

1 DAVID YEREMIAN & ASSOCIATES, INC.  
David Yeremian (SBN 226337)  
2 david@yeremianlaw.com  
Alvin B. Lindsay (SBN 220236)  
3 alvin@yeremianlaw.com  
2540 Foothill Blvd., Suite 201  
4 La Crescenta, CA 91214  
Telephone: (818) 230-8380  
5 Facsimile: (818) 230-0308

6 UNITED EMPLOYEES LAW GROUP, PC  
Walter Haines (SBN 71075)  
7 whaines@uelg.com  
4276 Katella Ave., #301  
Los Alamitos, CA 90720  
8 Tel.: (562) 256-1047  
9 Attorneys for Plaintiff CHET YATES on behalf of himself and others similarly situated

10 NORTON ROSE FULBRIGHT US LLP  
Joshua M. Henderson (SBN 197435) 555 California Street, Suite 3300  
11 San Francisco, California 94104  
Telephone: (628) 231-6800  
12 Facsimile: (628) 231-6799  
[josh.m.henderson@nortonrosefulbright.com](mailto:josh.m.henderson@nortonrosefulbright.com)

13 NORTON ROSE FULBRIGHT US LLP  
Phillip R. Di Tullio (SBN 324267)  
14 555 South Flower Street, Forty-First Floor  
Los Angeles, California 90071  
15 Telephone: (213) 892-9200  
Facsimile: (213) 892-9494  
16 [phillip.ditullio@nortonrosefulbright.com](mailto:phillip.ditullio@nortonrosefulbright.com)

17 Attorneys for Defendants APPLUS RTD USA, INC. and APPLUS RTD USA SERVICES INC.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **FOR THE COUNTY OF KERN**

20 CHET YATES, an individual, on behalf of  
21 himself and others similarly situated,  
22 **Plaintiff,**

23 vs.

24 APPLUS RTD USA, INC., a Delaware  
25 company; APPLUS RTD USA SERVICES,  
INC., a Delaware company; and DOES 1  
26 through 50, inclusive,  
27 **Defendants.**

Case No.: BCV-18-100258-TSC  
**CLASS ACTION**  
**Assigned for All Purposes To:**  
Hon. Thomas S. Clark  
Dept.: 17

**CLASS ACTION, PAGA REPRESENTATIVE  
ACTION, AND FLSA COLLECTIVE  
ACTION SETTLEMENT AGREEMENT AND  
RELEASE**  
Original Complaint Filed: February 5, 2018  
First Amended Complaint: April 11, 2018  
Second Amended Complaint: October 12, 2022  
Trial Date: None set

1 This Class Action, PAGA Representative Action, and FLSA Collective Action Settlement  
2 Agreement and Release (“Settlement Agreement”) is entered into by and between Plaintiff CHET  
3 YATES (“Plaintiff”), on behalf of himself and other similarly situated Settlement Class Members,  
4 and Defendants APPLUS RTD USA SERVICES, INC. and APPLUS RTD USA, INC.  
5 (“Defendants”) (collectively, “the parties”). Subject to the approval of the Court, this Action is  
6 hereby being settled pursuant to the terms and conditions set forth in this Settlement Agreement.  
7 Plaintiff will file approval documents asking the Court to make and enter judgment, subject to the  
8 continuing jurisdiction of the Court as set forth below, and subject to the definitions, recitals, and  
9 terms set forth herein which by this reference become an integral part of this Agreement. This  
10 Settlement Agreement shall be binding and supplant any and all prior versions of agreements entered  
11 into by Plaintiff and Defendants.

#### 12 **DEFINITIONS**

13 1. “Action” means the above captioned action entitled *Chet Yates, et al. v. Applus RTD*  
14 *USA, Inc., et al.*, Superior Court of the State of California for the County of Kern, Case No. BCV-  
15 18-100258-TSC.

16 2. “Class” or “Class Members” or “FLSA Collective Members” or “PAGA  
17 Representative Members” means: “All individuals employed by Defendants at any time during the  
18 period beginning on June 1, 2015 and March 23, 2021 (“the Class Period”), and who have been  
19 employed as non-exempt, hourly technicians, or assistant technicians based out of Defendants’  
20 facilities within the State of California.”

21 3. “Class Counsel” or “Collective Counsel” or “PAGA Counsel” means David  
22 Yeremian & Associates, Inc., and United Employees Law Group, PC.

23 4. “Class Counsel Award” or “Class Counsel Fees and Costs” means attorneys’ fees for  
24 Class Counsel’s litigation and resolution of this Action, and Class Counsel’s expenses and costs  
25 incurred in connection with this Action. Class Counsel will request that the Court approve an award  
26 of attorneys’ fees in an amount not to exceed thirty-three point three (33.3%) percent of the Gross  
27 Fund Value (i.e. \$316,350.00), as well as actual reasonable litigation costs in an amount not to  
28 exceed Fifteen Thousand Dollars (\$15,000.00) to be confirmed by Plaintiff’s Counsel in connection

1 with final approval. Defendants will not oppose these requests. Class Counsel’s attorneys’ fees and  
2 costs will be paid out of the Gross Fund Value. To the extent that the Court approves less than the  
3 amount of attorneys’ fees or costs that Class Counsel requests, the difference between the requested  
4 and awarded amounts will be added to the Net Fund Value for distribution to the Settlement Class.

5 5. “Class Information” means information regarding Class Members, FLSA Collective  
6 Members, and PAGA Representative Members that Defendants will in good faith compile from its  
7 records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel  
8 spreadsheet, or Microsoft Word Document, and shall include: each Class, FLSA Collective, and  
9 PAGA Representative Member’s full name; last four (4) digits of social security number; last known  
10 address; and number of Compensable Workweeks. Defendants will diligently and in good faith  
11 compile the Class Information list from its records and provide it to the Settlement Administrator  
12 within ten (10) calendar days of the Preliminary Approval Date. The Settlement Administrator will  
13 then mail the Class Notices to the Class Members, FLSA Collective Members, and PAGA  
14 Representative Members by no later than twenty-one (21) days following the Preliminary Approval  
15 Date.

16 6. “Class Member” or “FLSA Collective Member” or “PAGA Representative Member”  
17 means each person who is a member of the Class defined above and who is eligible to participate in  
18 this Settlement.

19 7. “Class Period” or “FLSA Collective Period” means the period of **June 1, 2015**  
20 through **March 23, 2021**.

21 8. “Class Representative Enhancement and Service Award” means the amount that  
22 Class Counsel will request that this Court approves as an enhancement award for distribution to  
23 Plaintiff as the named Class Representative for the Settlement Class. Defendants will not oppose  
24 this request. The amount of the enhancement award will not exceed Fifteen Thousand Dollars  
25 (\$15,000.00) and will be requested in recognition of Plaintiff’s efforts and risks in assisting with the  
26 prosecution of the Action and in return for executing a General Release of the Released Claims by  
27 Plaintiff.

28

1           9.       “Class Claims Allocation” means the portion of the Net Fund Value allocated to pay  
2 the Settlement Class Members their individual settlement payments in accordance with their fixed  
3 proportional amount of the Net Fund Value per workweek.

4           10.      “FLSA Collective Claims Allocation” means the portion of the Net Fund Value  
5 allocated to pay the Settlement FLSA Collective Members their individual payments in accordance  
6 with their fixed proportional amount of the Net Fund Value per workweek.

7           11.      “PAGA Claims Allocation” means the portion of the Net Fund Value allocated to  
8 pay the Settlement PAGA Representative Members their individual payments in accordance with  
9 their fixed proportional amount of the Net Fund Value per workweek.

10          12.      “Compensable Workweeks” means a reasonable estimate of weeks worked by Class  
11 Members, Collective Members, and PAGA Representative Members during the Class Period based  
12 on Defendants’ records and used as a value to calculate Individual Settlement Payments.  
13 Workweeks shall include only those weeks an employee was actively employed as a non-exempt  
14 employee of Defendants.

15          13.      “SAC” means the Second Amended Complaint on file in this Action.

16          14.      “Court” means the Superior Court for the County of Kern, State of California.

17          15.      “Defendants” means Applus RTD USA, Inc. and Applus RTD USA Services, Inc.

18          16.      “Effective Date” means the date of the final approval order, if no objections are filed  
19 to the settlement. If objections are filed and overruled, and no appeal is taken of the final approval  
20 order, then the effective date of final approval will be sixty-five (65) days after the trial court enters  
21 final approval. If an appeal is taken from the Court’s overruling of objections to the settlement, then  
22 the effective date of final approval will be twenty (20) days after the appeal is withdrawn or after an  
23 appellate decision affirming the final approval decision becomes final. No money will be distributed  
24 unless and until the effective date of final approval occurs.

25          17.      “Final Judgment” means the Court’s Final Judgment to be entered concurrently with  
26 the Court’s Order granting final approval to the Settlement.

27          18.      “Gross Fund Value” means the non-reversionary payment of Nine Hundred and Fifty  
28 Thousand Dollars (\$950,000.00) that Defendants will provide to the Settlement Administrator to

1 fund the settlement of this Action, and includes the Class Counsel Award, Settlement Administration  
2 Costs, payment to the Labor and Workforce Development Agency (“LWDA”) for the alleged PAGA  
3 penalties, and the Class Representative Enhancement and Service Award, along with the remaining  
4 funds to pay all individual settlement payments to the Settlement Class Members, FLSA Collective  
5 Members, and PAGA Representative Members. In addition to the Gross Fund Value, Defendants  
6 shall also be responsible for the employer’s share of payroll taxes with respect to the portion of  
7 settlement benefits allocated to wages. Defendants shall not be responsible for any employee-side  
8 payroll taxes, which will be taken out of the Gross Fund Value.

9       19.     “Individual Settlement Payment” means the amount payable from the Net Fund  
10 Value corresponding with the amount paid from the Class Claims Allocation, FLSA Collective  
11 Claims Allocation, and PAGA Claims Allocation to each Settlement Class Members, FLSA  
12 Collective Members, and PAGA Representative Members, less employee portions of state and  
13 federal withholding taxes, including FICA, FUTA and SDI contributions and any other applicable  
14 payroll deductions required by law as a result of the payment of the amount allocated to such Class  
15 Members, FLSA Collective Members, and PAGA Representative Members under the terms of this  
16 Settlement.

17       20.     “LWDA” means the California Labor and Workforce Development Agency.

18       21.     “Net Fund Value” means the Gross Fund Value, less Court-approved Settlement  
19 Administration Costs, Attorneys’ Fees and Costs, the Class Representative Enhancement Award,  
20 and the seventy-five percent (75%) portion of the PAGA Penalties payable to the LWDA. The Net  
21 Fund Value is composed of the Class Claims Allocation, the FLSA Collective Claims Allocation,  
22 and the PAGA Claims Allocation, as defined above. Each Class Member who fails to opt out will  
23 be entitled, provisionally, to a share or shares of the Class Claims Allocation, which shall be a fixed  
24 proportional amount of the Net Fund Value per workweek. Each Collective Member who opts-in  
25 will be entitled, provisionally, to a share or shares of the Collective Claims Allocation, which shall  
26 be a fixed proportional amount of the Net Fund Value per workweek. Each PAGA Representative  
27 Member will be entitled, provisionally, to a share of the PAGA Claims Allocation by virtue of being  
28

1 considered an aggrieved employee, which shall be a fixed proportional amount of the Net Fund  
2 Value per workweek. There is no mechanism to opt-out from the PAGA portion of the Settlement.

3 22. “Notice of Class, FLSA Collective, and PAGA Representative Settlement” or “Class  
4 Notice” means the notice, substantially in the form attached as **Exhibit 1**, approved by the parties  
5 and subject to Court approval that the Settlement Administrator will mail to each Class Member,  
6 FLSA Collective Member, and PAGA Representative Member explaining the terms of this  
7 Settlement Agreement and the settlement process.

8 23. “Parties” means Plaintiffs and Defendants (each defined below), collectively, and  
9 “Party” shall mean either Plaintiff or Defendants, individually.

10 24. “Payment Ratio” means the respective Compensable Workweeks for each Settlement  
11 Class Member, FLSA Collective Member, and PAGA Representative Member divided by the total  
12 Compensable Workweeks for all Settlement Class Members, FLSA Collective Members, and  
13 PAGA Representative Members.

14 25. “Plaintiff” means Chet Yates.

15 26. “Preliminary Approval Date” means the date, if any, upon which the Court issues  
16 an Order granting preliminary approval of the Settlement set forth in this Settlement Agreement.

17 27. “Request for Exclusion” refers to a timely letter submitted by a Class Member setting  
18 forth the individual’s name, present address, telephone number, and a clear statement by the Class  
19 Member electing to be excluded from the Settlement. The letter must be signed and submitted by  
20 the Class Member to the Settlement Administrator at the specified address indicated in the Class  
21 Notice. A Request for Exclusion must be postmarked on or before the exclusion deadline. The date  
22 of the postmark shall be the exclusive means to determine whether a Request for Exclusion has been  
23 timely submitted. A Class Member who does not request exclusion from the Settlement shall be  
24 deemed a Settlement Class Member and will be bound by all terms of the Settlement, when the  
25 Settlement is granted final approval by the Court.

26 28. “Released Claims by Plaintiff” or “the Plaintiff’s Released Claims” means the  
27 following: Plaintiff Chet Yates does hereby – for himself and for his heirs, representatives, attorneys,  
28 executors, administrators, successors, and assigns – release, acquit, and forever discharge

1 Defendants and Released Parties from any and all actions, cause of actions, obligations, costs,  
2 expenses, damages, losses, claims, liability, suits, debts, demands, and benefits (including attorneys’  
3 fees and costs), of whatever character, in law or in equity, known or unknown, suspected or  
4 unsuspected, matured or unmatured, of any kind or nature whatsoever, now existing or arising in  
5 the future, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of  
6 time to the date of execution hereof, including, but not limited to, any claims or causes of action  
7 arising out of or in any way relating to Plaintiff’s employment with Defendants, and claims which  
8 have been or could have been made in the SAC. Plaintiff and Defendants agree that this release of  
9 claims includes, but is not limited to, claims for breach of any implied or express contract or  
10 covenant; claims for promissory estoppel; claims of entitlement to any pay, including commissions;  
11 claims of wrongful denial of insurance and employee benefits; claims for wrongful termination,  
12 retaliatory discharge, or public policy violations of whatever kind or nature, defamation, invasion  
13 of privacy, fraud, misrepresentation, emotional distress, or other common law or tort matters; claims  
14 for any penalties; claims of harassment, retaliation, or discrimination based on race, color, religion,  
15 sex, sexual orientation, national origin, ancestry, physical or mental disability, medical condition,  
16 marital status, age, or any other protected status under federal, state, or local law; claims under the  
17 California Labor, Government, Business and Professions, and Health and Safety Codes; claims  
18 based upon the California Constitution; FLSA claims, claims based on any federal, state or other  
19 governmental statute, regulation or ordinance, including, without limitation, the California  
20 Confidentiality of Medical Information Act, the California Fair Employment and Housing Act, the  
21 California Unfair Competition Law, disputed claims under the California Wage Orders, the  
22 California Family Rights Act, the Age Discrimination in Employment Act (“ADEA”), the Older  
23 Workers Benefits Protection Act (“OWBPA”), Title VII of the Civil Rights Act, the Americans with  
24 Disabilities Act, the Labor Management Relations Act, and the Family Medical Leave Act, all as  
25 amended. Excluded from this release are any claims for breach of this Settlement Agreement and  
26 any claims that cannot be waived by law, including, but not limited to, the right to file a charge with,  
27 or participate in an investigation conducted by, the Equal Employment Opportunity Commission  
28 (“EEOC”) and/or the Department of Fair Employment and Housing (“DFEH”). Plaintiff waives,

1 however, his right to any monetary recovery or other relief should any agency pursue claims on  
2 Plaintiff's behalf that arose on or before the date of this Settlement Agreement. This release  
3 expressly excludes any workers' compensation claim that Plaintiff may have.

4 a. As to the Plaintiff's Released Claims only, Plaintiff expressly waives all  
5 rights and benefits under the terms of section 1542 of the California Civil Code. Section 1542 reads  
6 as follows: "A general release does not extend to claims that the creditor or releasing party does not  
7 know or suspect to exist in his or her favor at the time of executing the release and that, if known  
8 by him or her, would have materially affected his or her settlement with the debtor or released party."

9 b. Notwithstanding the provisions of section 1542, and for the purpose of  
10 implementing a full and complete release and discharge of all of his Released Claims, Plaintiff  
11 expressly acknowledges that this Settlement is intended to include in its effect, without limitation,  
12 all Released Claims which Plaintiff does not know or suspect to exist in his favor at the time of  
13 execution hereof, and that the Settlement contemplates the extinguishment of all such Released  
14 Claims.

15 29. "Released Claims by Settlement Class Members, and PAGA Representative  
16 Members" means as follows: Aside from those who submit a valid and timely request for exclusion  
17 from the settlement, the Plaintiff and each member of the Settlement Class, , and PAGA  
18 Representative Action release Defendants and any parent, subsidiary, affiliate, predecessor or  
19 successor, and all agents, employees, officers, directors and attorneys thereof (collectively the  
20 "Released Parties"), from any and all claims, debts, liabilities, demands, obligations, guarantees,  
21 costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued for,  
22 arising out of the factual allegations and claims asserted in the FAC, or any claims through the Class  
23 Period which could have been asserted based on the facts alleged in the SAC, including, without  
24 limitation, to any and all claims under federal and state law for alleged unpaid wages (including but  
25 not limited to overtime, final pay upon termination, and minimum wage), alleged unpaid meal and  
26 rest break premiums, itemized wage statement penalties, waiting time penalties under the California  
27 Labor Code or Business & Professions Code (including Section 17200 *et seq.*), reimbursement of  
28 business expenses, and claims for restitution and other equitable relief, liquidated damages, punitive



1 damages, or penalties; derivative claims for penalties pursuant to Labor Code sections 2698 and  
2 2699, *et seq.* (the PAGA); any claims under California Labor Code sections 201, 202, 203, 204,  
3 210, 218, 218.5, 218.6, 221, 224, 225, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2,  
4 1197, 1197.1, 1198, 2802, as well as the applicable California Industrial Welfare Commission Wage  
5 Orders, Business and Professions Code sections 17200-17208 *et seq.*, and the Fair Labor Standards  
6 Act, 29 U.S.C. sections 206 and 207, and any other benefit claimed on account of the allegations  
7 asserted or that could have been asserted in the complaints filed in the Action. This Settlement  
8 Agreement is expressly conditioned upon the release by all Settlement Class Members, FLSA  
9 Collective Members, and PAGA Representative Members of any claim under Labor Code section  
10 2698, *et seq.* as to the released claims set forth above, and upon covenants by all Settlement Class  
11 Members, FLSA Collective Members, and PAGA Representative Members that they will not  
12 participate in any proceeding seeking damages or penalties as to all the Released Claims set forth  
13 above. The Parties stipulate that beyond the Gross Fund Value, Defendant shall not owe any further  
14 monies to the Settlement Class or to the State of California based upon any claim made in the  
15 Lawsuit or in any original or amended complaint filed therein. This release shall apply to all claims  
16 arising at any point up to preliminary approval of the settlement by the court.

17       30.     “Released Claims by FLSA Collective Members” means as follows: For each  
18 FLSA Collective Member who timely returns the FLSA Collective Consent Form to join/opt-in to  
19 the FLSA Collective, that FLSA Collective Member knowingly and voluntarily, irrevocably and  
20 unconditionally, forever and fully shall have released Applus RTD USA, Inc., Applus RTD USA  
21 Services, Inc., and their parents, subsidiaries, affiliates, predecessors or successors, and all agents,  
22 employees, officers, directors and attorneys thereof from any and all claims and causes of action  
23 from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,  
24 attorneys' fees, damages, action or causes of action contingent or accrued for, arising out of the  
25 factual allegations and claims asserted in the Second Amended Complaint (SAC), or any claims  
26 through the Class and FLSA Collective Period which could have been asserted based on the facts  
27 alleged in the SAC, including without limitation to, any and all claims under federal and state law  
28 for alleged unpaid wages (including but not limited to overtime, final pay upon termination, and

1 minimum wage), alleged unpaid meal and rest break premiums, itemized wage statement  
2 penalties, waiting time penalties under the California Labor Code or Business & Professions Code  
3 (including Section 17200 *et seq.*), reimbursement of business expenses, and claims for restitution  
4 and other equitable relief, liquidated damages, punitive damages, or penalties; derivative claims  
5 for penalties pursuant to Labor Code sections 2698 and 2699, *et seq.* (the PAGA); any claims  
6 under California Labor Code sections 201, 202, 203, 204, 210, 218, 218.5, 218.6, 221, 224, 225,  
7 226, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 2802, as well as  
8 the applicable California Industrial Welfare Commission Wage Orders, Business and Professions  
9 Code sections 17200-17208 *et seq.*, and the Fair Labor Standards Act, 29 U.S.C. sections 206 and  
10 207, while the FLSA Collective Member was employed by Applus as a technician and/or assistant  
11 technician up to March 23, 2021.

12 31. “Released Parties” collectively mean: Defendants and any parent, subsidiary,  
13 affiliate, predecessor or successor, and all agents, employees, officers, directors and attorneys  
14 thereof.

15 32. “Response Deadline” means the date forty-five (45) days after the Settlement  
16 Administrator mails the Notice of Class, FLSA Collective, and PAGA Representative Settlement to  
17 Class Members, FLSA Collective Members, and PAGA Representative Members and the last date  
18 on which Class and FLSA Collective Members may: (a) submit a Request for Exclusion from the  
19 Settlement Class; (b) mail the consent to join/opt-in to Fair Labor Standards Act claim; (c) submit  
20 an objection to the Settlement; or (d) dispute the information contained in the Class Notice.

21 33. “Settlement” means the disposition of the Action pursuant to this Agreement.

22 34. “Settlement Administration Costs” means the amount to be paid to the Settlement  
23 Administrator from the Gross Settlement Fund for administration of this Settlement. The Settlement  
24 Administrator, ILYM Group, Inc., has provided a not to exceed administration quotation of Fourteen  
25 Thousand Dollars (\$14,000.00), and the Settlement Administration Costs will therefore be Fourteen  
26 Thousand Dollars (\$14,000.00).



1           40.     The parties have conducted significant investigation of the facts and law during the  
2 prosecution of this Action. Such discovery and investigation includes, but is not limited to, the  
3 exchange of relevant documents, the production and analysis of detailed time and payroll records  
4 for Plaintiff, Class Members, FLSA Collective Members, and PAGA Representative Members, and  
5 the deposition of Plaintiff. Class counsel has spoken with many Class Members, FLSA Collective  
6 Members, and PAGA Representative Members, and obtained declarations from them following a  
7 *Belaire-West* notice mailing, and this settlement comes as Plaintiff had advanced this action to the  
8 cusp of contested motion for class certification proceedings. Furthermore, counsel for the parties  
9 have investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiff  
10 and the potential defenses thereto.

11           41.     The parties participated in a private mediation session with a respected class action  
12 mediator, Lisa Klerman, Esq., on **December 21, 2020**. The parties and mediator worked to arrive  
13 at the general terms for resolving this action, subject to Court approval, and executed a  
14 Memorandum of Understanding (“MOU”) on or about **December 24, 2020**. In accordance with  
15 their MOU, the parties stipulated to dismissal of the FLSA claims, except as to those California  
16 Collective Members, and filed a stipulation to narrow the scope of the FLSA claim from nationwide  
17 to only California on March 24, 2022. Plaintiff’s third cause of action for Failure to Pay Wages  
18 Under the FLSA, 29 USC §§ 206, 207 will therefore remain only as to the California Settlement  
19 Class, and will be released when FLSA collective members mail the consent to join/opt-in to the  
20 Fair Labor Standards Act claim.

21           42.     Benefits of Settlement to Class, FLSA Collective, and PAGA Representative  
22 Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings  
23 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also  
24 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties  
25 and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of  
26 proof necessary to establish liability for the claims asserted in the Action, both generally and in  
27 response to Defendants’ defenses thereto, and the difficulties in establishing damages for the  
28 Settlement Class Members, FLSA Collective Members, and PAGA Representative Members.

1 Plaintiff and Class Counsel have also taken into account Defendants' agreement to enter into a  
2 settlement that confers substantial relief upon the members of the Settlement Class. Based on the  
3 foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this  
4 Settlement Agreement is a fair, adequate, and a reasonable settlement, and is in the best interests of  
5 the Settlement Class Members, FLSA Collective Members, and PAGA Representative Members.

6 43. Defendants' Reasons for Settlement. Defendants have concluded that any further  
7 defense of this litigation would be protracted and expensive for all parties. Substantial amounts of  
8 Defendants' time, energy, and resources have been and, unless this Settlement is completed, will  
9 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants have also taken  
10 into account the risks of further litigation in reaching its decision to enter into this Settlement. Even  
11 though Defendants continue to contend they are not liable for any of the claims alleged by Plaintiff  
12 in this Action, Defendants have agreed, nonetheless, to settle in the manner and upon the terms set  
13 forth in this Agreement to put to rest the claims in this Action. As to the Released Claims,  
14 Defendants deny and continue to deny each of those claims. Defendants have repeatedly asserted  
15 and continue to assert defenses thereto, and have expressly denied and continue to deny any  
16 wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

#### 17 STIPULATION AND AGREEMENT

18 44. NOW THEREFORE, in consideration of the mutual covenants, promises, and  
19 agreements set forth herein, the parties agree, subject to the Court's approval, as follows:

20 45. It is agreed by and among Plaintiff and Defendants that this Settlement shall bind the  
21 Class Members, FLSA Collective Members, PAGA Representative Members, and Defendants,  
22 subject to the terms and conditions hereof. Subject to the Court's approval, Plaintiff and Settlement  
23 Class Members, FLSA Collective Members, and PAGA Representative Members release  
24 Defendants from the Released Claims by Settlement Class Members, FLSA Collective Members,  
25 and PAGA Representative Members for the Class Period, as of the Effective Date.

26 46. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,  
27 the "acknowledging party" and each Party to this Agreement other than the acknowledging party,  
28 an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written

1 communication or disclosure between or among the Parties or their attorneys and other advisers, is  
2 or was intended to be, nor shall any such communication or disclosure constitute or be construed or  
3 be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230  
4 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her,  
5 or its own, independent legal and tax counsel for advice (including tax advice) in connection with  
6 this Agreement, (b) has not entered into this Agreement based upon the recommendation of any  
7 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any  
8 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty  
9 that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party  
10 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax  
11 strategies (regardless of whether such limitation is legally binding) upon disclosure by the  
12 acknowledging party of the tax treatment or tax structure of any transaction, including any  
13 transaction contemplated by this Agreement.

14       47.    Class Certification. The parties stipulate to class certification for purposes of  
15 settlement only. Defendants contend that the facts do not justify class certification under the  
16 governing legal standards. The trial court has not ruled on class certification in the underlying  
17 litigation. Consequently, a "Settlement Class" has been established for purposes of administration  
18 and resolution of this matter only. It is not, and it should not be construed as, any admission of fact  
19 or law in this matter or any other matter that class certification is appropriate. If the Court does not  
20 grant either preliminary or final approval of this settlement, then the parties revert to their previous  
21 positions and Defendants will not stipulate to class certification.

22       48.    Preliminary Approval of Settlement. Plaintiff will move the Court to grant  
23 preliminary approval of this class action Settlement for settlement purposes only, certifying the  
24 Settlement Class for settlement purposes only, and setting a date for a final approval hearing. Both  
25 parties agree to work diligently and cooperatively to have this matter presented to the Court for  
26 preliminary approval as efficiently as possible.

1           49.    Release of Claims by Plaintiff. Pursuant to this Agreement, Plaintiff releases the  
2 “Released Claims by Plaintiff” as of the Effective Date. Plaintiff further understands and agrees  
3 that he:

4           a.       Has had a reasonable amount of time within which to consider the settlement  
5 terms memorialized in this Settlement Agreement before agreeing to them;

6           b.       Has carefully read and fully understand all of the provisions of this Settlement  
7 Agreement;

8           c.       Has been advised in writing to speak with an attorney of his choosing, and is  
9 receiving benefits under this Agreement to which he is not otherwise entitled by law;

10          d.       Has been given twenty-one (21) calendar days to consider this Settlement  
11 Agreement. If Plaintiff signs this Agreement before the expiration of the twenty-one (21) -day  
12 period, he is expressly waiving his or her right to consider the Settlement Agreement for any  
13 remaining portion of that twenty-one (21) -day period. The Parties agree that any changes made to  
14 this Settlement Agreement from the version originally presented to Plaintiff, whether those changes  
15 are deemed material or non-material, do not extend the twenty-one (21) -day period Plaintiff has  
16 been given to consider this Agreement;

17          e.       Has at least seven (7) calendar days from the date of execution to revoke this  
18 Agreement. Any revocation must be in writing and received by Joshua M. Henderson of Norton  
19 Rose Fulbright US LLP by 5:00 p.m. Pacific Time on the seventh (7<sup>th</sup>) day after Plaintiff signs this  
20 Settlement Agreement to be effective. Delivery can be made via email at  
21 josh.m.henderson@nortonrosefulbright.com. If Plaintiff revokes this Settlement Agreement, all of  
22 the promises made by Plaintiff and Defendants through or related to this Settlement Agreement will  
23 not be effective, and Plaintiff will not be entitled to any of the settlement funds discussed herein;

24          f.       Plaintiff is, through this Agreement, releasing any and all claims he may have  
25 against Defendants or any Released Party, including but not limited to any claims he may have under  
26 the Age Discrimination in Employment Act or the Older Workers Benefit Protection Act; and

27          g.       Knowingly and voluntarily agrees to all of the terms set forth in this  
28 Settlement Agreement.

1           50.    Release of Claims by Settlement Class Members and PAGA Representative  
2 Members. Pursuant to this Agreement, Settlement Class Members, and PAGA Representative  
3 Members release the “Released Claims by Settlement Class Members and PAGA Representative  
4 Members” as of the Effective Date. FLSA Collective Members who sign and timely return the  
5 FLSA Collective Consent Form to join/opt-in to the FLSA Collective Action will release their  
6 claims pursuant to the FLSA Collective Consent Form.

7           51.    Settlement Administration. Defendants will diligently and in good faith compile the  
8 Class Information list from its records and provide it to the Settlement Administrator within ten (10)  
9 calendar days of the Preliminary Approval Date.

10          52.    Class, Collective, and PAGA Representative Notice and FLSA Collective Consent  
11 Form by First Class U.S. Mail. Upon receipt of the Class Information, the Settlement Administrator  
12 will perform a search based on the National Change of Address Database to update and correct any  
13 known or identifiable address changes. Within twenty-one (21) days of the latter of preliminary  
14 approval of this settlement or court approval of settlement notice to the class, the Settlement  
15 Administrator will send Class Members, FLSA Collective Members, and PAGA Representative  
16 Members, by first-class mail, at their last known address, the court-approved notice of this  
17 settlement. The Notice will inform Class members of their opportunity to opt out of the Settlement  
18 Class or object to it, and the Class Notice will provide the Class Members with his or her anticipated  
19 share of the Class Claims Allocation. The Notice will further inform Collective Members of their  
20 opportunity to opt into the Collective Class, and the Class Notice will provide the Collective  
21 Members with his or her anticipated share of the Collective Claims Allocation. Each PAGA  
22 Representative Member will be entitled, provisionally, to a share of the PAGA Claims Allocation  
23 by virtue of being considered an aggrieved employee. There is no mechanism to opt-out from the  
24 PAGA portion of the Settlement. The address identified by the Settlement Administrator as the  
25 current mailing address shall be presumed to be the best mailing address for each Class Member,  
26 FLSA Collective Member, and PAGA Representative Member.

27           a.    Undeliverable Notices. Any Class Notice returned to the Settlement  
28 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the



1 forwarding address affixed thereto within ten (10) calendar days of determining that a Notice was  
2 undeliverable. If no forwarding address is provided, the Settlement Administrator shall promptly  
3 attempt to determine a correct address by use of skip-tracing, or other search using the name, address  
4 and/or last four (4) digits of the Social Security number of the Class Member, FLSA Collective  
5 Member, and PAGA Representative Member involved, and shall then perform a re-mailing, if  
6 another mailing address is identified by the Settlement Administrator. In the event they require it,  
7 Class or Collective Members who receive a re-mailed Class Notice shall have their Response  
8 Deadline extended ten (10) calendar days from the original Response Deadline.

9           b.       Disputes Regarding Individual Settlement Payments. Class Members, FLSA  
10 Collective Members, and PAGA Representative Members will have the opportunity, should they  
11 disagree with Defendants' records regarding the dates of employment or other information on their  
12 Summary of Workweeks and Estimated Payment included in the Class Notice, to provide  
13 documentation and/or an explanation to show contrary information by the Response Deadline. If  
14 there is a dispute, the Settlement Administrator will consult with the parties to determine whether  
15 an adjustment is warranted. The Settlement Administrator shall then determine the eligibility for,  
16 and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The  
17 Settlement Administrator's determination of the eligibility for and amount of any Individual  
18 Settlement Payment shall be binding upon the Class Members, Collective Members, and PAGA  
19 Representative Members and the parties. In the absence of circumstances indicating fraud,  
20 manipulation, or destruction, Defendants' records will be given a rebuttable presumption of  
21 accuracy.

22           c.       Disputes Regarding Administration of Settlement. Any disputes not resolved  
23 by the Settlement Administrator concerning the administration of the Settlement will be resolved by  
24 the Court, under the laws of the State of California. Prior to any such involvement of the Court,  
25 counsel for the parties will confer in good faith to resolve the disputes without the necessity of  
26 involving the Court.

27           d.       Exclusions. The Notice of Class Settlement shall state that Class Members  
28 who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a

1 Request for Exclusion by the Response Deadline. The Request for Exclusion: (1) must contain the  
2 name, address, and telephone number of the person requesting exclusion, as well as a clear statement  
3 by the Class Member electing to be excluded; (2) must be signed by the Class Member; and (3) must  
4 be postmarked by the Response Deadline. The date of the postmark on the return mailing envelope  
5 on the Request for Exclusion shall be the exclusive means used to determine whether it has been  
6 timely submitted. The Request for Exclusion will be deemed invalid if it does not contain the Class  
7 Member's name, address, and telephone number, as well as a clear statement by the Class Member  
8 electing to be excluded, and the Class Member's signature. Any Class Member who requests to be  
9 excluded from the Settlement Class will not be entitled to any recovery under the Settlement and  
10 will not be bound by the terms of the Settlement or have any right to object, appeal or comment  
11 thereon. Class Members who receive a Notice of Class Settlement but fail to submit a valid and  
12 timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the  
13 Settlement and any Final Judgment entered in this Action. The Settlement Administrator shall  
14 provide the parties with regular updates regarding the status of any requests for exclusion.

15 e. Objections. The Notice of Class Settlement shall state that Class Members  
16 who wish to object to the Settlement must mail to the Settlement Administrator a written statement  
17 of objection ("Notice of Objection") by the Response Deadline. The date of the postmark on the  
18 return mailing envelope on the Notice of Objection shall be the exclusive means used to determine  
19 whether the Objection has been timely submitted. The Settlement Administrator will notify all  
20 parties of any objection within five (5) business days of receipt of the Objection. Plaintiff will file  
21 any such Objection(s) with the Court in advance of the Final Approval Hearing. The Notice of  
22 Objection must be signed by the Class Member and state: (1) the full name of the Class Member;  
23 (2) the dates of employment of the Class Member; (3) the basis for the objection; (4) if the Class  
24 Member intends to appear at the final approval hearing; and (5) any legal briefs, papers, or  
25 memoranda the objecting Class Member proposes to submit to the Court. Class Members who fail  
26 to make objections in the manner specified above shall be deemed to have waived any objections  
27 and shall be foreclosed from making any objections (whether by appeal or otherwise) to the  
28 Settlement. Class Members who submit a timely Notice of Objection will have a right to appear at

1 the final approval hearing in order to have their objections heard by the Court. At no time shall any  
2 of the parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve  
3 written objections to the Settlement or appeal from the Order granting final approval and/or Final  
4 Judgment. Class Counsel shall not represent any Class Members with respect to any such  
5 Objections.

6 f. The parties have the right to monitor and review administration of the  
7 Settlement to verify that the monies allocated to the Settlement Class are distributed in a correct  
8 amount.

9 g. The parties agree to use their best efforts to carry out the terms of this  
10 Settlement. At no time shall any of the parties or their counsel seek to solicit or otherwise encourage  
11 Class Members to submit either written objections to the Settlement or requests for exclusion from  
12 the Settlement, or to appeal from the Court's Final Judgment.

13 53. Funding Gross Settlement Fund. This is a non-reversionary Settlement in which  
14 Defendants are required to pay the entire Gross Settlement Fund. No portion of the Gross Fund  
15 Value will revert to Defendants. Defendants are separately and solely responsible for any employer  
16 payroll taxes owed as a result of this Settlement Agreement. Within twenty-one (21) days of final  
17 approval by the Court, Defendants will deposit money, in an amount equal to the Gross Fund Value,  
18 to pay (1) the Settlement Class, FLSA Collective, and Representative Class per the terms of the final  
19 settlement agreement, and (2) court approved attorneys' fees and costs, administration costs, and  
20 the enhancement payment, and (3) PAGA penalties to be paid to the Labor Workforce Development  
21 Agency ("LWDA") into an interest-bearing account, through the Settlement Administrator. Any  
22 interest accrued will be distributed to the Settlement Class, FLSA Collective, and Representative  
23 Class, except that if final approval is reversed on appeal, then Defendants are entitled to prompt  
24 return of the principal and all interest accrued.

25 54. Allocation of Settlement. Individual Settlement Payments will be paid from the Net  
26 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual  
27 Settlement Payments shall be mailed by the Settlement Administrator by regular First Class U.S.  
28 Mail to Settlement Class Members, FLSA Collective Members, and PAGA Representative

1 Members' last known mailing address within thirty (30) days after the Effective Date of final  
2 approval of the settlement. Each Class Member who fails to opt out will be entitled, provisionally,  
3 to a share or shares of the Class Claims Allocation, which shall be a fixed proportional amount of  
4 the Net Fund Value per workweek. Each Collective Member who opts into the Collective will be  
5 entitled, provisionally, to a share or shares of the Collective Claims Allocation, which shall be a  
6 fixed proportional amount of the Net Fund Value per workweek. Each PAGA Representative  
7 Member will be entitled, provisionally, to a share of the PAGA Claims Allocation by virtue of being  
8 considered an aggrieved employee, which shall be a fixed proportional amount of the Net Fund  
9 Value per workweek. There is no mechanism to opt-out from the PAGA portion of the Settlement.

10 a. Defendants and the Settlement Administrator will calculate the total  
11 Compensable Workweeks for all Settlement Class Members, Collective Members, and PAGA  
12 Representative Members. The respective Compensable Workweeks for each Settlement Class  
13 Member, Collective Member, and PAGA Representative Member will be divided by the total  
14 Compensable Workweeks for all Settlement Class Member, FLSA Collective Member, and PAGA  
15 Representative Member, resulting in the Payment Ratio for each Settlement Class Member, FLSA  
16 Collective Member, and PAGA Representative Member. Each Settlement Class Member, FLSA  
17 Collective Member, and PAGA Representative Member's Payment Ratio is then multiplied by the  
18 Class Claims Allocation, Collective Claims Allocation, or PAGA Claims Allocation, respectively,  
19 to determine his or her Individual Settlement Payment. Workweeks shall include only those weeks  
20 an employee was actively employed as a non-exempt employee with Defendants during the Class  
21 Period. Defendants' payroll records shall control, but Class Members, Collective Members, and  
22 PAGA Representative Members will have the right to challenge their number of workweeks. The  
23 parties will work together in good faith with the Settlement Administrator to resolve any disputes  
24 regarding workweeks.

25 b. The parties agree that the tax allocation of the payments to Class Members,  
26 Collective Members, and PAGA Representative Members shall be designated as twenty-five percent  
27 (25%) wages, forty-five percent (45%) penalties, and thirty percent (30%) pre-judgment interest.  
28 The Settlement Administrator will issue W-2s for the taxable portion of the class claims, and will

1 issue Form 1099s for the penalties and interest portions, and for any enhancement award, in  
2 accordance with applicable tax laws.

3 c. Checks issued to Settlement Class Members, FLSA Collective Members, and  
4 PAGA Representative Members pursuant to this Agreement shall remain negotiable for One  
5 Hundred Twenty (120) days. Any settlement checks that are not claimed or not negotiated within  
6 120 calendar days after the distribution of Individual Settlement Payments to Settlement Class  
7 Members, FLSA Collective Members, or PAGA Representative Members shall be void and the  
8 funds not disbursed as a result, and will instead be paid to the State Controller's Office Unclaimed  
9 Property Fund to be held in the name of the Class Member, FLSA Collective Member, or PAGA  
10 Representative Member and in accordance with the procedures set forth in CCP §1520.

11 d. Certification By Settlement Administrator. Upon completion of  
12 administration of the distributions, the Settlement Administrator shall provide written certification  
13 of such completion to the Court and counsel for all parties.

14 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received  
15 by Settlement Class Members, FLSA Collective Members, and PAGA Representative Members  
16 shall be deemed to be income to such Settlement Class Members, FLSA Collective Members, and  
17 PAGA Representative Members solely in the year in which such awards actually are received by  
18 the Settlement Class Members, FLSA Collective Members, and PAGA Representative Members.  
19 It is expressly understood and agreed that the receipt of such Settlement Awards will not entitle any  
20 Settlement Class Member, FLSA Collective Member, or PAGA Representative Member to  
21 additional compensation or benefits under any company compensation or benefit plan or agreement  
22 in place during the period covered by the Settlement, nor will it entitle any Settlement Class  
23 Member, FLSA Collective Member, or PAGA Representative Member to any increased pension  
24 and/or retirement, or other deferred compensation benefits. It is the intent of this Settlement that  
25 any Settlement Awards provided for in this Agreement are the sole payments to be made by  
26 Defendants to the Settlement Class Members, FLSA Collective Members, and PAGA  
27 Representative Members in connection with this Settlement, and that the Settlement Class Members,  
28 FLSA Collective Members, and PAGA Representative Members are not entitled to any new or

1 additional compensation or benefits as a result of having received the Settlement Awards  
2 (notwithstanding any contrary language or agreement in any benefit or compensation plan document  
3 that might have been in effect during the period covered by this Settlement).

4 f. Class Representative Enhancement and Service Award. Class Counsel will  
5 request that the Court approve an enhancement award for distribution to Plaintiff as the named Class  
6 Representative for the Settlement Class. Defendants will not oppose this request. The amount of  
7 the enhancement award will not exceed Fifteen Thousand Dollars (\$15,000.00). At the time of  
8 execution of the settlement agreement, Plaintiff will sign a full release of all claims against  
9 Defendants, i.e. the Released Claims by Plaintiff. Defendants agree not to oppose or object to a  
10 Class Representative Enhancement and Service Award of up to \$15,000.00 to Plaintiff, subject to  
11 Court approval. The Class Representative Service Awards shall be paid to Plaintiffs no later than  
12 thirty (30) days following the Effective Date. The Settlement Administrator shall issue an IRS Form  
13 1099 – MISC to Plaintiff in connection with the Class Representative Service Award. Plaintiff shall  
14 be solely and legally responsible to pay any and all applicable taxes on his Class Representative  
15 Service Award and shall hold harmless Defendants and Class Counsel from any claim or liability  
16 for taxes, penalties, or interest arising as a result of the Class Representative Service Awards. Any  
17 amount requested by Plaintiff for the Class Representative Enhancement and Service Award not  
18 granted by the Court shall return to the Net Fund Value and be distributed as provided in this  
19 Agreement.

20 g. Class Counsel Award of Attorneys' Fees and Costs. Class Counsel will  
21 request that the Court approve an award of attorneys' fees in an amount not to exceed thirty-three  
22 point three percent (33.3%) percent of the Gross Fund Value (i.e. \$316,350.00), as well as actual  
23 reasonable litigation costs in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) to be  
24 confirmed by Plaintiff's Counsel in connection with final approval. Defendants will not oppose  
25 these requests. Class Counsel's attorneys' fees and costs will be paid out of the Gross Fund Value.  
26 To the extent that the Court approves less than the amount of attorneys' fees or costs that Class  
27 Counsel requests, the difference between the requested and awarded amounts will be added to the  
28 Net Fund Value for distribution to the Settlement Class. Court approved Attorneys' Fees and Costs

1 shall be paid by the Administrator to Class Counsel no later than thirty (30) days following the  
2 Effective Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on  
3 the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS  
4 Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This  
5 Settlement is not contingent upon the Court awarding Class Counsel any particular amount in  
6 attorneys’ fees and costs.

7           h.       Settlement Administration Costs. The Settlement Administrator shall be paid  
8 for the costs of administration of the Settlement from the Gross Fund Value no later than thirty (30)  
9 days following the Effective Date. The costs of administration for the disbursement of the Gross  
10 Fund Value shall not exceed \$14,000.00. The Settlement Administrator, on Defendants’ behalf,  
11 shall have the authority and obligation to make payments, credits and disbursements, including  
12 payments and credits in the manner set forth herein, to Settlement Class Members, FLSA Collective  
13 Members, and PAGA Representative Members calculated in accordance with the methodology set  
14 out in this Agreement and orders of the Court. The parties agree to cooperate in the Settlement  
15 Administration process and to make all reasonable efforts to control and minimize the cost and  
16 expenses incurred in administration of the Settlement.

17                   1.       The parties each represent they do not have any financial interest in  
18 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator  
19 that could create a conflict of interest.

20                   2.       The Settlement Administrator shall be responsible for: processing and  
21 mailing payments to Plaintiff, Class Counsel, the LWDA, and Settlement Class Members, FLSA  
22 Collective Members, and PAGA Representative Members; performing any translations required for  
23 the Class Notice, printing, and mailing the Class Notice and tax forms to Class Members, FLSA  
24 Collective Members, and PAGA Representative Members if directed by the Court; receiving and  
25 reporting the requests for exclusion and objections submitted by Class Members, and opt-ins  
26 submitted by Collective Members; providing declaration(s) as necessary in support of preliminary  
27 and/or final approval of this Settlement; and other tasks as the parties mutually agree or the Court  
28 orders the Settlement Administrator to perform. The Settlement Administrator shall keep the parties

1 timely apprised of the performance of all Settlement Administrator responsibilities. Class Members  
2 will have forty-five (45) days from the date of mailing in which to postmark objections or a notice  
3 of opting out. FLSA Collective Members will have forty-five (45) days from the date of mailing in  
4 which to postmark the Consent to Join/Opt-In to the Fair Labor Standards Act claim.

5 i. Payment to the LWDA. The parties allocate Twenty Thousand Dollars  
6 (\$20,000.00) to PAGA penalties the Labor Code Private Attorneys General Act of 2004, with  
7 seventy-five percent (75%) of this amount to be paid directly to the LWDA (\$15,000.00) and  
8 twenty-five percent (25%) of this amount (\$5,000.00) to be included in the Net Fund Value and paid  
9 to the PAGA Representative Class. This PAGA Payment is made pursuant to Labor Code Section  
10 2699(i), and shall also be paid within thirty (30) days of the Effective Date.

11 j. No person shall have any claim against Defendants, Defendants' Counsel,  
12 Plaintiff, Settlement Class Members, FLSA Collective Members, and PAGA Representative  
13 Members, Class Counsel, or the Settlement Administrator based on distributions and payments  
14 made in accordance with this Agreement.

15 55. Plaintiff and all Settlement Class Members, FLSA Collective Members, and PAGA  
16 Representative Members shall be enjoined from filing or prosecuting any other cases, claims, suits  
17 or administrative proceedings (including filing claims with the Division of Labor Standards  
18 Enforcement of the California Department of Industrial Relations) regarding claims released by the  
19 Settlement, unless and until such Class Members have served valid and timely Requests for  
20 Exclusion with the Settlement Administrator.

21 56. Motion for Preliminary Approval of Class, FLSA Collective, and PAGA  
22 Representative Settlement. Plaintiff shall prepare and file a Motion for Preliminary Approval of  
23 Proposed Class, FLSA Collective, and PAGA Representative Action Settlement. Defendants and  
24 their counsel will cooperate with Class Counsel as reasonably necessary in the preparation of the  
25 Motion for Preliminary Approval of Proposed Class, FLSA Collective, and PAGA Representative  
26 Action Settlement. Defendants shall have the right to review and comment on Plaintiff's proposed  
27 filings and shall be given a minimum of five (5) days to review any such materials prior to filing.  
28 Class Counsel shall consider in good faith defense counsel's comments, if any, before filing any



1 motion. Concurrent with the filing of the motion for preliminary approval of the Settlement, Class  
2 Counsel shall notify the LWDA of the terms of this Settlement. Plaintiff also agrees to update the  
3 LWDA with notice of the inclusive dates of this Settlement Agreement via an amended PAGA  
4 notice.

5 57. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration  
6 of the Response Deadline, with the Court’s permission, a final approval hearing shall be conducted  
7 to determine final approval of the Settlement along with the amount properly payable for: (i) the  
8 Class Counsel Award; (ii) the Class Representative Enhancement and Service Award; (iii) payment  
9 to the LWDA; and (iv) the Settlement Administration Costs.

10 58. Class Size Differential. Defendants represent that the class is approximately five  
11 hundred fourteen (514) members at the time of Settlement and the number of workweeks worked  
12 by these individuals during the Class period is approximately thirty-seven thousand nine hundred  
13 sixty one (37,961) (“the workweeks number”). In no event shall the number of workweeks worked  
14 by the Class Members by the earlier of March 23, 2021 or at the time of preliminary approval exceed  
15 one hundred fifteen percent (115%) of the workweeks number without recalculation of the Gross  
16 Fund Value. If the workweeks number is increased with the hiring of more Class Members, FLSA  
17 Collective Members, and PAGA Representative Members and/or the passage of time by more than  
18 fifteen percent (15%), the Parties agree that the Settlement’s Gross Fund Value will be increased in  
19 value proportionate to the increased workweeks over one hundred fifteen percent (115%) of the  
20 workweeks number.

21 59. Nullification of Settlement Agreement. In the event: (i) the Court does not enter the  
22 Order for preliminary approval of the Settlement; (ii) the Court does not finally approve the  
23 Settlement; (iii) the Court does not enter a Final Judgment as provided herein; or (iv) the Settlement  
24 does not become final for any other reason, this Settlement Agreement shall be null and void and  
25 any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void  
26 from the beginning. Defendants also retain the right, in the exercise of their sole discretion, to  
27 nullify the settlement within thirty (30) days after expiration of the opt out period if ten percent  
28 (10%) or more of Class Members opt out of this Settlement. All signatories and their counsel must

1 not encourage opt-outs. Counsel for the Class Members, FLSA Collective Members, and PAGA  
2 Representative Members and Defendants specifically agree not to solicit opt-outs, directly or  
3 indirectly, through any means.

4 60. Notices. Unless otherwise specifically provided herein, all notices, demands or other  
5 communications given hereunder shall be in writing and shall be deemed to have been duly given  
6 as of the fifth (5th) calendar day after mailing by First Class U.S. Mail, addressed as follows:

7 To Counsel for Plaintiff and the Settlement Class Members, FLSA Collective Members, and  
8 PAGA Representative Members:

9 DAVID YEREMIAN & ASSOCIATES, INC.  
10 David Yeremian  
11 Alvin B. Lindsay  
12 2540 Foothill Blvd., Suite 201  
13 La Crescenta, CA 91214

14 UNITED EMPLOYEES LAW GROUP, PC  
15 Walter Haines  
16 4276 Katella Ave., #301  
17 Los Alamitos, CA 90720

18 To Counsel for Defendants:  
19 NORTON ROSE FULBRIGHT US LLP  
20 Joshua M. Henderson  
21 555 California Street, Suite 3300  
22 San Francisco, California 94105

23 NORTON ROSE FULBRIGHT US LLP  
24 Phillip R. Di Tullio  
25 555 South Flower Street, Forty-First Floor  
26 Los Angeles, California 90071

27 61. Notice of Final Judgment. Notice of final judgment will be given to the Class  
28 Members, FLSA Collective Members, and PAGA Representative Members by posting notice to the  
case website maintained by the Settlement Administrator.

62. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class  
Members, Collective Members, and PAGA Representative Members pursuant to this Agreement  
shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for,  
or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.)

1 of Plaintiff or Settlement Class Members, Collective Members, and PAGA Representative  
2 Members.

3 63. No Admission by Defendants. Defendants deny any and all claims alleged in this  
4 Action and deny all wrongdoing whatsoever. This Agreement is not a concession or admission, and  
5 shall not be used against Defendants as an admission or indication with respect to any claim of any  
6 fault, concession, or omission by any Defendants.

7 64. Exhibits and Headings. The terms of this Agreement include the terms set forth in  
8 any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any  
9 Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any  
10 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not  
11 constitute a part of this Agreement.

12 65. Interim Stay of Proceedings. The parties agree to stay all proceedings in the Action,  
13 except such proceedings necessary to implement and complete the Settlement, in abeyance pending  
14 the Final Approval Hearing to be conducted by the Court.

15 66. Publicity. Neither Plaintiff nor Class Counsel shall cause to be publicized, directly  
16 or indirectly, any discussion or publicity relating to the existence of this Settlement Agreement or  
17 its terms in any type of mass media, including, but not limited to, speeches, press conferences, press  
18 releases, interviews, television or radio broadcasts, newspapers, website postings, messages or  
19 postings on the Internet, including, but not limited to, Facebook, Instagram, Twitter, LinkedIn, or  
20 any other social media. Breach of this provision shall entitle Defendants, in the exercise of their  
21 sole discretion, to nullify this Agreement and the Settlement Agreement at any time before the  
22 Effective Date. Should Plaintiff or Class Counsel at any time breach this provision, Plaintiff shall  
23 forfeit to Defendants the full amount of his enhancement award. Without limitation by the  
24 foregoing, Defendants also may enforce this provision through an action for injunctive relief.  
25 Plaintiff waives any obligation by Defendants to file a bond in connection with any such action.  
26 This provision does not apply to any publications ordered by the Court.

27 67. Limited Confidentiality. The negotiations, terms, and existence of this Agreement  
28 and the continued discussions regarding the final settlement documents will remain strictly

1 confidential and shall not be discussed with anyone other than the Parties, counsel of record, their  
2 retained consultants, the Settlement Administrator, mediator Lisa Klerman, and the Court, if  
3 necessary. Any confidentiality associated with the terms of this Settlement shall expire upon the  
4 filing of a motion for preliminary approval of the proposed Settlement, except: (i) the negotiations  
5 and discussions preceding submission of the settlement to the Court for approval, and any  
6 negotiations and discussions between the time of preliminary approval and final approval, shall  
7 remain strictly confidential (unless otherwise ordered by the Court, and even then the information  
8 shared with the Court shall retain its confidentiality); and (ii) Defendants may disclose the  
9 Settlement in any government filings or disclosures that it is required to make pursuant to any  
10 regulatory rules or requirements, and to its legal, tax, or accounting advisors, insurance companies,  
11 or as required by law. Upon distribution of all Settlement funds, the Parties shall either (a) return  
12 documents designated as confidential to counsel for the party who provided such information within  
13 thirty (30) days; or (b) destroy such documents upon consent of the party who provided the  
14 confidential documents. Plaintiff further agrees not to contact anyone or solicit himself, or cause  
15 himself to be contacted or solicited, with regard to information obtained by Plaintiff through the  
16 Lawsuit, confidential information obtained by Plaintiff during his employment, and any matter  
17 relating to the subject of the Lawsuit, for the purposes of assisting any person or entity in a claim,  
18 cause of action, suit, arbitration or mediation against Defendants, except as required by law.  
19 Plaintiff also agrees not to assist any person or any entity through the use of any information  
20 obtained by Plaintiff through the Lawsuit, confidential information obtained by Plaintiff during his  
21 employment with Defendants, and any matter relating to the subject of the Lawsuit, except as  
22 required by law.

23       68.     Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the  
24 interpretation, calculation or payment of Settlement claims, or other disputes regarding compliance  
25 with this Agreement shall be resolved as follows:

26             a.       If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class  
27 Members, Collective Members, and PAGA Representative Members, or Defendants' Counsel, on  
28

1 behalf of Defendants, at any time believe that the other Party has breached or acted contrary to the  
2 Agreement, that Party shall notify the other Party in writing of the alleged violation.

3           b.       Upon receiving notice of the alleged violation or dispute, the responding  
4 Party shall have ten (10) calendar days to correct the alleged violation and/or respond to the  
5 initiating Party with the reasons why the Party disputes all or part of the allegation.

6           c.       If the response does not address the alleged violation to the initiating Party's  
7 satisfaction, the parties shall negotiate in good faith for up to ten (10) calendar days to resolve their  
8 differences.

9           d.       If Class Counsel and Defendants' Counsel are unable to resolve their  
10 differences after twenty (20) calendar days, either Party shall first contact the mediator to try to  
11 resolve the dispute. If that proves unsuccessful, the party may file an appropriate motion for  
12 enforcement with the Court. The briefing of such motion should be in letter brief form and shall not  
13 exceed five (5) single-spaced pages (excluding exhibits).

14           e.       Reasonable attorneys' fees and costs for work done in resolving a dispute  
15 under this Section may be recovered by any Party that prevails under the standards set forth within  
16 the meaning of applicable law.

17       69.    Amendment or Modification. This Agreement may be amended or modified only by  
18 a written instrument signed by counsel for all parties or their successors-in-interest.

19       70.    Entire Agreement. This Agreement and any attached Exhibits constitute the entire  
20 Agreement among these parties, and no oral or written representations, warranties, or inducements  
21 have been made to any Party concerning this Agreement or its Exhibits other than those contained  
22 and memorialized in the Agreement and its Exhibits.

23       71.    Authorization to Enter Into Settlement Agreement. Counsel for all parties warrant  
24 and represent they are expressly authorized by the parties whom they represent to negotiate this  
25 Agreement and to take all appropriate actions required or permitted to be taken by such parties  
26 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to  
27 effectuate the terms of this Agreement. The parties and their counsel will cooperate with each other  
28 and use their best efforts to effect the implementation of the Settlement. In the event the parties are

1 unable to reach agreement on the form or content of any document needed to implement the  
2 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms  
3 of this Settlement, the parties may seek the assistance of the Court or the mediator to resolve such  
4 disagreement. The persons signing this Agreement on behalf of Defendants represent and warrant  
5 they are authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and  
6 warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part  
7 of a claim, covered by this Settlement to a third-party.

8       72.     Binding on Successors and Assigns. This Agreement shall be binding upon the  
9 Parties, and their heirs, representatives, executors, administrators, predecessors and successors,  
10 insurers, and assigns, and shall inure to the benefit of each and all of the Released Parties, and to  
11 their heirs, representatives, executors, administrators, successors, and assignees.

12       73.     California Law Governs. All terms of this Agreement and the Exhibits hereto shall  
13 be governed by and interpreted according to the laws of the State of California.

14       74.     Counterparts. This Agreement may be executed in one or more counterparts. All  
15 executed counterparts and each of them shall be deemed to be one and the same instrument.

16       75.     This Settlement is Fair, Adequate and Reasonable. The parties believe this  
17 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this  
18 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present  
19 and potential.

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

27 ///

28 ///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PLAINTIFF'S COUNSEL**  
DAVID YEREMIAN & ASSOCIATES, INC.

Date: \_\_\_\_\_

\_\_\_\_\_  
David Yeremian  
Alvin B. Lindsay

**PLAINTIFF'S COUNSEL**  
UNITED EMPLOYEES LAW GROUP

Date: \_\_\_\_\_

\_\_\_\_\_  
Walter Haines

**DEFENDANTS' COUNSEL**  
NORTON ROSE FULBRIGHT US LLP

Date: \_\_\_\_\_

\_\_\_\_\_  
Joshua M. Henderson  
Phillip R. Di Tullio