

## CLASS ACTION SETTLEMENT AGREEMENT

Subject to final approval by the Court, which counsel and the Parties agree to pursue and recommend in good faith, this Settlement Agreement is made between Plaintiff Francisco Hernandez (hereinafter "Plaintiff") on behalf of himself and the Class and Defendant Burrtec Waste & Recycling Services, LLC ("Defendant") (collectively Plaintiff and Defendant are referred to in this Agreement as the "Parties"). This Agreement is intended to settle the case entitled *Francisco Hernandez, etc., et al. v. Burrtec Waste & Recycling Services, LLC, et al.*, (United States District Court for the Central District of California Case No. 5:21-cv-001490-JWH-SP). The Parties request that the Court make and enter judgment, subject to the continuing jurisdiction of the Court as set forth below, and subject to the definitions, recitals, and terms set forth herein which by this reference become an integral part of this Stipulation of Settlement.

### I. DEFINITIONS

In addition to terms elsewhere defined in this Agreement, the terms below have the following meaning:

1. **Action**: The case styled *Francisco Hernandez, etc., et al. v. Burrtec Waste & Recycling Services, LLC, et al.*, currently pending in the United States District Court for the Central District of California, Case. No. 5:21-cv-001490-JWH-SP.
2. **Administration Costs**: The costs incurred by the Settlement Administrator, CPT Group, Inc., to administer this Settlement, which shall not exceed \$10,000.00. All Administration Costs shall be paid from the Maximum Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
3. **Agreement, Settlement Agreement, or Settlement**: The settlement agreement reflected in this document, titled "Settlement Agreement."

4. **Attorneys' Fees Award**: The amount of attorneys' fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed 1/3 (33.33%) of the Maximum Settlement Amount. 1/3 (33.33%) of the Maximum Settlement Amount is \$27,766.67. The Attorneys Fee Award shall be paid from the Maximum Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
5. **Class Period**: May 21, 2016 through preliminary approval.
6. **Class Counsel**: James R. Hawkins, Christina M. Lucio, and Mitchell J. Murray of James Hawkins APLC.
7. **Class Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) last known telephone number; and (4) social security number. The Class Data shall be based on Defendant's payroll, personnel, and other business records.
8. **Class and Class Member**: All of Defendant's employees and/or job applicants in the United States who authorized or were the subject of a consumer report or background check procured, or caused to be procured, for employment purposes by Defendant, or its affiliates, during the Class Period.
9. **Class Notices**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
10. **Class Representative or Plaintiff**: Plaintiff, Francisco Hernandez.
11. **Class Representative Enhancement Payment**: The amount the Court awards to Plaintiff, which will not exceed \$4,000. This payment shall be paid and taken from the Maximum Settlement Amount (defined below). This payment is offered in consideration for Plaintiff's actions in conferring a benefit upon the Class, and the time and effort Plaintiff put into pursuing the litigation. If the Court

awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

12. **Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$7,500. The Cost Award will be paid from the Maximum Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
13. **Counsel for Defendant:** Richard D. Marca, Christopher S. Milligan, and Robert A. Escalante of Varner & Brandt LLP.
14. **Court:** United States District Court for the Central District of California.
15. **Defendant:** Burrtec Waste & Recycling Services, LLC.
16. **Disbursement of the Settlement:** Within fifteen (15) calendar days after the Settlement Administrator's receipt of the Maximum Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; and (4) the Administration Costs, as approved by the Court.
17. **Effective Final Settlement Date:** The Settlement shall become effective on the date that the Court grants final approval unless there are objectors/objections to the Settlement, in which case the Effective Final Settlement Date shall be the first regular business day after the appeal period runs (if no appeal is filed), or the first day after all appeals are denied or otherwise finally resolved or decided in favor of the Settlement.

18. **Final Judgment or Final Approval:** The Final Order entered by the Court approving this Agreement.
19. **Funding of Settlement:** Defendant shall wire to the Settlement Administrator the Maximum Settlement Amount no later than fifteen (15) calendar days of the Effective Final Settlement Date.
20. **Maximum Settlement Amount or MSA:** The total value of the Settlement is a non-reversionary \$83,300. This is the maximum amount Defendant can be required to pay under this Settlement Agreement. The MSA includes payment for all Attorneys' Fees and Costs Award, the Class Representative Enhancement Payment, Class Settlement Payments, and Administrative Costs. Defendant shall not be required to pay anything greater than the MSA in exchange for the releases set forth herein, except as set forth in Section III, Paragraph 43, Subsection A.
21. **Individual Class Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Class Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.
22. **Net Settlement Amount or NSA:** The total amount of money available for payout to Participating Class Members, which is the MSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payment, and Administration Costs. In other words, the NSA is the portion of the MSA that will be distributed to Participating Class Members.
23. **Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
24. **Parties:** Plaintiff Francisco Hernandez, as an individual and as Class Representative, Defendant Burrtec Waste & Recycling Services, LLC.

25. **Preliminary Approval or Preliminary Approval Order:** The Court's Order preliminarily approving the terms of this Settlement.
26. **Released Claims:** Plaintiff and the Participating Class Members shall fully and finally release and discharge the Released Parties, during the Class Period, of any and all claims of any nature and description whatsoever, arising from, or related to, the claims that are alleged in the Action that could have been asserted under the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* ("FCRA"), the California Investigative Consumer Reporting Agencies Act ("ICRAA"), the California Consumer Credit Reporting Agencies Act, and/or the California Unfair Competition Law, and/or equivalent or corresponding state or local laws anywhere in the United States. This release shall discharge all claims from statutory, compensatory, actual damages, putative damages, restitution, declaratory, injunctive relief, and equitable relief, and attorneys' fees and expenses, arising from or related to background checks, consumer reports, and/or investigative consumer report, or authorizations, releases, or disclosures for such reports, as ordered by Released Parties during the Class Period.
27. **Plaintiff's Release:** The Settlement also contemplates that Plaintiff, in consideration for the receipt of an enhanced award, will execute a separate general release of any and all claims, including Claims in the Action or the PAGA lawsuit.
28. **Released Parties:** Burrtec Waste & Recycling Services, LLC, any predecessors and successors in interest, any current or former parent corporations, sister companies, affiliated or related parties, joint employers, co-employers, customers, subsidiary corporations, and assigns, companies acquiring any or all of the foregoing entities' assets or capital stock, current or former owners, officers, directors, shareholders, agents, representatives, and employees of the foregoing entities, and insurers and attorneys of any of the foregoing persons or entities.
29. **Response Deadline:** Sixty (60) calendar days from the initial mailing or re-mailing of the Class Notices.

30. **Settlement Administrator**: The third-party administrator agreed upon by Parties to administer this Settlement is CPT Group, Inc.

## II. **RECITALS**

31. Plaintiff filed the Action against Defendant in the Superior Court County of Riverside on May 28, 2021 (Case No. CVRI2103348). The Complaint alleged causes of action against Defendant for (1) Violation of the Fair Credit Reporting Act for Failure (“FCRA”) to Make Proper Disclosures [15 U.S.C. §§ 1681, *et seq.*]; (2) Violation of the Fair Credit Reporting Act for Failure to Obtain Property Authorization; (3) Failure to Make Proper Disclosure in Violation of Investigative Consumer Reporting Agencies Act (“ICRAA”); (4) Failure to Pay Minimum Wages; (5) Failure to Pay Overtime Owed; (6) Failure to Provide Lawful Meal Periods; (7) Failure to Authorize and Permit Rest Periods; (8) Failure to Timely Pay Wages During Employment; (9) Failure to Timely Pay Wages Owed Upon Separation from Employment; (10) Unlawful Deductions; (11) Failure to Reimburse Necessary Expenses; (12) Knowing and Intentional Failure to comply with Itemized Wage Statement Provisions; and (13) Violation of the Unfair Competition Law.
32. On August 3, 2021, Plaintiff filed in Riverside County Superior Court a putative Complaint for Damages alleging a single cause of action for (1) Civil Penalties Under the Private Attorneys’ General Act, Labor Code §§ 2698, *et seq.* (the “PAGA Complaint”). The PAGA Complaint contained the same predicate state law claims as the Class Action Complaint: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure to Provide Lawful Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Timely Pay Wages Due and Payable During Employment; (6) Failure to Timely Pay Wages Owed At Separation; (7) Unlawful Deductions; (8) Failure to Reimburse Necessary Expenses; and (9) Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions.
33. On August 31, 2021, Defendant filed an answer to the Class Action Complaint in Riverside Superior Court. On September 1, 2021, Defendant removed the Class Action Complaint to this Court.

34. On September 1, 2021, Defendant removed the Action to the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.
35. On April 21, 2022, a settlement was reached in two (2) separate but related, coordinated, and previously filed wage and hour lawsuits entitled: (1) *JOSE EVARISTO FRANCO, individually and on behalf of others similarly situated; TRISTAN SNIPP, individually and on behalf of others similarly situated; AUDRICK SOMOZA, individually and on behalf of others similarly situated, v. BURRTEC WASTE INDUSTRIES, INC., a California corporation, et al.*, pending in the Superior Court of California, County of Riverside, Court Case No., RIC1820321; and (2) *GONZALO ORTEGA, an individual and class representative on behalf of himself and all other similarly situated non-exempt former and current employees v. BURRTEC WASTE INDUSTRIES, INC., a California corporation, et al.*, pending in the Superior Court of California, County of Los Angeles, Court Case No., 19STCV40150 the “*Franco/Ortega* coordinated class actions”).<sup>1</sup>
36. Following the settlement of the *Franco/Ortega* coordinated class actions, counsel for Plaintiff and Defendant *in* the instant matter discussed the impact of those settlements and agreed that the settlement of the *Franco/Ortega* coordinated class actions would potentially affect and wipe out the recovery of any wage and hour or PAGA claims in this Action.
37. On July 1, 2022 and August 29, 2022, the Parties attended a Settlement Conference with Magistrate Judge Sheri Pym. Prior to the Settlement Conference, the Parties exchanged settlement conference statements and Defendant provided class-wide data, documents, and information permitting Plaintiff and Class Counsel to fully evaluate class-wide exposure.
38. On August 29, 2022, with the assistance of Magistrate Judge Sheri Pym, the Parties reached a settlement, the principal terms of which were recited on the record.

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<sup>1</sup> The Judicial Council Coordination Proceeding No. for the *Franco* and *Ortega* Lawsuits is RICJCCP5121.

39. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
40. **Defendant's Reasons for Settlement.** Defendant recognizes the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
41. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, make no concessions or admissions of liability of any sort, and contend that for any purpose other than settlement, the Action is not appropriate for class treatment. Defendant asserts a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
42. **Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this



Agreement is, may be construed as, or may be used as an admission, concession, or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, the Plaintiff, Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

### **III. SETTLEMENT TERMS AND CONDITIONS**

**43. Maximum Settlement Amount.** Subject to the terms and conditions of this Agreement, the Maximum Settlement Amount that Defendant is obligated to pay under this Settlement Agreement is \$83,300. The MSA includes payment for all Attorneys' Fees and Costs Awards, the Class Representative Enhancement Payment, all Class Settlement Payments, and Administrative Costs. Defendant shall not be required to pay anything greater than the MSA in exchange for the releases set forth herein, except as set forth in Section III, Paragraph 43, Subsection A.

**A. Escalator Provision:** Defendant represented that, as of August 2022, there were 238 Class Members. This is a material term of the Settlement. In the event that the class size exceeds 238 by more than ten percent (10%), the MSA shall increase proportionally. For example, if the class size is determined to be 262 Class Members, as verified by the Settlement Administrator, the MSA shall increase in a corresponding *pro rata* amount, and attorneys' fees shall be calculated as a percentage of the adjusted MSA.

**44. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.

**45. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the Claims asserted on

behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

46. **Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as representative for the Class.
47. **Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
48. **Individual Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

**A. Calculation.**

- i. **Individual Class Settlement Share Calculation.**  
The amount of each Individual Class Settlement Share will equal the Net Settlement Amount divided by the number of Participating Class Members.

**B. Tax Withholdings.** Individual Class Settlement Share payments made to Participating Class Members will be considered penalties and non-wage income paid under IRS Form 1099 and will not be subject to employer tax withholdings or employer payroll taxes. 1099 Forms will be distributed by the Settlement Administrator at times and in the manner required by Internal Revenue Code of 1986 and consistent with this Agreement.

49. **Disbursement of Maximum Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement

Administrator shall disburse the Maximum Settlement Amount as directed later on herein to the following:

- A. To the Named Plaintiff:** Class Counsel will file a motion for payment from the MSA of an amount not to exceed \$4,000 to Plaintiff as an enhancement for his services in this case (“Class Representative Enhancement Payment”). Defendant will not oppose a motion for an enhancement payment up to this amount. The effectiveness or validity of this Settlement is not conditioned upon any specific enhancement payment granted by the Court.
- B. To Class Counsel.** Subject to the Court’s approval, all attorneys’ fees, costs, and expenses will be paid from the MSA Defendant will not object to Plaintiff’s attorneys’ fees request not to exceed 1/3 (33.33%) of the MSA and a cost award not to exceed \$7,500, and Plaintiff/Class Counsel agree to seek no more than these amounts. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the entirety of the application for the attorneys’ fees, costs, and expenses award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the attorneys’ fees, costs, and expenses award, the difference shall become part of the NSA and be available for distribution to Participating Class Members. The effectiveness or validity of this Settlement is not conditioned upon any specific fees/costs awarded by the Court.
- C. To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$10,000.00. This will be paid out of the Maximum Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

**D. To Participating Class Members.** The Settlement Administrator will pay an Individual Class Settlement Share from the Net Settlement Amount to each Participating Class Member.

**50. Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that CPT Group, Inc. shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to Class Members; performing skip traces and re-mailing notices to Class Members; calling Class Members with undeliverable notices to obtain accurate addresses; keeping track of any objections or requests for exclusion from Class Members; calculating each Class Member's Individual Settlement Share; maintaining a website which will include settlement documents; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and re-mailing Individual Settlement Shares to Participating Class Members; distributing the Attorneys' Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members and Plaintiff with 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the State of California unclaimed property fund in the name of the Class Member; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

**51. Procedure for Approving Settlement.**

**A. Motion for Preliminary Approval and Conditional Certification.**

- i. On or before the date Plaintiff files his Motion for Preliminary Approval, Plaintiff will file a First Amended Complaint for the purpose of facilitating the settlement of the Action on a class-wide basis that alleges only: (1) violation of the Fair Credit Reporting Act for failure to make proper disclosures; (2) violation of the Fair Credit Reporting Act for failure to obtain proper authorization; (3) Violation of the Investigative Consumer Reporting Agencies Act for failure to make proper disclosures; and (4) Violation of Unfair Competition Law. Class Counsel will provide a copy for Defendants' review and approval before filing.
- ii. Plaintiff will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval hearing; and (4) approving the Class Notice.
- iii. At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- iv. **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys' Fee Award, Administration Costs, and Plaintiff's Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered

separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys' Fee Award, Administration Costs, and Plaintiff's Representative Service Award shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys' Fee Award, Administration Costs, and Plaintiff's Class Representative Enhancement Payment.

**B. Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- i. Delivery of Class Data.** Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list the following information for each Class: (1) first and last name; (2) last known mailing address; (3) last known telephone number; and (4) social security number. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Class Data shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Class Data and all information contained within the Class Data as private and confidential.
- ii. Preparation of Class Notices.** Based on the information in the Class Data and the formula set forth in Paragraph 48(A)(i), above, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share for every Class Member, to be included in the Class Notice. The Class Notices will inform each Class Member of his/her right to do nothing, opt out of the

Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.

- iii. **Mailing of Class Notices.** Before mailing the Class Notice, the Administrator shall update Class Member addresses using the National Change of Address database. Within twenty-one (21) calendar days after receipt of the Class Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all Class Members using the mailing address information provided by Defendant and updated using the National Change of Address Database.
- iv. **Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database, direct contact, and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found. There shall be no obligation to re-mail a Class Notice more than one time. For each Class Notice that is re-mailed, the Class Member shall have sixty (60) days from the date the Class Notice is re-mailed to respond.

- v. **Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.
- vi. **Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

**C. Objections to Settlement.** The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline.

- a. **Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing, and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
- b. **Notice of Intent to Appear.** Objecting Class Members may (though are not required to) appear at the Final



Approval Hearing, either in person or through the objector's own counsel. Objecting Class Members are permitted to appear regardless of whether they submitted a written objection.

**D. Request for Exclusion from the Settlement (“Opt-Out”).** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion by no later than the Response Deadline. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and the last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative, and (e) be postmarked no later than the Response Deadline.

- i. **Effect of “Opt-Out.”** Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Class Settlement Share or any benefit of this Settlement.
- ii. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Class Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment,

regardless of whether he or she has objected to the Settlement.

- iii. **Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
- iv. **Opt-Out Fuse.** If more than ten percent (10%) of the Settlement Class Members opt-out, Defendant will have the absolute right (but not the obligation) in its sole discretion to terminate this Settlement. If Defendant exercises its right to terminate, the Settlement will be void ab initio and of no force or effect, and will not be admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural. In addition, none of the Parties to this Settlement will be deemed to have waived or assigned any claims, objections, defenses, or arguments in this action, including with respect to the issue of class certification. In the event Defendant exercises the option to terminate this Settlement, Defendant shall be responsible for the Administrative Costs actually incurred by the Settlement Administrator.

**E. No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

**F. Motion for Final Approval.**

- i. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accordance with the terms of the Settlement: (1) the Attorneys' Fee Award; (2) Administrative Costs; (3) the Plaintiff's Class Representative Enhancement Payment; and (4) Administration Costs. Class Counsel will also move the Court for an order of Final Approval and associated entry of Judgment releasing and barring any Released Claims of the Participating Class Members.
  
- ii. **Denial or Appeal of Final Approval.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Maximum Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Plaintiff's Class Representative Enhancement Payment, Attorneys' Fee Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
  
- iii. **Proposed Order and Judgment.** Upon Final Approval of the Settlement, Plaintiff shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction under CCP § 664.6, FRCP 41, and/or any comparable federal rule or statute over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters

as may be appropriate under Court rules and applicable law. The prevailing party to any such enforcement action shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with such enforcement.

**G. Waiver of Right to Appeal.** Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys' Fee Award, Administration Costs, and Plaintiff's Representative Enhancement Payment. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

**H. Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement Agreement, and that Court's decision is not completely reversed and the judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Maximum Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

**I. Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the

Maximum Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- i. Funding the Settlement:** Defendant shall wire to the Settlement Administrator the Maximum Settlement Amount no later than fifteen (15) calendar days of the Effective Final Settlement Date.
  - ii. Disbursement:** Within fifteen (15) calendar days after the Defendant wires the MSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys' Fee Award to be paid to Class Counsel; (4) the Class Representative Enhancement Payment to be paid to Plaintiff; and (5) the Administration Costs to be paid to the Settlement Administrator.
  - iii. Qualified Settlement Fund or QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- J. Settlement Administrator's Final Report.** Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator

will provide any supplemental declaration required by the Court or the Parties.

**K. Uncashed Checks.** Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

- i. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing the Individual Settlement Share checks, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be sent to the State of California Unclaimed Property Fund (or similar agency) in the names of each Participating Class Member whose check is un-cashed.

**L. Defendant's Legal Fees.** Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Maximum Settlement Amount.

**52. Release of Claims.** As of the Effective Final Settlement Date and Defendant's funding of the MSA, Class Members who do not submit a timely and valid request for exclusion release the Released Parties from the Released Class Claims.

### **53. Miscellaneous Terms**

**A. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of

compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).

**B. No Effect on Employee Benefits.** The Plaintiff's Class Representative Enhancement Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members. The Parties agree that any payments paid to Plaintiff or the Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Plaintiff's Class Representative Enhancement Award shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

**C. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

**D. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to

take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- E. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- F. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- G. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- H. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- I. California Law Governs.** All terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.



**J. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

**K. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

**L. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

**M. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.

**N. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

- O. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- P. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- Q. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- R. Confidentiality.** Except as explicitly provided for herein (see section called “Enforceability”) the terms of this Settlement will be kept confidential until they are finally memorialized in a complete settlement agreement and filed with the Court for preliminary approval. Class Counsel shall do nothing to otherwise disclose or publicize this Settlement or use it for marketing purposes, including on web sites and the Internet and in any form of electronic or no-electronic press whatsoever, although this confidentiality obligation shall not be construed to interfere with Class Counsel’s communications with Settlement Class Members and will not preclude Class Counsel from referring to the Settlement in any future Court filings in support of class certification and/or prevailing party attorneys’ fees and/or settlement approval.

**S. Plaintiff's Waiver of Right to Object.** Plaintiff waives any right to object to this Agreement, and by signing this Agreement is bound by the terms herein.

**IV. EXECUTION BY PARTIES AND COUNSEL**

The Parties and their counsel execute this Agreement.

Dated: Dec 2, 2022

**FRANCISCO HERNANDEZ**



Dated: 10/29/22

**BURRTEC WASTE & RECYCLING SERVICES, LLC**

  
Name: Tracy A. Sweeney  
Title: V.P.

APPROVED AS TO FORM AND CONTENT:

Dated: December 2, 2022

**JAMES HAWKINS APLC**



James R. Hawkins  
Christina M. Lucio  
Mitchell Murray

Attorneys for Plaintiff

Dated: 12/28/2022

**VARNER & BRANDT LLP**



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