submits a Request for Exclusion shall be prohibited from objecting to the
21 Settlement Agreement.

22 69. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
23 Member who does not affirmatively opt-out of the Settlement Agreement by submitting
24 a timely and valid Request for Exclusion will be bound by all of the terms of the Settlement
25 Agreement, including those pertaining to the Released Claims, as well as any Judgment
26 that may be entered by the Court if it grants Final Approval to the Settlement.

27 70. Objection Procedures. To object to the Settlement Agreement, a Class
28 Member must file a valid Notice of Objection with the Court on or before the Response

1 Deadline. The Notice of Objection shall be signed by the Class Member and contain all
2 information required by this Settlement Agreement. Class Members may also raise
3 objections orally at the Final Fairness and Approval hearing, whether or not they
4 previously submitted a valid Notice of Objection. At no time will any of the Parties or their
5 counsel take any action to encourage, support, or induce Class Members to object to the
6 Settlement Agreement, opt-out from the Settlement, or appeal from the Order and
7 Judgment. Class Counsel will not represent any Class Members with respect to any such
8 objections to this Settlement.

9 71. Certification Reports Regarding Individual Class Payment Calculations. The
10 Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly
11 report which certifies: (a) the number of Class Members who have submitted valid
12 Requests for Exclusion; and (b) whether any Class Member has submitted a challenge to
13 any information contained in their Claim Form or Notice Packet. Additionally, the
14 Settlement Administrator will provide to counsel for both Parties any updated reports
15 regarding the administration of the Settlement Agreement as needed or requested. No
16 later than 30 days prior to the deadline for Class Counsel to file its motion in support of
17 the Final Approval and Fairness Hearing, the Settlement Administrator will compile and
18 deliver to Class Counsel and Defendants' Counsel a declaration with summary
19 information of the Notice process, including but not limited to: (a) the total amount of
20 final Individual Class Payments of each Settlement Class Member; (b) the number of
21 Settlement Class Members to receive such payments; (c) the final number of requests for
22 exclusion/opt-outs requests and objections; (d) the Settlement Administrator's
23 qualifications for administration; and (e) an explanation of the steps taken to implement
24 the Notice process as set forth in this Agreement. The Settlement Administrator will also
25 provide a copy of each opt-out request and objection, authenticate those documents,
26 and provide all necessary details as requested by Counsel regarding the timing and
27 handling of any opt-out requests and objections.

28 72. Uncashed Settlement Checks. Any checks issued by the Settlement

1 Administrator to Participating Class Members will be negotiable for 180 calendar days
2 from the date the check was issued (the "Void Date"). For any Class Member whose
3 Individual Class Payment check or Individual PAGA Payment check is uncashed and
4 cancelled after the Void Date, the Administrator shall transmit the funds represented by
5 such checks to a Court-approved non-profit organization or foundation recipients whose
6 work is related to the subject matter of the lawsuit, its underlying objections, and the
7 Class Members' claims consistent with F.R.C.P. 23(e) ("Cy Pres Recipient").

8 73. Cy Pres Recipient. The Cy Pres Recipient shall be the California Bar's Justice
9 Gap Fund. The Parties represent and warrant that they have no interest or relationship,
10 financial or otherwise, with the intended Cy Pres Recipient.

11 74. Certification of Completion. Upon completion of administration of the
12 Settlement, the Settlement Administrator will provide a written declaration under oath
13 to certify such completion to the Court and counsel for all Parties.

14 75. Treatment of Individual Class Payments and Individual PAGA Payments.
15 Individual Class Payments will be allocated as follows: of each Individual Class Payment,
16 30% will be allocated as alleged unpaid wages, 40% will be allocated as alleged unpaid
17 civil penalties, and 40% will be allocated as alleged unpaid interest. The percentage of
18 each Individual Class Payment allocated as wages will be reported on an IRS Form W-2 by
19 the Settlement Administrator. The remaining percentage of each payment shall be
20 allocated as interest, penalties, and reimbursement, and will be reported on an IRS Form-
21 1099 by the Settlement Administrator. All Individual PAGA Payments will be allocated as
22 alleged penalties and will be reported on an IRS Form-1099 by the Settlement
23 Administrator.

24 76. Administration of Taxes by the Settlement Administrator. The Settlement
25 Administrator will be responsible for issuing to Plaintiff, Participating Class Members,
26 Aggrieved Employees, and Class Counsel any W-2, 1099, or other tax forms as may be
27 required by law for all amounts paid pursuant to this Agreement.

28 77. Tax Liability. The Parties acknowledge that no tax advice has been offered

1 or given by any other Party, their attorneys, agents, or any other representatives, in the
2 course of these negotiations, and that each Party is relying upon the advice of his/its own
3 tax consultant with regard to any tax consequences that may arise as a result of the
4 execution of this Agreement. The Class Representatives and Class Counsel acknowledge
5 that they may be required to submit a Form W-9, and the Class Representatives, Class
6 Members, and Class Counsel acknowledge that the Settlement Administrator may be
7 required to issue a Form 1099 or other tax form reporting the consideration flowing to
8 the Class Representatives, Class Members, and Class Counsel under this agreement to the
9 Internal Revenue Services and/or other taxing authority. Nothing herein shall obligate the
10 Class Representatives, Class Members, and Class Counsel to pay, indemnify, or otherwise
11 assume responsibility for any taxes that would be owed by Defendants in the first
12 instance or as a result of any re-classification of the treatment of the payments, such as,
13 for example, employer-side payroll contributions.

14 78. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
15 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
16 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
17 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
18 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
19 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH
20 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
21 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
22 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
23 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
24 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
25 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
26 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
27 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
28 DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX

1 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
2 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
3 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
4 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
5 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
6 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
7 THIS AGREEMENT.

8 79. No Prior Assignments. The Parties and their counsel represent, covenant,
9 and warrant that they have not directly or indirectly assigned, transferred, encumbered,
10 or purported to assign, transfer, or encumber to any person or entity any portion of any
11 liability, claim, demand, action, cause of action, or right herein released and discharged.

12 80. Release of Claims by Class Members. As of the Effective Date and full
13 funding the MSA by Defendants, the Settlement Class and Participating Class Members
14 fully release and discharge the Released Parties for the Released Claims for the Release
15 Period. Participating Class Members will be deemed to have acknowledged and agreed
16 that their claims for wages and penalties in the Action are disputed, and that Individual
17 Class Payments constitute payment of all sums allegedly due. Participating Class
18 Members will be deemed to have acknowledged and agreed that California Labor Code
19 Section 206.5 is not applicable to the Individual Class Payment.

20 81. Plaintiff's Released Claims. The Class Representative shall be bound by a
21 complete Section 1542 release and waiver of all claims known and unknown, without
22 exception, against the "Released Parties" (below), except as may be prohibited by law.

23 82. Release of Claims by Aggrieved Employees and State. As of the Effective
24 Date and full funding the MSA by Defendants, the Aggrieved Employees and State of
25 California fully release and discharge the Released Parties for the Released PAGA Claims
26 for the PAGA Release Period.

27 83. Duties of the Parties Prior to Court Approval. The Parties shall promptly
28 submit this Settlement Agreement to the Court in support of Plaintiff's Motion for

1 Preliminary Approval and determination by the Court as to the fairness, adequacy, and
2 reasonableness of the Settlement Agreement. Promptly upon execution of this
3 Settlement Agreement, the Parties shall apply to the Court for the entry of an order for:

4 a. Scheduling a fairness hearing on the question of whether the proposed
5 Settlement, including but not limited to, payment of Class Counsel's fees and costs, and
6 the Class Representative Enhancement Payment, should be finally approved as fair,
7 reasonable, and adequate as to the members of the Settlement Class;

8 b. Preliminarily Certifying a Settlement Class;

9 c. Approving, as to form and content, the proposed Notice;

10 d. Approving the manner and method for Class Members to request exclusion
11 from the Settlement as contained herein and within the Notice;

12 e. Directing the mailing of the Notice, by first class mail to the Class Members;
13 and

14 f. Giving Preliminary Approval to Settlement subject to final review by the
15 Court.

16 84. Duties of the Parties Following Preliminary Court Approval. Following
17 Preliminary Approval by the Court of the Settlement provided for in this Settlement
18 Agreement and Notice to the Class, Class Counsel will submit a proposed final order of
19 approval and judgment for:

20 a. Approval of the Settlement, adjudging the terms thereof to be fair,
21 reasonable, and adequate, and directing consummation of its terms and provisions;

22 b. Approval of Class Counsel's application for an award of attorneys' fees and
23 costs;

24 c. Approval of the Class Representative Enhancement Payment to the Class
25 Representatives;

26 d. Approval of the Settlement Administration Costs of the Settlement
27 Administrator; and

28 e. That judgment be entered in the Action.

1 85. Notice Obligations under 28 U.S.C. § 1715. Within ten (10) days of the filing
2 of the Motion for Order Granting Preliminary Approval, Defendants shall provide notice
3 of the Settlement, consistent with the requirements of 28 U.S.C. § 1715, to the Attorney
4 General of the United States and/or the appropriate State official of each State in which
5 a Class Member resides. Such notice shall include each document or item of information
6 required under 28 U.S.C. § 1715(b)(1)-(8), as required. If any of the notified federal or
7 state officials takes any action adversely affecting the validity or enforceability of the
8 Settlement, or seeking to impose additional liability on Defendants for the matters
9 resolved by the Released Claims, Defendants may, at their option, suspend the
10 implementation of the Settlement pending the outcome of the action initiated by the
11 notified federal or state official or may elect to void the Settlement by written notice to
12 Class Counsel.

13 86. Rescission of Settlement Agreement (by Defendants). If more than ten
14 percent (10%) of the Class Members opt-out of the Settlement by submitting Requests
15 for Exclusion, Defendants may, at their option, rescind and void the Settlement and all
16 actions taken in furtherance of it will thereby be null and void. Defendants must exercise
17 this right of rescission, in writing, to Class Counsel within fourteen (14) calendar days
18 after the Settlement Administrator notifies the Parties of the total number of Requests
19 for Exclusion received by the Response Deadline. If the option to rescind is exercised,
20 Defendants shall be solely responsible for all costs of the Settlement Administrator
21 accrued to that point.

22 87. Escalator Clause. Plaintiff has materially relied upon the Class Size
23 Representation in entering into this Settlement. Should the number of Settlement Class
24 Members increase by 10% on a per-person *or* per-workweek basis compared to the Class
25 Size Representation, the MSA shall increase by 1 % for each percentage increase over that
26 10% threshold. For the avoidance of doubt, if the Escalator Clause is triggered and the
27 Gross Settlement Amount increases, Class Counsel shall have the right to seek attorney's
28 fees up to one-third of the increased Gross Settlement Amount.

1 88. Adjustments to Components of Maximum Settlement Amount. This
2 Agreement contemplates those future adjustments to the amounts of components of the
3 Maximum Settlement Amount listed above may be necessary and/or may be ordered by
4 the Court. Any such future adjustments shall be made only by written stipulation of the
5 Parties or by an order of the Court. For the avoidance of doubt, this Paragraph does not
6 apply to the Escalator Clause above, and modifications to this Settlement and the Notice
7 shall be implemented upon the Escalator Clause triggering without the need for a written
8 stipulation or Court Order.

9 89. Nullification of Settlement Agreement. In the event that: (a) the Court does
10 not issue final approval of the Settlement as provided herein; or (b) the Settlement does
11 not become final for any other reason, then this Settlement Agreement, and any
12 documents generated to bring it into effect, will be null and void. Any order or judgment
13 entered by the Court in furtherance of this Settlement Agreement will likewise be treated
14 as void from the beginning. In such event, if the Court rejects the Settlement despite the
15 Parties' best efforts, Defendants shall be liable for all Settlement Administration costs
16 incurred.

17 90. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the
18 Court to request the Preliminary Approval of the Settlement Agreement, and the entry of
19 a Preliminary Approval Order for: (a) conditional certification of the Settlement Class for
20 settlement purposes only, (b) Preliminary Approval of the proposed Settlement
21 Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing. The
22 Preliminary Approval Order will provide for the Notice Packet to be sent to all Class
23 Members as specified herein. In conjunction with the Preliminary Approval hearing,
24 Plaintiff will submit this Settlement Agreement, which sets forth the terms of this
25 Settlement, and will include the proposed Notice Packet; *i.e.*, the proposed Notice of
26 Class Action Settlement document and share form, attached as **Exhibit A**. Class Counsel
27 will be responsible for drafting all documents necessary to obtain Preliminary Approval.
28 Defendants agree not to oppose the Motion for Preliminary Approval.

1 91. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration
2 of the deadlines for Class Members to submit Requests for Exclusion, or objections to the
3 Settlement Agreement, and with the Court's permission, a Final Approval/Settlement
4 Fairness Hearing will be conducted to determine the Final Approval of the Settlement
5 Agreement along with the amounts properly payable for: (a) Individual Class Payments;
6 (b) Individual PAGA Payments; (c) the Labor and Workforce Development Agency
7 Payment; (d) the Class Counsel's Fees and Costs; (e) the Class Representative
8 Enhancement Payment; (f) all Settlement Administration Costs; and (g) the Defendants'
9 share of payroll taxes for wages paid in connection with the Individual Class Payments.
10 Class Counsel will be responsible for drafting all documents necessary to obtain Final
11 Approval, including responding to any objections and appeals arising therefrom. Class
12 Counsel will also draft the attorneys' fees and costs application to be heard at the Final
13 Approval hearing. Defendants agree not to oppose the Motion for Final Approval.

14 92. Termination of Settlement. Subject to the obligation(s) of cooperation set
15 forth herein, any Party may terminate this Settlement if the Court declines to enter the
16 Preliminary Approval Order, the Final Approval Order, or final judgment in substantially
17 the form submitted by the Parties, or the Settlement Agreement as agreed does not
18 become final because of appellate court action. The Terminating Party shall give to all
19 other Parties (through his/its counsel) written notice of his/its decision to terminate this
20 Agreement no later than ten (10) business days after receiving notice that one of the
21 enumerated events has occurred. Termination of this Agreement shall have the following
22 effects:

23 a. The Settlement Agreement shall be terminated and shall have no force or
24 effect, and no Party shall be bound by any of its terms;

25 b. In the event the Settlement is terminated, Defendants shall have no
26 obligation to make any payments to any Party, Class Member or Class Counsel. The
27 Terminating Party shall pay the Settlement Administrator for services rendered up to the
28 date the Settlement Administrator is notified that the Settlement has been terminated;

1 c. The Settlement Agreement and all negotiations, statements, and
2 proceedings relating thereto shall be without prejudice to the rights of any of the Parties,
3 all of whom shall be restored to their respective positions in the Action prior to the
4 Settlement.

5 93. Judgment and Continued Jurisdiction. Upon Final Approval of the
6 Settlement by the Court or after the Final Approval/Settlement Fairness Hearing, the
7 Parties will present the Judgment pursuant to California Code of Civil Procedure section
8 664.6 to the Court for its approval. After entry of the Judgment, the Court will have
9 continuing jurisdiction for purposes of addressing: (a) the interpretation and
10 enforcement of the terms of the Settlement, (b) Settlement administration matters, and
11 (c) such post-Judgment matters as may be appropriate under court rules or as set forth
12 in this Agreement.

13 94. Exhibits Incorporated by Reference. The terms of this Agreement include
14 the terms set forth in any attached Exhibits, which are incorporated by this reference as
15 though fully set forth herein. Any Exhibits to this Agreement are an integral part of the
16 Settlement.

17 95. Entire Agreement. This Settlement Agreement, the general release of all
18 claims by the Class Representative, and any attached Exhibits constitute the entirety of
19 the Parties' settlement terms. No other prior or contemporaneous written or oral
20 agreements may be deemed binding on the Parties. The Parties expressly recognize
21 California Civil Code §1625 and California Code of Civil Procedure § 1856(a), which
22 provide that a written agreement is to be construed according to its terms and may not
23 be varied or contradicted by extrinsic evidence, and the Parties agree that no such
24 extrinsic oral or written representations or terms will modify, vary, or contradict the
25 terms of this Agreement.

26 96. Amendment or Modification. This Settlement Agreement may be amended
27 or modified only by a written instrument signed by the named Parties or their successors-
28 in-interest.

1 97. Authorization to Enter into Settlement Agreement. Counsel for all Parties
2 warrant and represent they are expressly authorized by the Parties whom they represent
3 to negotiate this Settlement Agreement and to take all appropriate action required or
4 permitted to be taken by such Parties pursuant to this Settlement Agreement to
5 effectuate its terms and to execute any other documents required to effectuate the terms
6 of this Settlement Agreement. The Parties and their counsel will cooperate with each
7 other and use their best efforts to effectuate the implementation of the Settlement. If
8 the Parties are unable to reach agreement on the form or content of any document
9 needed to implement the Settlement, or on any supplemental provisions that may
10 become necessary to effectuate the terms of this Settlement, the Parties may seek the
11 assistance of the Court to resolve such disagreement.

12 98. Signatories. It is agreed for the purposes of this Settlement Agreement only
13 that because the members of the Class are so numerous, it is impossible or impractical to
14 have each member of the Class execute this Settlement Agreement. The Notice, attached
15 hereto as Exhibit A, will advise all Class Members of the binding nature of the release,
16 and the release shall have the same force and effect as if this Settlement Agreement were
17 executed by each member of the Class.

18 99. Binding on Successors and Assigns. This Settlement Agreement will be
19 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto,
20 as previously defined.

21 100. California Law Governs. All terms of this Settlement Agreement and Exhibits
22 hereto will be governed by and interpreted according to the laws of the State of
23 California.

24 101. Execution and Counterparts. This Settlement Agreement is subject only to
25 the execution of all Parties. The Agreement may be executed in one or more counterparts
26 either by ink or electronic signature. All executed counterparts and each of them,
27 including electronic, facsimile, and scanned copies of the signature page, will be deemed
28 to be one and the same instrument.

102. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action. The Parties further agree that they have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further agree that they and their respective counsel have conducted informal discovery, including but not limited to per-shift time keeping data, payroll data, and evidence of pay and timekeeping policies, and that the investigation conducted by the Parties was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement.

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

104. Plaintiff's Waiver of Right to Be Excluded and Object. Plaintiff agrees to sign this Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the terms herein. For good and valuable consideration, Plaintiff further agrees that he will not request to be excluded from the Settlement Agreement, nor object to any terms herein, except as stipulated by the Parties in regard to her individual claims.

105. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's Fees and Costs below the amount requested from the Court but must inform Defense Counsel and the Class Administrator of any intent to appeal prior to the distribution of any funds from the Class Administrator to any Settlement Class Members or any other Parties.

106. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Agreement, Defendants do not admit, and specifically denies, it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law. The Parties agree that there exists a bona fide dispute as to whether any compensation is actually due to Plaintiff, the putative class, and Aggrieved Employees, and if so, the amount thereof, and no legal determinations have been made with respect to the legal claims brought in the Action and resolved in this Settlement. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local, or other applicable law.

107. Captions. The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.

108. Waiver. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right, or remedy.

109. Enforcement Actions. In the event that one or more of the Parties institute any legal action, motion, petition, or other proceeding against any other Party or Parties

1 to enforce the provisions of this Settlement or to declare rights and/or obligations under
2 this Settlement, the successful Party or Parties will be entitled to recover from the
3 unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert
4 witness fees incurred.

5 110. Mutual Preparation. The Parties have had a full opportunity to negotiate
6 the terms and conditions of this Agreement. Accordingly, this Agreement will not be
7 construed more strictly against one Party than another merely by virtue of the fact that
8 it may have been prepared by counsel for one of the Parties, it being recognized that,
9 because of the arm's-length negotiations between the Parties, all Parties have
10 contributed to the preparation of this Agreement.

11 111. Representation By Counsel. The Parties acknowledge that they have been
12 represented by counsel throughout all negotiations that preceded the execution of this
13 Agreement, and that this Agreement has been executed with the consent and advice of
14 counsel, and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent
15 that there are no liens on the Settlement Agreement.

16 112. All Terms Subject to Final Court Approval. All amounts and procedures
17 described in this Settlement Agreement herein will be subject to the Court's Final
18 Approval.

19 113. Notices. Unless otherwise specifically provided herein, all notices, demands,
20 or other communications given hereunder shall be in writing and shall be transmitted to
21 a Party via email:

22 To Plaintiff and the Settlement Class:

23 Elliot J. Siegel
24 elliot@kingsiegel.com
25 **KING & SIEGEL LLP**
26 724 S. Spring Street, Suite 201
Los Angeles, California 90014

27 Xavier Villegas
28 xavier@xaviervillegaslaw.com

LAW OFFICE OF XAVIER VILLEGAS, APC

2390 Las Posas Road, C168
Camarillo, CA 93010

To Defendants:

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FOLEY & LARDNER LLP
555 South Flower Street, Suite 3300
Los Angeles, CA 90071
tel: 213.972.4500
fax: 213.486.0065

114. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

115. Binding Agreement. The Parties warrant that: 1) they understand and have full authority to enter into this Agreement; 2) they intend that this Agreement will be fully enforceable and binding on all Parties; and 3) agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release Between Plaintiff and Defendants as of the

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date(s) set forth below:

SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFF: Paula Norton

Dated: Nov 22, 2024


paula norton (Nov 22, 2024 13:56 CST)
Paula Norton

DEFENDANT: Strategic Staffing Solutions-S3

Dated: 11/22/2024

Signed by:

By: B5E577E7B391478...
Its: Mark A Redman chief financial officer

DEFENDANT: Cynthia J. Pasky

Dated: 11/22/2024

DocuSigned by:

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Cynthia J. Pasky