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11 Attorneys for Plaintiffs Joe Alfaro and Yoni I. Marin Romero,
12 on behalf of themselves, and all other similarly-situated employees

13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF ALAMEDA**

15 JOE ALFARO and YONI I. MARIN
16 ROMERO, on behalf of themselves and all
other similarly-situated employees,

17 Plaintiffs,

18 v.

19 BROADLY INC., a Delaware Corporation;
20 and DOES 1 through 100, Inclusive,

21 Defendants.

Case No. RG19022174

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Evelio Grillo, Department 21

CLASS AND REPRESENTATIVE ACTION

**STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

Exhibits:

- 1 - Notice of Class Action Settlement
- 2 - Change of Address Form
- 3 - Preliminary Approval Order
- 4 - Final Approval Order and Judgment

Complaint filed: June 7, 2019

Trial date: Not set

1 & Singer.

2 8. "Class Member(s)" means all current and former employees that worked for
3 Broadly, Inc., as a member of the sales team in California at any time during the period from
4 June 7, 2015, and through May 1, 2020, and excluding any persons who opt-out.

5 9. "Class Period" means June 7, 2015 through May 1, 2020, inclusive.

6 10. "Complaint" means the complaint filed in the Action, and subsequently
7 amended on May 27, 2020 by a First Amended Complaint ("FAC"). The FAC alleges the
8 following claims: (1) failure to pay minimum, regular and overtime wages (Labor Code §§
9 510, 1194, and IWC Order 4 §§ 3, 4; (2) failure to provide meal periods or compensation in
10 lieu thereof (Labor Code §§ 226.7, 512, and IWC Order 4, §11; (3) failure to authorize and
11 permit rest periods or pay compensation in lieu thereof (Labor Code §§ 226.7, and IWC Order
12 4, §12 (4) failure to reimburse necessary business expenses (Labor Code § 2802, and IWC
13 Order 4, §7; (5) failure to provide accurate wage statements (Labor Code § 226); (6) failure to
14 timely pay wages at termination of employment (Labor Code §§ 201 - 203); (7) Unfair
15 Business Practices (Business & Professions Code §§ 17200, et seq.); and (8) civil penalties
16 pursuant to Labor Code §§ 2698, *et seq.*, for the above-referenced Labor Code violations.

17 11. "Court" means the Superior Court of the State of California County of Alameda.

18 12. "Defendant" means Broadly, Inc.

19 13. "Defendant's Counsel" means Gordon Rees Scully Mansukhani, LLP.

20 14. "Employer Tax Obligations" means the employer's share of payroll taxes,
21 including, but not limited to, FICA, Medicare, ETT, FUTA, and SUTA, etc., with respect to
22 the portion of the Participating Class Member's allocated as wages. The Tax Obligations shall
23 be paid by Defendant in addition to the Gross Settlement Amount.

24 15. "Effective Date of Settlement" means the date when the Settlement becomes
25 Final.

26 16. "Final" is defined as when the last of the following dates occurs:

- 27 a) If there is an objection to the Settlement, the date the Court enters
28 judgment;

1 b) If an objection to the Settlement is made and Judgment entered, but no
2 appeal is filed, the date the judgment is affirmed and is no longer subject
3 to appeal;

4 c) If Judgment is entered and a timely appeal from the Judgment is filed,
5 the date the Judgment is affirmed and no longer subject to appeal

6 17. “Final Approval Order and Judgment” means an Order and Judgment issued by
7 the Court in substantially the form attached as **Exhibit 4** approving the Settlement and this
8 Agreement as binding upon the Parties and the Class Members.

9 18. “Gross Settlement Amount” (or “GSA”) means the maximum amount
10 Defendant shall pay under this Settlement. The GSA is \$875,000 and consists of the a)
11 Attorneys’ Fees and Costs Payment; b) the Class Representatives’ Service Payment; c) LWDA
12 Payment (75% of the PAGA Payment); d) PAGA Members’ Payment (25% of the PAGA
13 Payment); e) the Administration Expenses; and f) Class Members’ Settlement Payments. The
14 GSA is non-reversionary and no portion will revert to Defendant under any circumstances. The
15 Parties agree, covenant, and represent that Defendant shall be required to pay only the Gross
16 Settlement Amount and the Employer Tax Obligations.

17 19. “LWDA Payment” means the 75% portion of the PAGA Payment, i.e. \$18,750,
18 to be paid to the California Labor and Workforce Development Agency (“LWDA”), for all
19 applicable civil penalties under the California Labor Code’s Private Attorneys General Act of
20 2004, Labor Code §§ 2699 *et seq.*

21 20. “Net Settlement Amount” means the amount remaining after the Court-
22 approved deductions from the Gross Settlement Amount for the a) Attorneys’ Fees and Costs
23 Payment; b) the Class Representative Service Payments; c) the LWDA Payment; d) PAGA
24 Member Payment (25% of the PAGA Payment), and e) the Administration Expenses.

25 21. “Notice” (or “Class Notice”) means the Court-approved Notice of Class Action
26 Settlement informing Class Members of the terms of the proposed Settlement, of their rights to
27 object, to request exclusion from the Class, to dispute the information upon which their
28 Settlement Payments are calculated, as well as the date set for the Final Approval Hearing,

1 among other things, substantially in the form attached as **Exhibit 1**.

2 22. “Notice Packet” means collectively, the Court-approved Notice, Change of
3 Address form (in a form substantially similar to **Exhibit 2**), and a pre-printed return envelope
4 to be mailed to all Class Members.

5 23. “PAGA Member”, a subset of the Class, means all current and former
6 employees that worked for Broadly, Inc., as a member of the sales team in California at any
7 time during the PAGA Period.

8 24. “PAGA Member Payment” means the 25% of the PAGA Payment, i.e., \$6,250
9 to be distributed to PAGA Members based on the number of Pay Periods employed during the
10 PAGA Period.

11 25. “PAGA Period” means the period of time from May 3, 2018 through May 1,
12 2020.

13 26. “PAGA Payment” means the allocation of \$25,000 from the Gross Settlement
14 Amount of which 75% (\$18,750) will be paid to the California’s Labor and Workforce
15 Development Agency (“LWDA”), for all applicable civil penalties under the California Labor
16 Code’s Private Attorneys General Act of 2004, Labor Code §§ 2699 *et seq.*, and of which 25%
17 (\$6,250) will remain with the Gross Settlement Amount for distribution, on a proportionate
18 basis to all PAGA Members.

19 27. “Participating Class Member” means a Class Member who did not return a valid
20 and timely request for exclusion in the manner and by the Response Deadline as set forth in the
21 Notice and this Agreement.

22 28. “Parties” means Plaintiffs and Defendant.

23 29. “Party” means any of said Parties.

24 30. “Pay Period” means any period during the Class Period in which Class
25 Members were employed by Defendant. (Class Members were paid every 14 days).
26 Defendant represents there are an aggregate of 3,137 Pay Periods worked by the estimated 154
27 Class Members during the Class Period.

28 31. “Plaintiff”, “Plaintiffs”, or “Class Representatives” means Joe Alfaro and/or

1 Yoni Israel Marin Romero.

2 32. "Preliminary Approval Order" means the order issued by the Court substantially
3 in the form attached as **Exhibit 3**, that preliminarily approves the terms and conditions of this
4 Settlement, approves the Notice of Class Action Settlement and method of dissemination,
5 grants conditional certification of the Class, appoints Plaintiffs as the Class Representatives,
6 their counsel as Class Counsel, and the Administrator, and setting of a Final Approval Hearing
7 date.

8 33. "Released Claims" are defined as all claims, charges, complaints, liens,
9 demands, causes of action, obligations, damages and liabilities, that each Class member had,
10 now has, or may hereafter claim to have against Defendant, ("Releasee") and that were
11 asserted in the Action, or that arise from or could have been asserted based on any of the facts,
12 circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or
13 failures to act alleged in the First Amended Class and Representative Action Complaint
14 ("Operative Complaint") filed in the Action, regardless of whether such claims arise under
15 state and/or local law, statute, ordinance, regulation, or common law, or other source of law
16 ("the Released Claims"). The Released Claims specifically include, but are not limited to (1)
17 Unpaid Wages; (2) Failure to Pay Meal Period Premium Pay; (3) Failure to Pay Rest Break
18 Premium Pay; (4) Failure to Reimburse for Business Expenses; (5) Inaccurate Wage
19 Statements; (6) Waiting Time Penalties; (7) Unfair Competition; and all related Civil Penalties
20 under California's Private Attorney General's Act ("PAGA"). The enumeration of these
21 specific statutes shall neither enlarge nor narrow the scope of res judicata based on the claims
22 that were asserted in the Action or could have been asserted in the Action based on the facts
23 and circumstances alleged in the Operative Complaint.

24 34. "Released Parties" means Defendant Broadly, Inc., and its parents, subsidiaries,
25 officers, shareholders, members, directors, agents, attorneys, employees, and insurers.

26 35. "Response Deadline" means sixty (60) days after the initial mailing of the
27 Notice Packet by the Administrator for Class Members to postmark and return a valid and
28 timely request for exclusion or a dispute concerning the information upon which their

1 Settlement Payment will be calculated. Written objections may be submitted by the Response
2 Deadline however, Participating Class Members may also appear at the Final Approval without
3 first returning a written objection.

4 36. "Service Payment" means the amount the Court authorizes to be paid to each
5 Class Representative over and above his individual Settlement Payment in recognition of his
6 work and efforts in obtaining the benefits of the Settlement for the Class, for undertaking the
7 risk for payment of costs in the event this matter had not successfully resolved, and for
8 providing a General Release of all claims against the Released Parties. Class Representatives,
9 Plaintiff Joe Alfaro and Plaintiff Yoni Israel Marin Romero will request, and Defendant will
10 not oppose, a Service Payment of Ten Thousand Dollars (\$10,000) each. The Service Payment
11 shall be paid out of—and will not increase—the Gross Settlement Amount. The Service
12 Payments will be in addition to their respective Settlement Payments.

13 37. "Settlement" or "Agreement" means the terms and conditions set forth in this
14 Stipulation of Settlement and Release of Class and Representative Claims.

15 38. "Settlement Payment" means the gross amount (including any taxes or other
16 standard withholdings) each Participating Class Member is entitled to receive based on their
17 number of Pay Periods during the Class Period, and their number of Pay Periods during the
18 PAGA Period:

19 MEDIATION

20 39. With substantial investigation, research, discovery, and analysis of the
21 voluminous data, and a Class-wide damage model extrapolated through the date of mediation,
22 on April 6, 2021, the Parties attended mediation with Francis "Tripper" Ortman, an
23 experienced and well-regarded wage and hour class action mediator facilitating the serious
24 and informed arms'-length negotiations. An agreement could not be reached by the end of the
25 day, and a Mediator's Proposal was tendered to the Parties. By June 3, 2021, the offer had
26 been accepted.

27 PLAINTIFFS' CLAIMS

28 40. Plaintiffs have claimed and continue to claim that the Released Claims have

1 merit and gives rise to the Released Parties' liability. Neither this Agreement nor any
2 documents referred to, or any action taken to carry out this Agreement is, or may be construed
3 as or may be used as, an admission by or against the Class Members or Class Counsel or any
4 Party or Counsel as to the merits or lack thereof of the claims asserted, except to show
5 resolution of the Released Claims.

6 **NO ADMISSION OF LIABILITY**

7 41. This Agreement represents a compromise and settlement of the Action. Neither
8 this Agreement, nor any document referred to or contemplated, nor any action taken to carry
9 out this Agreement may be construed as, or may be used as an admission, concession, or
10 indication by or against Released Parties that Plaintiffs' claims in the Action have merit or that
11 they have any fault, wrongdoing, or liability to Plaintiffs or the Class on those claims
12 whatsoever, including any concession that certification of a class continues to be appropriate in
13 this case.

14 42. This Agreement is made for the sole purpose of consummating settlement of all
15 causes of action contained in the First Amended Class and Representative Action Complaint.
16 By entering into this Agreement, the Parties do not admit the allegations or contentions of the
17 other Party, and each Party is entering into this Agreement for the sole purpose of resolving
18 this matter and avoiding the time and expense incident to protracted litigation. Released Parties
19 specifically deny all of Plaintiffs' claims as to liability and remedies, as well as Plaintiffs' class
20 and representative allegations, and expressly reserve all rights to challenge all such claims and
21 allegations upon all procedural and substantive grounds, including the assertion of any and all
22 defenses if the Court does not approve this Agreement and/or if the Settlement does not
23 become effective as defined.

24 **INADMISSIBILITY OF SETTLEMENT AGREEMENT**

25 43. Whether or not the Settlement is finally approved, neither the Settlement, nor
26 any of its terms, nor any document, statement, proceeding, or conduct related to this
27 Agreement, nor any reports or accounts thereof, shall in any event be:

28 A. Construed as, offered, or admitted in evidence as, received as, or deemed

1 to be evidence for any purpose adverse to the Released Parties, including, but not limited to,
2 evidence of a presumption, concession, indication, or admission by any of the Released Parties
3 of any liability, fault, wrongdoing, omission, concession or damage; or

4 B. Disclosed, referred to or offered or received in evidence against any of
5 the Released Parties, in any further proceeding in the Action, or in any other civil, criminal, or
6 administrative action or proceeding except for purposes of settling this Action pursuant to the
7 terms of this Agreement or enforcing the release of the Released Claims.

8 **CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES ONLY**

9 44. The Parties stipulate to certification of the Class only for purposes of the
10 Settlement. If, for any reason, the Settlement is not finally approved, the stipulation to certify
11 the Class will be void. The Parties further agree that certification for purposes of the Settlement
12 is not an admission that class action certification is proper under the standards applied to
13 contested certification motions and that this Agreement will not be admissible in this or any
14 other proceeding as evidence that either: (a) a class action should be certified or (b) Defendant
15 is liable to Plaintiffs or any Class Member, other than according to the Settlement's terms.

16 **FAIRNESS AND BENEFITS OF SETTLEMENT TO THE CLASS**

17 45. Plaintiffs recognize the expense and length of continued proceedings necessary
18 to continue the litigation against Defendant through trial and through any possible appeals.
19 Plaintiffs have also taken into account the uncertainty and risk of the outcome of further
20 litigation, and the difficulties and delays inherent in such litigation, including those involved in
21 the maintenance of class certification. Plaintiffs are also aware of the burdens of proof
22 necessary to establish liability for the claims asserted in the Action, Defendant's defenses, and
23 the difficulties in establishing damages for the Class. Plaintiffs have also considered the
24 lengthy and significant negotiations facilitated by Mr. Ortman at mediation on April 6, 2021,
25 and through such time as the mediator's proposal was accepted on June 3, 2021, and beyond to
26 reach agreement on all terms of this Agreement and exhibits. Based on the foregoing,
27 Plaintiffs, Class Counsel, Defendant, and Defendant's Counsel have determined that the
28 Settlement set forth in this Agreement, and its terms, are fair, adequate, equitable and

1 reasonable, the product of good faith, arms-length negotiations between the Parties, are
2 consistent with public policy, and fully comply with applicable provisions of law, and in the
3 best interests of all Class Members.

4 **RELEASE AS TO ALL CLASS MEMBERS**

5 46. Plaintiffs do, and all Participating Class Members will, agree that upon the
6 Effective Date, they shall be deemed to have, and by operation of the Final Approval Order
7 and Judgment shall have, released the Released Parties from the Released Claims. The
8 Settlement Payments shall be paid to Participating Class Members specifically in exchange for
9 the release of the Released Parties from the Released Claims.

10 **GENERAL RELEASE BY PLAINTIFFS**

11 47. Plaintiffs will give upon the execution of this Agreement and Effective Date of
12 Settlement, in addition to the Released Claims given by Participating Class Members, a general
13 release of all claims, known or unknown, based on any fact, condition, or incident occurring
14 prior to the date of this Agreement against Defendant, including a waiver of rights under
15 California Civil Code section 1542, which states:

16 A general release does not extend to claims that the creditor or releasing party
17 does not know or suspect to exist in his or her favor at the time of executing the
18 release and that, if known by him or her, would have materially affected his or
19 her settlement with the debtor or released party.

20 Plaintiffs agree to release the Released Parties from all wage and hour claims, including, but
21 not limited to, unpaid overtime or minimum wages, meal and rest period violations, untimely
22 payment of wages, wage statement violations, penalties under the Private Attorneys General
23 Act and all other Released Claims, "Plaintiffs' Released Claims".

24 **FUNDING AND DISTRIBUTION OF GROSS SETTLEMENT AMOUNT**

25 48. Within thirty (30) calendar days of the Effective Date of Settlement, Defendant
26 shall deliver, or caused to be delivered the Gross Settlement Amount and the Employer Tax
27 Obligations to the Administrator.

28 49. Following the anticipated Court-approved deductions for the Attorneys' Fees
Payment (\$291,666.67), and Litigation Costs (up to \$17,500), Service Payment to Class

1 Representative Joe Alfaro (\$10,000), Service Payment to Class Representative Yoni I. Marin
2 Romero (\$10,000), LWDA Payment (\$18,750), the PAGA Member payment (\$6,250), and
3 Administration Expenses (up to \$10,000), the remaining sum, the Net Settlement Amount
4 estimated at \$510,833.33 will be distributed to all Participating Class Members on a
5 proportionate basis, using the Class Member's aggregate number of Pay Periods employed
6 during the Class Period in relation to the aggregate number of Pay Periods employed by all
7 Participating Class Members during the Class Period.

8 50. PAGA Members will receive a share of the \$6,250 PAGA Payment based on
9 the number of Pay Periods employed during the PAGA Period.

10 51. Within 15 days of the Administrator's receipt of the GSA, the Administrator
11 shall distribute the Settlement Payments to Participating Class and PAGA Members, LWDA
12 Payment to the LWDA, the Court-approved Attorneys' Fees and Litigation Costs to Class
13 Counsel, the Service Payment to the Class Representatives, and the Administration Payment to
14 CPT Group, Inc.

15 **NOTICE/APPROVAL OF SETTLEMENT AND**
16 **SETTLEMENT IMPLEMENTATION**

17 52. As part of this Settlement, the Parties agree to the following procedures for
18 obtaining Preliminary Approval of the Settlement, and providing notice of the Settlement to the
19 Class:

20 A. Preliminary Approval Hearing. Class Counsel shall notice a hearing
21 before the Court to request Preliminary Approval of the Settlement. In conjunction with this
22 hearing, Class Counsel will submit this Agreement (including all exhibits) which set forth the
23 terms of this Settlement. The proposed Order Granting Preliminary Approval of Class Action
24 Settlement, in a form substantially similar to **Exhibit 3** will be submitted together with such
25 motion.

26 B. Information Regarding Class. Within 30 calendar days of Preliminary
27 Approval, Defendant shall provide the Administrator with a Microsoft Excel Spreadsheet
28 containing for each member of the Class, the following: full name, most current mailing

1 address, telephone numbers, social security number, dates of employment, the number of Pay
2 Periods during the Class Period, and the number of Pay Periods during the PAGA Period, (the
3 “Class List and Data”).

4 C. Notice to Class Members. The Administrator shall mail the Court-
5 approved Notice Packet, (Notice of Class Action Settlement, Change of Address form, and pre-
6 printed return envelope, **Exhibits 1 and 2**) by U.S. First Class Mail to all Class Members
7 identified by Defendant’s records to be Class Members and contained in the Class List and
8 Data.

9 D. Administrator. The Administrator shall be responsible (a) for printing
10 and mailing the Notice of Class Action Settlement, Change of Address Form, and preprinted
11 return envelope (“Notice Packet”) as directed by the Court; (b) for updating mailing addresses
12 on receipt of the Class List and Data, and performing subsequent skip-traces on undelivered
13 Notice Packets; (c) establishing a toll-free number and post-office box for receipt of Class
14 Member communications; (d) receiving and reviewing all communications from Class
15 Members and others seeking information on eligibility as a Class Member; (e) consulting with
16 counsel for the Parties as necessary concerning the data, resolution of disputed claims, and
17 status of the settlement process, and weekly status reports; (f) receiving and tracking Class
18 Member communications and requests for exclusion, objections, and disputes; (g) calculating
19 and informing Defendant, prior to the Funding Date, of the Employer Tax Obligations; (h)
20 calculating all Settlement Payments, including applicable taxes and withholdings; (i)
21 distributing Settlement Payments to Participating Class and PAGA Members and to others as
22 Ordered by the Court; (j) submitting tax documents to applicable taxing authorities; (k)
23 handling uncashed checks; (m) cooperating with counsel for the Parties as necessary to prepare
24 declarations in support of the motion for preliminary and/or final approval of the Settlement,
25 and final accounting; and (l) for such other tasks as the Parties set forth in this Agreement or as
26 the Parties mutually agree or the Court orders the Administrator to perform. The Parties each
27 represent they do not have any financial interest in the Administrator or otherwise have a
28 relationship with it that could create a conflict of interest. The Parties agree to cooperate in the

1 settlement administration process and to make all reasonable efforts to control and minimize
2 the Settlement Administration Payment.

3 **CLASS NOTICE**

4 53. The Parties agree to the following procedures for giving notice of this
5 Settlement to the Class:

6 A. On receipt of the Class List and Data, and after conducting a National
7 Change of Address (“NCOA”) database search of all Class Member addresses and making the
8 address corrections indicated, the Administrator shall mail within ten (10) business days of
9 receipt of the Class List and Data, the Notice Packet to all Class Members. The envelope
10 containing the Notice Packet shall include on the exterior, front side, the following language:

11 **IMPORTANT LEGAL DOCUMENT**

12 **You may get Money from a Class Action
13 Settlement; your prompt reply to correct a
14 BAD address is required.**

15 B. Notice Packets returned to the Administrator with a forwarding address
16 shall be re-mailed by the Administrator within three (3) business days of receipt of the returned
17 Notice Packet. All Notice Packets returned to the Administrator as undelivered shall be
18 researched by the Administrator using the Class Member’s social security number to determine
19 any possible new address. If an updated address is located, the Notice Packet shall be re-mailed
20 immediately. Class Members who are re-mailed Notice Packets shall have their Response
21 Deadline extended fifteen (15) calendar days from the original Response Deadline. If a Notice
22 Packet belonging to a currently employed Class Member is returned as undelivered, the
23 Administrator will notify the Parties and Defendant shall then confirm the most recent address
24 they have and provide same to the Administrator for re-mailing of the Notice Packet no later
25 than three (3) business days of receipt of the updated address.

26 C. Class Members will be responsible for keeping the Administrator
27 apprised of any changes of address to ensure receipt of their Settlement Payment checks. A
28 Change of Address form and pre-printed return envelope will be included in the Notice Packet.

1 **PROCEDURE FOR OBJECTING TO OR REQUESTING EXCLUSION**
2 **FROM THE SETTLEMENT**

3 54. Class Members who wish to object to the Settlement or to exclude themselves
4 from the Class shall use the following procedures:

5 A. Procedure for Objecting. All Class Members shall have the right to
6 submit objections to the Settlement. The Class Notice shall indicate that any Class Member
7 who wishes to object to the Settlement may return to the Administrator, a written statement
8 that includes the specific reasons for the objection(s) on or before the Response Deadline.
9 Class Members may also appear at the time of the Final Approval Hearing without first
10 submitting a written objection.

11 B. Procedure for Requesting Exclusion from the Class. Class Members
12 must return a written statement (as directed by the Notice) no later than the Response Deadline
13 stating their intention to opt out of the Class. The written request for exclusion must contain the
14 Class Member’s full name, address, telephone number, last four digits of their social security
15 number, and be signed by that Class Member. Any Class Member who properly opts out of the
16 Class using this procedure will no longer be a Class Member, will not be entitled to any
17 Settlement Payment, and will not be bound by the Settlement or have any right to object,
18 appeal, or comment thereon. Because there is no right to request exclusion from a settlement
19 brought pursuant to the PAGA, Class Members who successfully exclude themselves, who are
20 eligible PAGA Members, will receive their proportionate share of the \$6,250 (25% of the
21 \$25,000 PAGA Payment) based on the number of Pay Periods they were employed during the
22 PAGA Period. For this payment, each will release all PAGA claims alleged in the Action.

23 Class Members who do not return a valid and timely request for exclusion in the
24 manner described in the Class Notice and in this paragraph, will remain in the Class and shall
25 receive their proportionate share of the NSA (Settlement Payment) and shall be bound by all
26 terms of the Settlement and any Judgment entered in this Action if the Settlement is approved
27 by the Court, regardless of whether they ineffectively or untimely request exclusion from the
28 Settlement, or do not cash their Settlement Payment checks.

1 C. Option to Reject the Settlement. No later than five (5) business days
2 after the close of the regular or extended Response Deadline, whichever is later, the
3 Administrator shall provide to Class Counsel and Defendant’s Counsel a complete list of all
4 persons who have timely requested exclusion from the Class, and the number of their Pay
5 Periods. If Class Members representing more than five (5) percent of the aggregate number of
6 Pay Periods for the Class submit valid and timely requests for exclusion, either Party will have
7 the option at their discretion, of rejecting the Settlement in its entirety.

8 Counsel for the Party opting to reject the Settlement, shall make such
9 election to reject the Settlement in a writing and served on the other Party no later than ten (10)
10 business days following the issuance of the Administrator’s notification of the number of Class
11 Members who validly requested exclusion from the Class. If Defendant makes this election,
12 they will assume full responsibility for the payment of the Administrator’s fees and costs
13 through the date of their election.

14 D. Plaintiffs’ Right to Terminate Agreement. The GSA was negotiated
15 based on Defendant’s records which reflected 154 Class Members who worked 3,137 Pay
16 Periods during the period from June 7, 2015 through May 1, 2020. If it is determined,
17 following receipt of the Class List and Data by the Administrator and prior to the mailing of
18 the Notice of Class Action Settlement, that the number of Pay Periods are more than five (5)
19 percent greater, the Parties will agree to a good-faith renegotiation of the GSA. Plaintiffs shall
20 have the right to declare the Settlement null and void if the renegotiation of the GSA is
21 unsuccessful.

22 **NO SOLICITATION OF SETTLEMENT OBJECTIONS OR EXCLUSIONS**

23 55. The Parties agree to use their best efforts to carry out the terms of this
24 Agreement. At no time shall any of the Parties or their counsel or agents (or the
25 Administrator) seek to solicit or otherwise encourage anyone to submit written objections to
26 the Settlement or requests for exclusion from eligible Class Members, or encourage anyone to
27 appeal from the Court’s Judgment.

28 **CALCULATION OF SETTLEMENT PAYMENTS**

AND TAX OBLIGATIONS PAYMENT

56. The Administrator shall have the authority and obligation to calculate the amounts of the Settlement Payments in accordance with the methodology set forth in this Agreement and orders of the Court. Each Participating Class Member will be eligible to receive a Settlement Payment based upon the total number of his/her Pay Periods employed during the Class Period in relation to the aggregate number of Pay Periods employed by all Participating Class Members during the Class Period, e.g.

$$\text{Settlement Payment} = \text{NSA (x)} \frac{\text{Class Member's Total Number of Pay Periods}}{\text{All Participating Class Members Pay Periods}}$$

If the Class Member also worked during the PAGA Period, he or she would be eligible to receive a proportionate share of the PAGA Payment allocated to them, e.g.:

$$\text{PAGA Member Payment} = \$ 6,250 \text{ (x)} \frac{\text{the PAGA Member's Number of Pay Periods}}{\text{All PAGA Members' Number of Pay Periods}}$$

57. The Parties agree that the formulas for allocating the Settlement Payments to the Class is reasonable and that the payments are designed to provide a fair settlement to the Class, despite the uncertainties of the compensation and penalties alleged to be owed to the Class and the calculation of them.

58. The Parties agree that twenty (20) percent of each Settlement Payment shall be deemed wages for which the Administrator shall make all ordinary deductions for local, state, and federal taxes and withholdings or any other applicable payroll deductions, and for which an IRS W-2 Form will be issued. The Parties further agree that sixty (60) percent of each Settlement Payment will be deemed the payment of civil penalties, and twenty (20) percent deemed interest for which IRS 1099 Forms shall be issued. If the Class Member is also an eligible PAGA Member, the portion representing the civil penalties will be reported as penalties, and reported on an IRS Form 1099. The IRS W-2 and 1099 Forms shall be provided to the Participating Class and PAGA Members, and the applicable governmental authorities by the Administrator.

59. Each Participating Class Member will be responsible for paying all applicable local, state, and federal taxes on Settlement Payments paid under the terms of this Settlement,

1 as described above. Each Participating Class Member shall cooperate with Defendant and the
2 Administrator and provide documentation as requested to demonstrate such payment should
3 any taxing authority challenge the allocation of the Settlement Payments.

4 60. It shall be the responsibility of the Administrator or its designee to timely
5 calculate and withhold from the Settlement Payments all Participating Class Member tax
6 obligations on the portion allocated as wages; to timely calculate and withhold from the Gross
7 Settlement Amount the appropriate payroll deductions; to calculate and report to Defendant the
8 necessary Employer Tax Obligations, and to prepare and deliver the necessary tax
9 documentation for signature by all necessary parties and, thereafter, to cause the appropriate
10 deposits of withholding taxes and informational and other tax return filing to occur. Once
11 received from Defendant, the Administrator shall pay the Employer Tax Obligations arising
12 out of the Settlement Payments to the appropriate taxing authorities within thirty (30) days of
13 distribution.

14 61. Defendant makes no representations as to the tax treatment or legal effect of the
15 payments called for hereunder, and Plaintiffs and Participating Class Members are not relying
16 on any statement or representation by Defendant in this regard. Plaintiffs and Participating
17 Class Members understand and agree that except for Defendant's payment of the Employer's
18 Tax Obligation, they will be solely responsible for the payment of any taxes and penalties
19 assessed on the payments described herein.

20 **ATTORNEYS' FEES AND COSTS PAYMENT AND SERVICE PAYMENT**

21 62. Subject to Court approval, Class Counsel shall be paid up to one-third of the
22 Gross Settlement Amount, \$291,666.67, as Attorneys' Fees, and up to \$17,500 as
23 reimbursement of their litigation costs. Class Counsel shall not be permitted to petition the
24 Court for, or accept, any additional payments for fees or costs. The amounts paid in fees and
25 costs shall be for all claims for attorneys' fees, expenses, or costs past, present, and future
26 incurred in litigating the Action. Defendant shall not oppose Class Counsel's Attorneys' Fees
27 and Costs Payment request in these amounts.

28 63. The Attorneys' Fees and Costs Payment to Class Counsel shall constitute full

1 satisfaction of any obligation to pay any amounts to any person, attorney, or law firm for
2 attorneys' fees, expenses, or costs in the Action incurred by any attorney on behalf of the
3 Plaintiffs and the Class, and shall relieve Released Parties of any other claims or liability to any
4 other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them
5 may claim to be entitled on behalf of the Plaintiffs and/or the Class.

6 64. Subject to Court approval, Plaintiff Joe Alfaro and Plaintiff Yoni I. Marin
7 Romero, as Class Representatives shall be paid up to \$10,000 each as Service Payments for
8 having initiated this Action, work performed in furtherance of the Action, and the risks
9 associated with the payment of attorneys' fees and costs in the event this matter had not
10 successfully concluded, for the substantial benefits conferred upon the Class, and a General
11 Release of all claims. Defendant shall not oppose the Service Payment requests in this
12 amount. The Service Payment approved by the Court shall be a part of, and paid from, the
13 Gross Settlement Amount. This payment shall not have any state or federal taxes withheld,
14 and shall be reported on an IRS Form 1099 and provided to the Plaintiffs and applicable
15 governmental authorities by the Administrator. Plaintiffs shall be responsible for
16 characterizing this payment for tax purposes and for paying any taxes owing.

17 65. Plaintiffs' Service Payment will be paid in addition to their respective
18 Settlement Payments.

19 **PAGA PAYMENT**

20 66. The Parties have allocated Twenty-Five Thousand Dollars (\$25,000) to settle
21 the claims of the Class under Labor Code § 2699. Labor Code § 2699(i) requires any
22 settlement under this section be distributed 75% to the California's Labor Workforce
23 Development Agency ("LWDA") for enforcement of labor laws and education of employers,
24 and 25% to the PAGA Members. Accordingly, \$18,750 will be issued and paid to the LWDA,
25 and the remaining \$6,250 will be distributed on a proportional basis to all PAGA Members.

26 **DEFENDANT'S LEGAL FEES**

27 67. All of Defendant's own legal fees, costs, and expenses incurred in the Action as
28 well as the employment related taxes normally paid by an employer shall be borne by

1 Defendant.

2 **FINAL APPROVAL HEARING AND ENTRY OF ORDER AND JUDGMENT**

3 68. Following the Response Deadline, and on a date set by the Court as reflected in
4 the Court's Preliminary Approval Order, the Court shall conduct a Final Approval Hearing.
5 The Parties shall present the Final Approval Order and the Judgment to the Court, in a form
6 substantially similar to **Exhibit 4**, for its approval and entry.

7 **PROCEDURE FOR PAYMENT OF SETTLEMENT PAYMENTS**

8 69. Following Final Approval, and solely for purposes of this Agreement, the
9 Settlement Payments shall be distributed in accordance with the following eligibility
10 requirements:

11 A. Participating Class and PAGA Members. All Participating Class and
12 PAGA Members shall receive a Settlement Payment under the plan of allocation and will be
13 bound by the terms of the Settlement and any order or judgment entered by the Court
14 approving this Settlement.

15 B. Class Members Who Request Exclusion. Those Class Members who
16 return valid and timely requests for exclusion will no longer be a member of the Class, are not
17 Participating Class Members, are not entitled to any Settlement Payment, and will not be
18 bound by this Settlement or any order or judgment entered by the Court approving this
19 Settlement. However, if the Class Member is also an eligible PAGA Member, he or she shall
20 receive a proportionate share of the \$6,250 PAGA Payment and will release all PAGA Claims
21 alleged in the Action because PAGA Members, under the law, have no right to opt out of a
22 PAGA Settlement.

23 70. Settlement Payments to Participating Class Members shall be paid pursuant to
24 the formula and at the times set forth in this Agreement. The Administrator's determination of
25 eligibility for, and the calculations of, any Settlement Payments under the terms of this
26 Agreement, shall be conclusive, and binding on all Parties, including all Class Members,
27 subject to the Court's final determination.

28 71. Any Settlement Payment checks issued to Participating Class Members shall

1 remain valid and negotiable until 180 calendar days after the date of issuance of the Settlement
2 Payment checks, and will thereafter be canceled if not cashed within that time. However, 30
3 calendar days after the issuance of the Settlement Payment checks, the Administrator will mail
4 a postcard to all member of the Class, who have not by that date, cashed their checks
5 reminding them of the void date. All sums represented by uncashed and voided checks will be
6 submitted to the State of California, Controller Unclaimed Property Division for further
7 handling on behalf of the Class Member.

8 72. No person shall have any claim against the Released Parties, Defendant's
9 Counsel, the Plaintiffs, the Class, Class Counsel, or the Administrator based on mailings,
10 calculations, distributions and payments made in accordance with or pursuant to this
11 Agreement.

12 **NULLIFICATION OF SETTLEMENT AGREEMENT**

13 73. In the event: (a) the Court does not enter any Order as requested; (b) the Court
14 does not finally approve the Settlement; (c) the Court does not enter a Judgment which
15 becomes final as a result of the occurrence of the Effective Date of Settlement; or (d) the
16 Settlement does not become effective for any other reason, including either Parties' election to
17 reject the Settlement in the event that Class Member representing more than five percent (5%)
18 of the Class' Pay Periods timely request exclusion, or an objection which is sustained in the
19 trial court and on all appeals, or Plaintiffs elect to rescind the Settlement in the event that the
20 Pay Periods are exceeded by five (5) percent as set forth in this Agreement, this Agreement
21 shall be null and void and any order or judgment entered by the Court in furtherance of this
22 Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. In such a
23 case, the Parties shall be returned to their respective statuses as of the date and time
24 immediately before the execution of this Agreement, and the Parties shall proceed in all
25 respects as if this Agreement had not been executed. In the event an appeal is filed from the
26 Court's Judgment, or any other appellate review is sought prior to the Effective Date,
27 administration of the Settlement shall be stayed pending final resolution of the appeal or other
28 appellate review.

1 **NOTIFICATION AND CERTIFICATION BY ADMINISTRATOR**

2 74. The Administrator shall keep Counsel for the Parties apprised of all
3 distributions of Settlement Payments and upon completion of administration of that portion of
4 the Settlement, the Administrator shall provide written certification of progress of such
5 completion to counsel for all Parties and the Court as requested.

6 **NO EFFECT ON EMPLOYEE BENEFITS**

7 75. The Settlement Payments issued and paid to Participating Class Members and
8 the Service Payments issued and paid to Plaintiffs shall be deemed not to be “pensionable”
9 earnings and shall not have any effect on the eligibility for, accrual of, or calculation of, any of
10 the employee benefits (*e.g.* vacations, holiday pay, retirement plans, 401K, Employee Stock
11 Purchase Plan, etc.) of the Plaintiffs or Participating Class Members. The Parties agree that any
12 Settlement Payments to Participating Class Members and the Service Payments under the
13 terms of this Agreement do not represent any modification of Participating Class Members’
14 previously credited hours of service or other eligibility criteria under any employee stock
15 purchase plan, employee pension benefit plan, or employee welfare benefit plan sponsored by
16 Defendant. Further, any Settlement Payments or Service Payments shall not be considered
17 “compensation” in any year for purposes of determining eligibility for, or benefit accrual
18 within, an employee stock purchase plan, employee pension benefit plan, or employee welfare
19 benefit plan sponsored by Defendant.

20 **GENERAL PROVISIONS**

21 76. Exhibits. The terms of this Agreement include the terms included in **Exhibits**
22 **1-4**, which are incorporated by reference as though fully set forth. Any exhibits to this
23 Agreement are an integral part of the Settlement. Any changes to exhibits following
24 preliminary approval by the Court, shall be approved by all Parties, but shall not be re-
25 submitted to the Court if changes are minor, clerical, and do not materially alter the originally
26 submitted documents.

27 77. Headings. The descriptive headings of any paragraphs or sections of this
28 Agreement are inserted for convenience of reference only and do not constitute a part of this

1 Agreement.

2 78. Interim Stay of Proceedings. The Parties agree to hold all proceedings in the
3 Action, except such proceedings necessary to implement and complete the Settlement, in
4 abeyance pending the Final Approval Hearing to be conducted by the Court.

5 79. Amendment or Modification. This Agreement may be amended or modified
6 only by a written instrument signed by counsel for all Parties or their successors-in-interest.

7 80. Entire Agreement. This Agreement and any attached Exhibits constitute the
8 entire agreement among these Parties, and no oral or written representations, warranties,
9 inducements, or covenants have been made to any Party concerning this Agreement or its
10 Exhibits other than the representations, warranties, inducements, and covenants contained and
11 memorialized in such documents. All prior or contemporaneous negotiations, agreements,
12 understandings, and representations, whether written or oral, are expressly superseded and are
13 of no further force and effect. Each of the Parties acknowledges that it has not relied on any
14 promise, representation, or warranty, express or implied, not contained in this Agreement.

15 81. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
16 warrant and represent that they are expressly authorized by the Parties whom they represent to
17 negotiate this Agreement and to take all appropriate action required or permitted to be taken by
18 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
19 documents required to effectuate the terms of this Agreement. The Parties and their counsel
20 will cooperate with each other and use their best efforts to effectuate the implementation of the
21 Settlement. In the event the Parties are unable to reach agreement on the form or content of any
22 document needed to implement the Settlement, or on any supplemental provisions that may
23 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
24 of the Mediator or the Court to resolve such disagreement.

25 82. Binding Agreement. Subject to the limitations in Paragraph 82, the Parties
26 intend that this agreement shall be fully enforceable and binding on all Parties, including
27 Participating Class Members, and that it shall be admissible and subject to disclosure in any
28 proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that

1 otherwise might apply under federal or state law. The Parties further agree that this
2 Agreement is enforceable pursuant to California Code of Civil Procedure section 664.6.

3 83. Binding on Successors. This Agreement shall be binding upon, and inure to the
4 benefit of, the heirs, beneficiaries, or successors of the Parties.

5 84. Assignment. None of the rights, commitments, or obligations recognized under
6 this Agreement may be assigned by any Party, Class Member, Counsel for the Parties without
7 the express written consent of each other Party and their respective counsel. The
8 representations, warranties, covenants, and agreements contained in this Agreement are for the
9 sole benefit of the Parties under this Agreement, and shall not be construed to confer any right
10 or any remedy to any other person.

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

13 86. Venue. Any adjudicated dispute regarding the interpretation or validity of or
14 otherwise arising out of this Agreement, or relating to the Action or the Released Claims, shall
15 be subject to the exclusive jurisdiction of the Court in which the Parties seek approval of this
16 Settlement, and the Plaintiffs, Class Members, and Defendant agrees to submit to the personal
17 and exclusive jurisdiction and venue of that Court.

18 87. Counterparts. This Agreement may be executed in one or more counterparts.
19 All executed counterparts and each of them shall be deemed to be one and the same instrument.

20 88. Facsimile and Electronic Signatures. A signed facsimile or electronic version of
21 this Agreement shall have the same force and effect as a signed original of this Agreement.

22 89. Jurisdiction of the Court. The Court shall retain jurisdiction solely with respect
23 to the interpretation, implementation, and enforcement of the terms of this Agreement and all
24 orders and judgments entered in connection with the Agreement, and the Parties and their
25 counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and
26 enforcing this Agreement and all related orders and judgments entered in connection. In the
27 event judicial intervention or enforcement is necessary, the prevailing Party shall be entitled to
28 an award or attorneys' fees, costs and interest.

1 90. Cooperation and Drafting. Each of the Parties has cooperated in the drafting
2 and preparation of this Agreement; and the drafting of this Agreement shall not be construed
3 against any of the Parties.


4 91. Invalidity of Any Provision. The Parties request that before declaring any
5 provision of this Agreement invalid, the Court shall first attempt to construe all provisions
6 valid to the fullest extent possible consistent with applicable precedents.

7 92. Plaintiffs’ Waiver of Right to be Excluded and Object. Plaintiffs agree to sign
8 this Agreement and by signing this Agreement are bound by the terms stated and further agree
9 not to request to exclusion from the Class and agree not to object to any of the terms of this
10 Agreement. Any such request for exclusion or objection shall be void and of no force or effect.

11 IN WITNESS THEREOF, the Parties hereto have so agreed.

12 **PLAINTIFFS / CLASS REPRESENTATIVES**

13
14 Date: 1/20/2022
~~December~~ ____, 2021

14 By: 

15 Joe Alfaro
16 Plaintiff/Class Representative

17 Date: December ____, 2021

17 By: _____
18 Yoni L. Marin Romero
19 Plaintiff/Class Representative

20 **DEFENDANT, BROADLY, INC.**

21 Date: December ____, 2021

21 By: _____
22 Krystal Nguyen,
23 [title]: _____

24 APPROVED AS TO FORM

25 Date: December ____, 2021

24 **COHELAN KHOURY & SINGER**
25
26 By: _____
27 Diana M. Khoury / Rosemary C. Khoury
28 Attorneys for Plaintiffs/ Class Representatives

[Signatures, continued next page]

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2 and preparation of this Agreement; and the drafting of this Agreement shall not be construed
3 against any of the Parties.

4 91. Invalidity of Any Provision. The Parties request that before declaring any
5 provision of this Agreement invalid, the Court shall first attempt to construe all provisions
6 valid to the fullest extent possible consistent with applicable precedents.

7 92. Plaintiffs' Waiver of Right to be Excluded and Object. Plaintiffs agree to sign
8 this Agreement and by signing this Agreement are bound by the terms stated and further agree
9 not to request to exclusion from the Class and agree not to object to any of the terms of this
10 Agreement. Any such request for exclusion or objection shall be void and of no force or effect.

11 IN WITNESS THEREOF, the Parties hereto have so agreed.

12 **PLAINTIFFS / CLASS REPRESENTATIVES**

13
14 Date: December ____, 2021

By: _____
Joe Alfaro
Plaintiff/Class Representative

15
16 1/20/2022
17 Date: ~~December~~ ____, 2021

By: Yoni Romero

Yoni L. Marin Romero
Plaintiff/Class Representative

18
19 **DEFENDANT, BROADLY, INC.**

20
21 Date: December ____, 2021

By: _____
Krystal Nguyen,
[title]: _____

22
23 APPROVED AS TO FORM

24 Date: December ____, 2021

25
26 **COHELAN KHOURY & SINGER**
By: _____
Diana M. Khoury / Rosemary C. Khoury
Attorneys for Plaintiffs/ Class Representatives

27
28 [*Signatures, continued next page*]

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2 and preparation of this Agreement; and the drafting of this Agreement shall not be construed
3 against any of the Parties.

4 91. Invalidity of Any Provision. The Parties request that before declaring any
5 provision of this Agreement invalid, the Court shall first attempt to construe all provisions
6 valid to the fullest extent possible consistent with applicable precedents.

7 92. Plaintiffs' Waiver of Right to be Excluded and Object. Plaintiffs agree to sign
8 this Agreement and by signing this Agreement are bound by the terms stated and further agree
9 not to request to exclusion from the Class and agree not to object to any of the terms of this
10 Agreement. Any such request for exclusion or objection shall be void and of no force or effect.

11 IN WITNESS THEREOF, the Parties hereto have so agreed.

12 **PLAINTIFFS / CLASS REPRESENTATIVES**

13
14 Date: December __, 2021

By: _____
Joe Alfaro
Plaintiff/Class Representative

15
16
17 Date: December __, 2021

By: _____
Yoni L. Marin Romero
Plaintiff/Class Representative

18
19 **DEFENDANT, BROADLY, INC.**

20
21 Date: December __, 2021

By: _____
Krystal Nguyen,
[title]: _____

22
23 APPROVED AS TO FORM

January 20, 2022

24 Date: ~~December __, 2021~~

25 **COHELAN KHOURY & SINGER**


26 By: _____
Diana M. Khoury
Diana M. Khoury / Rosemary C. Khoury
Attorneys for Plaintiffs/ Class Representatives

27
28 [*Signatures, continued next page*]

1/21/2022

1 Date: ~~December~~ ____, 2021

LEBE LAW, APLC

2
3 By: 

4 Jonathan M. Lebe
5 Attorneys for Plaintiffs / Class Representatives

6 Date: December ____, 2021

GORDON REES SCULLY MANSUKHANI, LLP

7
8 By: _____
9 Mollie M. Burks / Sat Sang S. Khalsa
10 Attorneys for Defendant, Broadly

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COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

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Date: December ____, 2021

LEBE LAW, APLC

By: _____

Jonathan M. Lebe
Attorneys for Plaintiffs / Class Representatives

Date: December ____, 2021

GORDON REES SCULLY MANSUKHANI, LLP

Sat Sang

By: **Khalsa**

Mollie M. Burks / Sat Sang S. Khalsa
Attorneys for Defendant, Broadly

Digitally signed by: Sat Sang Khalsa
DN: CN = Sat Sang Khalsa email =
skhalsa@grsm.com C = US O = GRSM
LLP
Date: 2022.01.20 13:26:40 -05'00'

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101