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14 DISTRIBUTION ALTERNATIVES, INC.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SAN BERNARDINO**

18 ANGELICA AGUILAR, individually, and on
behalf of other members of the general public
19 similarly situated,

20 Plaintiff,

21 vs.

22 DISTRIBUTION ALTERNATIVES, INC., a
23 Minnesota corporation; and DOES 1 through
24 10, Inclusive,

25 Defendants.

CASE NO.: CIVSB2206760

**STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT**

*[Assigned for all purposes to the Honorable Joseph
T. Ortiz, Department S17]*

Complaint Filed: March 29, 2022

1 This Stipulation Regarding Class Action and PAGA Settlement and Release (hereinafter the
2 “Settlement” or “Agreement”) is made and entered into by and between Plaintiff ANGELICA AGUILAR
3 (“Plaintiff”), on behalf of herself, the California Labor and Workforce Development Agency (“LWDA”),
4 the State of California allegedly aggrieved employees, and all others similarly situated, and Defendant
5 DISTRIBUTION ALTERNATIVES, INC. (“Defendant”). Plaintiff and Defendant shall be, at times,
6 collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally, and
7 forever resolve the claims as set forth herein, based upon and subject to the terms and conditions of this
8 Agreement.

9 THE PARTIES STIPULATE AND AGREE as follows:

10 **1. DEFINITIONS**

11 Unless otherwise defined herein, the following terms used in this Agreement shall have the
12 meanings ascribed to them as set forth below:

13 **A. “Action”** means *Angelica Aguilar v. Distribution Alternatives, Inc.*, filed on March 29,
14 2022 in the Superior Court of California, County of San Bernadino, Case No. CIVSB2206760.

15 **B. “Agreement”** means this Joint Stipulation of Settlement, including the attached Exhibit(s).

16 **C. “Class Counsel”** means: Raul Perez, Bevin Allen Pike, Daniel S. Jonathan, and Trisha K.
17 Monesi of Capstone Law APC. The term “Class Counsel” shall be used synonymously with the term
18 “Plaintiff’s Counsel.”

19 **D. “Class Data” or “Class List”** means a list based on Defendant’s business records that
20 identifies each Class Member’s name; last known home or mailing address; Social Security number or, as
21 applicable, other taxpayer identification number; and dates of employment.

22 **E. “Class Member(s)”, “Settlement Class”, or “Settlement Class Member(s)”** means all
23 hourly, non-exempt employees who are currently or have been directly employed by Defendant in the
24 State of California at any time during the Class Period.

25 **F. “Class Period”** means the period from March 29, 2018 through the earlier of September
26 10, 2023 or the date the Court preliminarily approves the Settlement Agreement.

27 **G. “Class Notice”** means and refers to the notice sent to Class Members after preliminary
28 approval of the Settlement in the manner described in Paragraph 9(A) of this Agreement.

1 **H. “Court”** means the Superior Court of the State of California for the County of San
2 Bernadino.

3 **I. “Defendant”** means Defendant Distribution Alternatives, Inc.

4 **J. “Defense Counsel”** means counsel for Defendant Leila Nourani and Martin P. Vigodnier
5 of Jackson Lewis P.C.

6 **K. “Disposition”** means the method by which the Court approves the terms of the Settlement
7 and retains jurisdiction over its enforcement, implementation, construction, administration, and
8 interpretation.

9 **L. “Effective Date”** means the date when all of the following events have occurred: (1) the
10 Stipulation of Settlement has been executed by all Parties, Class Counsel, and Defendant’s Counsel; (2)
11 the Court has given preliminary approval to the Settlement; (3) the Class Notice has been given to the
12 putative members of the Class, providing them with an opportunity to object to the terms of this Settlement
13 or to opt-out of the Settlement; (4) the Court has held a formal fairness hearing and entered a Judgment
14 and Final Order certifying the Settlement Class, and approving the Settlement; (5) 65 calendar days have
15 passed since the Court has entered a Judgment and Final Order certifying the Settlement Class, and
16 approving the Settlement; and (6) in the event there are written objections filed prior to the final fairness
17 hearing which are not later withdrawn or denied, the later of the following events: seven business days
18 after the period for filing any appeal, writ or other appellate proceeding opposing the Court’s Final Order
19 approving the Settlement has elapsed without any appeal, writ or other appellate proceeding having been
20 filed; or, if any appeal, writ or other appellate proceeding opposing the Court’s Final Order approving the
21 Settlement has been filed, seven business days after any appeal, writ or other appellate proceedings
22 opposing the Settlement has been finally and conclusively dismissed with no right to pursue further
23 remedies or relief.

24 **M. “Employer Taxes”** means employer-funded taxes and contributions imposed on the wage
25 portions of the Individual Settlement Payments under the Federal Insurance Contributions Act, the Federal
26 Unemployment Tax Act, and any similar state and federal taxes and contributions required of employers,
27 such as for unemployment insurance.

1 **N. “Final Judgment” or “Judgment”** means the judgement entered by the Court based upon
2 the Final Order Approving Settlement.

3 **O. “Final Order Approving Settlement” or “Final Order”** means the final formal court
4 order signed by the Court following the Final Fairness and Approval Hearing in accordance with the terms
5 herein, approving this Agreement.

6 **P. “General Release”** means the broader release of claims by Plaintiff, which is in addition
7 to Plaintiff’s limited release of claims as a Participating Class Member.

8 **Q. “Gross Settlement Amount”** means an all-in and non-reversionary sum of SEVEN
9 HUNDRED THOUSAND DOLLARS (\$700,000.00) inclusive of all amounts to be paid under the
10 Settlement, including the amounts to the Settlement Class, Plaintiff for Service Award, PAGA penalties
11 to the State of California and PAGA Members, attorney fees and costs, and settlement administration
12 expenses. Under no circumstances will Defendant’s payment exceed the Gross Settlement Amount, except
13 that Defendant will make additional payments to the Settlement Administrator representing its share of
14 any employer payroll taxes to be paid in connection with the Settlement (*e.g.*, FICA, FUTA, payroll taxes,
15 or any similar tax or charge).

16 **R. “Individual PAGA Payment(s)”** means a payment made to a PAGA Member for his or
17 her share of the PAGA Payment, which may be in addition to his or her Individual Settlement Share if he
18 or she is also a Participating Class Member.

19 **S. “Individual Settlement Payment(s)”** means a payment to a Participating Class Member
20 of his or her net share of the Net Settlement Amount.

21 **T. “Individual Settlement Share”** means the gross amount of the Net Settlement Amount
22 that a Participating Class Member is projected to receive based on the number of Workweeks that he or
23 she worked as a Settlement Class Member during the Class Period, which shall be reflected in his or her
24 Class Notice.

25 **U. “LWDA”** means the State of California Labor and Workforce Development Agency.

26 **V. “LWDA Payment”** means the payment to the LWDA for its seventy-five percent (75%)
27 share of the total amount allocated toward penalties under the PAGA all of which is to be paid from the
28 Gross Settlement Amount. The Parties agree that TWENTY THOUSAND DOLLARS AND ZERO

1 CENTS (\$20,000.00) shall be allocated toward PAGA penalties, subject to approval by the Court, of
2 which FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$15,000.00) will be paid to the LWDA
3 and FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00) will be paid to PAGA Members on
4 a pro rata basis based on the Workweeks worked by the PAGA Members in the PAGA Period.

5 **W. “Motion for Final Approval”** means Plaintiff’s submission of a written motion, including
6 any evidence as may be required for the Court to conduct an inquiry into the fairness of the Settlement as
7 set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and to enter a Final Order
8 in this Action.

9 **X. “Motion for Preliminary Approval”** means Plaintiff’s submission of a written motion,
10 including any evidence as may be required for the Court to grant preliminary approval of the Settlement
11 as required by Rule 3.769 of the California Rules of Court.

12 **Y. “Net Settlement Amount”** means the portion of the Gross Settlement Amount that is
13 available for distribution to the Participating Class Members after deductions for the Court-approved
14 allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award of attorneys’ fees,
15 reimbursement of litigation costs and expenses to Class Counsel, the LWDA Payment and the PAGA
16 Payment.

17 **Z. “Non-Participating Class Member(s)”** means any Class Member(s) who submit to the
18 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant to
19 Paragraph 9(C) below. Non-Participating Class Member(s) shall still receive their pro rata share of the
20 PAGA Settlement Amount, if applicable.

21 **AA. “Operative Complaint”** means the First Amended Complaint filed with the Court.

22 **BB. “PAGA”** means the California Private Attorneys General Act of 2004, California Labor
23 Code §§ 2698 *et seq.*

24 **CC. “PAGA Payment”** is the 25% portion of the TWENTY THOUSAND DOLLARS AND
25 ZERO CENTS (\$20,000.00) that is allocated toward PAGA penalties (FIVE THOUSAND DOLLARS
26 AND ZERO CENTS (\$5,000.00)) that, subject to approval by the Court will be paid to PAGA Members
27 on a pro rata basis based on the Workweeks worked by the PAGA Members in the PAGA Period, which
28 will be in addition to their Individual Settlement Payment if they are also Participating Class Members.

1 Settlement Class Members are not permitted to exclude themselves from receiving their pro rata share of
2 the PAGA Payment.

3 **DD. “PAGA Member(s)”** means all Class Members who worked for Defendant at any time
4 during the PAGA Period.

5 **EE. “PAGA Member’s Workweeks”** means the number of weeks that a PAGA Member was
6 directly employed by and worked for the Defendant as a non-exempt employee during the PAGA Period
7 in California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

8 **FF. “PAGA Period”** means the period from April 6, 2020 through the earlier of September
9 10, 2023 or the date the Court preliminarily approves the Settlement Agreement.

10 **GG. “PAGA Released Claims”** means the claims being released as described in Paragraph 7
11 below.

12 **HH. “PAGA Workweeks”** means the aggregate number of Workweeks worked by all PAGA
13 Members during the PAGA Period.

14 **II. “Participating Class Member(s)”** means all Settlement Class Members who do not
15 submit a timely and valid Request for Exclusion and will therefore receive his or her share of the Net
16 Settlement Amount automatically; i.e., without the need to return a claim form. Each Participating Class
17 Member will be paid his/her Participating Individual Settlement Share. Settlement Class Members may
18 not exclude themselves from receiving their pro rata share of the PAGA Payment, if applicable.

19 **JJ. “Participating Individual Settlement Share”** means the gross amount of the Net
20 Settlement Amount that a Participating Class Member is eligible to receive based on the number of
21 Workweeks that he or she worked as a Settlement Class Member during the Class Period once all opt-outs
22 have been factored in, excluding any Individual PAGA Payment to which he or she may be entitled if he
23 or she is also an PAGA Member.

24 **KK. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to Plaintiff
25 Angelica Aguilar.

26 **LL. “Preliminary Approval Date”** means the date on which the Court enters an Order
27 granting preliminary approval of the Settlement embodied in this Agreement.

28 **MM. “Released Claims”** means the claims being released described in Paragraph 7 below.

1 **NN. “Released Parties”** means Defendant and their present and former parent companies,
2 subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, owners, partners,
3 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any other individual
4 or entity that could be liable for any Released Claims, and Defense counsel of record in the Action.

5 **OO. “Response Deadline”** means the deadline for Settlement Class Members to postmark or
6 fax any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator. The
7 Responses Deadline is forty-five (45) calendar days from the date that the Class Notice is first mailed by
8 the Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an instance, the
9 Response Deadline shall be fifteen (15) calendar days from the re-mailing, or forty-five (45) calendar days
10 from the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion,
11 Workweek Dispute or Objection. The date of the postmark shall be the exclusive means for determining
12 whether a Request for Exclusion, Objection, or Workweek Dispute was submitted by the Response
13 Deadline.

14 **PP. “Request for Exclusion”** means a written request to be excluded from the Settlement Class
15 pursuant to Paragraph 9(C) below.

16 **QQ. “Service Award”** means monetary amounts to be paid to Plaintiff of up to TEN
17 THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00), which subject to Court approval, will be
18 paid out of the Gross Settlement Amount.

19 **RR. “Settlement Administration Costs”** means all costs incurred by the Settlement
20 Administrator in administration of the Settlement, including, but not limited to, translating the Class
21 Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English and Spanish,
22 calculating Individual Settlement Shares, Individual Settlement Payments, Individual PAGA Payments,
23 and Participating Individual Settlement Shares, as well as associated taxes and withholdings, providing
24 declarations, generating Individual Settlement Payment checks and related tax reporting forms, doing
25 administrative work related to unclaimed checks, transmitting payment to Class Counsel for the Court-
26 approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses, to Plaintiff for
27 her Service Award, and to the LWDA for the LWDA Payment, providing weekly reports of opt-outs,
28 objections and related information, and any other actions of the Settlement Administrator as set forth in

1 this Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are
2 estimated not to exceed TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00). If the actual
3 amount of the Settlement Administration Costs is less than TEN THOUSAND DOLLARS AND ZERO
4 CENTS (\$10,000.00), the difference between TEN THOUSAND DOLLARS AND ZERO CENTS
5 (\$10,000.00) and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount.
6 If the Settlement Administration Costs exceed TEN THOUSAND DOLLARS AND ZERO CENTS
7 (\$10,000.00) then such excess will be paid solely from the Gross Settlement Amount and Defendant will
8 not be responsible for paying any additional funds in order to pay these additional costs.

9 **SS. “Settlement Administrator”** means the Third-Party Administrator mutually agreed upon
10 by the Parties and approved by the Court that will be responsible for the administration of the Settlement
11 including, without limitation, translating the Class Notice in Spanish, the distribution of the Individual
12 Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters
13 under this Agreement.

14 **TT. “Workweeks”** means the number of weeks that a Settlement Class Member was directly
15 employed by and worked for the Defendant as a non-exempt employee during the Class Period in
16 California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable). All
17 Class Members will be deemed to have worked at least one Workweek during the Class Period, and all
18 PAGA Members will be deemed to have worked at least one pay period during the PAGA Period.

19 **2. BACKGROUND**

20 **A.** On April 6, 2021, Plaintiff filed with the LWDA and mailed Defendant a notice under
21 Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to recover civil
22 penalties on behalf of PAGA Members for various alleged Labor Code violations (“PAGA Notice”).

23 **B.** On March 29, 2022, Plaintiff filed a putative wage-and-hour Complaint in Superior Court
24 of the State of California, County of San Bernadino, captioned *Angelica Aguilar v. Distribution*
25 *Alternatives, Inc.*, Case No. CIVSB2206760 alleging causes of action against Defendant for unpaid
26 overtime; unpaid minimum wages; failure to provide meal periods; failure to permit rest breaks; non-
27 compliant wage statements and failure to maintain payroll records; wages not timely paid upon
28 termination; failure to timely pay wages during employment; unreimbursed business expenses; and unfair

1 and unlawful business practices. On July 20, 2022, Plaintiff filed the operative First Amended Complaint
2 alleging an additional cause of action for civil penalties under PAGA.

3 **C.** Shortly thereafter, the Parties agreed to exchange informal discovery and attend an early
4 mediation in which Plaintiff was provided with, among other things, Plaintiff's complete time and payroll
5 records, anonymized sampling of 20% of the Class Members' time and payroll records, a legend of which
6 of the 20% sampling have meal period waivers, a randomized sampling of ten Class Members' wage
7 statements during the Class Period, all wage and hour policies in effect during the Class Period, packets
8 given to new hires, and relevant data points. Plaintiff also agreed to produce non-privileged
9 communications with Defendant's employees concerning allegations in her Complaint, non-privileged
10 witness or declaration statements concerning allegations in the Complaint, and documents that support
11 her alleged off-the-clock work, meal and rest period violations, and reimbursement claims (e.g., notes,
12 diary entries, calendars, text messages, emails, receipts, etc.).

13 **D.** On April 17, 2023, the Parties participated in a full-day mediation before Michael Young,
14 Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With
15 the aid of the mediator's evaluation, the Parties reached the Settlement to resolve the Action.

16 **E.** Class Counsel has conducted significant investigation of the law and facts relating to the
17 claims asserted in the Class Action, and the PAGA Notice, and have concluded that that the Settlement
18 set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into
19 account the sharply contested issues involved, the expense and time necessary to litigate the Action
20 through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an adverse
21 outcome, the uncertainties of complex litigation, the information learned through informal discovery
22 regarding Plaintiff's allegations, and the substantial benefits to be received by Settlement Class Members.

23 **F.** Defendant has concluded that, because of the substantial expense of defending against the
24 Action, the length of time necessary to resolve the issues presented herein, the inconvenience involved,
25 and the concomitant disruption to its business operations, it is in its best interest to accept the terms of this
26 Agreement. Defendant denies each of the allegations and claims asserted against it in the Action and the
27 PAGA Notice. However, Defendant nevertheless desires to settle the Action for the purpose of avoiding
28

1 the burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the
2 controversies engendered by the Action.

3 **G.** This Agreement is intended to and does effectuate the full, final, and complete resolution
4 of all Class Released Claims of Plaintiff and Participating Class Members, and all PAGA Released Claims
5 of Plaintiffs and, to the extent permitted by law, of the State of California and PAGA Members.

6 **3. JURISDICTION**

7 The Court has jurisdiction over the Parties and the subject matter of the Action. The Action
8 includes claims that, if proven, would authorize the Court to grant relief pursuant to the applicable statutes.
9 After the Court has granted Final Order Approving Settlement and entered judgment, the Court shall retain
10 jurisdiction over the Parties to enforce the terms of the judgment pursuant to California Rule of Court,
11 rule 3.769, subdivision (h).

12 **4. STIPULATION OF CLASS CERTIFICATION**

13 The Parties stipulate to the certification of the Settlement Class under this Agreement for purposes
14 of settlement only.

15 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

16 **A. Motion for Preliminary Approval**

17 Plaintiff shall promptly submit this Stipulation of Settlement to the San Bernadino Superior Court
18 in support of Plaintiff's Motion for Preliminary Approval and determination by the Court as to its fairness,
19 adequacy, and reasonableness. Prior to filing, Plaintiff agrees to provide Defendant the opportunity to
20 review Plaintiff's Motion for Preliminary Approval, and Plaintiff shall make a good faith effort to
21 incorporate and/or address Defendant's edits and comments. At the hearing on the Motion for Preliminary
22 Approval, the Parties will appear and support the granting of the motion. Should the Court decline to
23 preliminarily approve material aspects of the Settlement (including but not limited to the scope of release
24 to be granted by Class Members or by PAGA Members, or the binding effect of the Settlement on Class
25 Members or PAGA Members), the Parties shall work together in good faith to address any concerns raised
26 by the Court and propose a revised Settlement for the Court's approval. Promptly upon execution of this
27 Stipulation of Settlement, Plaintiff shall apply to the Court for the entry of an order preliminarily
28 approving the Settlement in a form that is mutually agreeable between the Parties and also provides for

1 the following: (1) Scheduling a fairness hearing on the question of whether the proposed Settlement,
2 including payment of attorneys' fees and litigation costs, costs of administration and the Class
3 Representative's Enhancement Award should be finally approved as fair, reasonable and adequate as to
4 the members of the Settlement Class; (2) Certifying a Settlement Class, Plaintiff Angelica Aguilar as Class
5 Representative, and Raul Perez, Bevin Allen Pike, Daniel S. Jonathan, and Trisha K. Monesi of Capstone
6 Law APC as Class Counsel; (3) Approving as to form and content the proposed Class Notice; (4)
7 Approving the manner and method for Class Members to request exclusion from the Settlement as
8 contained herein and within the Class Notice; (5) Directing the mailing of the Class Notice by first class
9 mail to the Class Members; and (6) Preliminarily approving the Settlement, subject only to the objections
10 of Class Members and final review by the Court and approval of the settlement of PAGA Released Claims;
11 and (7) Enjoining Plaintiff and all Class Members from filing or prosecuting any other cases, claims, suits
12 regarding the Released Class Claims unless and until such Class Members have filed valid Requests for
13 Exclusion with the Settlement Administrator.

14 **B. Motion for Final Approval**

15 Class Counsel agree to return or destroy all confidential documents; e.g., lists, and data in all forms
16 and formats (originals and copies), including but not limited to documents Defendant informally produced
17 to Class Counsel in anticipation of mediation (e.g., anonymized sampling of 20% of the Class Members'
18 time and payroll records, a legend of which of the 20% sampling have meal period waivers, a randomized
19 sampling of ten Class Members' wage statements during the Class Period, all wage and hour policies in
20 effect during the Class Period, packets given to new hires, and relevant data point) within twenty-one
21 (21) days after the Effective Date. Prior to filing, Plaintiff agrees to provide Defendant the opportunity to
22 review Plaintiff's Motion for Final Approval, and Plaintiff shall make a good faith effort to incorporate
23 and/or address Defendant's edits and comments. At the hearing on the Motion for Final Approval, the
24 Parties will appear and support the granting of the motion. Should the Court decline to finally approve
25 material aspects of the Settlement (including but not limited to the scope of release to be granted by Class
26 Members or by PAGA Members, or the binding effect of the Settlement on Class Members or PAGA
27 Members), the Parties shall work together in good faith to address any concerns raised by the Court and
28 propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount

1 than that sought by Plaintiff and Class Counsel for the Service Award and the Class Counsel's Court-
2 approved attorneys' fees and litigation costs will not constitute a material modification to the Settlement
3 within the meaning of this paragraph. Class Counsel agrees to submit a proposed final order and judgment,
4 in a form that is mutually agreeable between the parties and also provides for the following: (1) Approving
5 the Settlement, adjudging the terms of the Settlement to be fair, reasonable and adequate, and directing
6 consummation of the Settlement's terms and provisions; (2) Approving Class Counsel's application for
7 an award of attorneys' fees and litigation costs; (3) Approving the Service Award to Plaintiff; (4)
8 Approving payment of Settlement administration costs to the Settlement Administrator; and (5) Entering
9 judgment in accordance with California Rules of Court, Rule 3.769(h), and permanently barring and
10 enjoining all members of the Settlement Class and the PAGA Members from prosecuting against
11 Defendant and the Released Parties any Class Released Claims and PAGA Released Claims.

12 **6. NO ADMISSION**

13 In entering into this Agreement, Defendant do not admit, and specifically denies, that it violated
14 any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute
15 or any other applicable laws, regulations or legal requirements; breached any contract; violated or
16 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
17 conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any
18 of the negotiations connected with it, will be construed as an admission or concession by Defendant of
19 any such violations or failures to comply with any applicable law.

20 **7. RELEASE OF CLAIMS**

21 **A. Release by All Participating Class Members**

22 Upon the date Defendant transfers the Gross Settlement Amount, Plaintiff and Participating Class
23 Members release the Released Parties from any and all claims alleged or that reasonably could have been
24 alleged in Plaintiff's Operative Complaint based on the facts alleged, which arose during the Class Period,
25 including but not limited to (1) all claims for failure to pay overtime wages; (2) all claims for failure to
26 pay minimum wages; (3) all claims for failure to provide meal periods or compensation in lieu thereof;
27 (4) all claims for failure to provide rest periods or compensation in lieu thereof; (5) all claims for failure
28 to pay all wages due upon separation from employment; (6) all claims for failure to issue accurate and

1 compliant wage statements; (7) all claims for failure to indemnify necessary expenditures or losses; and
2 (8) all claims asserted through California Business & Professions Code section 17200, *et seq.* arising out
3 of the Labor Code violations referenced in the Operative Complaint (the “Class Released Claims”).

4 **B. Release by All PAGA Members**

5 Upon the date of funding the Gross Settlement Amount, the State of California and PAGA
6 Members release the Released Parties from all claims exhausted in Plaintiff’s notice(s) sent to the LWDA
7 and alleged in the Operative Complaint and/or based on the Class Released Claims, which arose during
8 the PAGA Period, regardless of whether PAGA Members opt out of the Class Settlement, including claims
9 for PAGA penalties pursuant to Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699 in
10 connection with alleged violations of Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7,
11 256, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2699, and 2802 (“PAGA
12 Released Claims”).

13 **C. Claims Not Released**

14 The releases above expressly exclude all other claims, including claims for vested benefits,
15 wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and
16 any other claims outside of the Class Released Claims of Participating Class Members arising during the
17 Class Period and the PAGA Released Claims of PAGA Members (and, to the extent permitted by law, the
18 State of California) arising outside of the PAGA Period.

19 **D. Plaintiff’s General Release of All Known and Unknown Claims**

20 Upon the date of funding of the Gross Settlement Amount, in addition to the claims being
21 released by all Participating Class Members, the named Plaintiff will release and forever discharge the
22 Released Parties, to the fullest extent permitted by law, of and from any and all claims, known and
23 unknown, asserted and not asserted, which the Named Plaintiff has or may have against the Released
24 Parties as of the date of execution of this Agreement (“Named Plaintiff’s Released Claims”). The
25 Named Plaintiff’s Released Claims include, but are not limited to, all of the Released Claims, the PAGA
26 Released Claims and any other claims arising under the California Labor Code; any claim arising out of the
27 California common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and federal
28 common law; all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and

1 attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, and
2 wrongful termination, including but not limited to, 42 U.S.C. section 1981, Title VII of the Civil Rights Act
3 of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the California
4 Fair Employment and Housing Act, the California Labor Code, and the law of contract and tort. This release
5 excludes the release of claims not permitted by law.

6 The Named Plaintiff's Released Claims include all claims, whether known or unknown. Even
7 if the Named Plaintiff discovers facts in addition to or different from those that she now knows or
8 believes to be true with respect to the subject matter of the Named Plaintiff's Released Claims, those
9 claims will remain released and forever barred. To effect a full and complete general release as
10 described above, the Named Plaintiff expressly waives any and all rights and benefits conferred upon
11 him by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable
12 law which are as follows:

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

19 Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release
20 and discharge of the Released Parties, the Named Plaintiff expressly acknowledges this Agreement is
21 intended to include in its effect, without limitation, all claims the Named Plaintiff does not know or suspect
22 to exist in the Named Plaintiff's favor at the time of signing this Agreement, and that this Agreement
23 contemplates the extinguishment of any such claims. The Named Plaintiff warrants that the Named Plaintiff
24 has read this Settlement, including this waiver of California Civil Code section 1542, and that the Named
25 Plaintiff has consulted with or had the opportunity to consult with counsel of the Named Plaintiff's choosing
26 about this Agreement and specifically about the waiver of section 1542, and that the Named Plaintiff
27 understands this Agreement and the section 1542 waiver, and so the Named Plaintiff freely and knowingly
28 enter into this Agreement. The Named Plaintiff further acknowledges that the Named Plaintiff later may

1 discover facts different from or in addition to those the Named Plaintiff now knows or believes to be true
2 regarding the matters released or described in this Agreement, and even so the Named Plaintiff agrees that
3 the releases and agreements contained in this Agreement shall remain effective in all respects
4 notwithstanding any later discovery of any different or additional facts. The Named Plaintiff expressly
5 assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes,
6 or controversies released or described in this Agreement or with regard to any facts now unknown to the
7 Named Plaintiff relating thereto.

8 **8. SETTLEMENT ADMINISTRATOR**

9 Plaintiff and Defendant, through their respective counsel, have selected CPT Group, Inc. to
10 administer the Settlement, which includes but is not limited to translating the Class Notice to Spanish,
11 distributing and responding to inquiries about the Class Notice and calculating all amounts to be paid from
12 the Gross Settlement Amount. Charges and expenses of the Settlement Administrator, currently estimated
13 to be TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00) will be paid from the Gross
14 Settlement Amount. If the actual amount of the Settlement Administration Costs is less than TEN
15 THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00), the difference between TEN THOUSAND
16 DOLLARS AND ZERO CENTS (\$10,000.00) and the actual Settlement Administration Costs shall be a
17 part of the Net Settlement Amount. If the Settlement Administration Costs exceed TEN THOUSAND
18 DOLLARS AND ZERO CENTS (\$10,000.00), then such excess will be paid solely from the Gross
19 Settlement Amount and Defendant will not be responsible for paying any additional funds in order to pay
20 these additional costs.

21 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION PROCESS**

22 **A. Notice to the Settlement Class Members**

23 Within ten (10) business days after the Preliminary Approval Date, Defense Counsel shall provide
24 the Settlement Administrator with the Class List. The Settlement Administrator shall perform an address
25 search using the United States Postal Service National Change of Address (“NCOA”) database and update
26 the addresses contained on the Class List with the newly-found addresses, if any. Within ten (10) business
27 days, or soon thereafter, of receiving the Class List from Defendant, the Settlement Administrator shall
28 mail the Class Notice in English and Spanish to the Settlement Class Members via first-class regular U.S.

1 Mail using the most current mailing address information available. The Settlement Administrator shall
2 maintain the Class List and digital copies of all the Settlement Administrator's records evidencing the
3 giving of notice to any Settlement Class Member, for at least four (4) years from the Effective Date.

4 The Class Notice will set forth the following:

- 5 (1) the Settlement Class Member's estimated Individual Settlement Payment and
6 Individual PAGA Payment, and the basis for each;
- 7 (2) the information required by California Rule of Court, rule 3.766, subdivision (d);
- 8 (3) the material terms of the Settlement;
- 9 (4) the proposed Settlement Administration Costs;
- 10 (5) the definition of the Settlement Class;
- 11 (6) a statement that the Court has preliminarily approved the Settlement;
- 12 (7) how the Settlement Class Member can obtain additional information, including
13 contact information for Class Counsel;
- 14 (8) information regarding opt-out and objection procedures;
- 15 (9) the date and location of the Final Fairness and Approval Hearing; and
- 16 (10) that the Settlement Class Member must notify the Settlement Administrator no later
17 than the Response Deadline if the Settlement Class Member disputes the accuracy
18 of the number of Workweeks as set forth on his or her Class Notice ("Workweek
19 Dispute"). If a Settlement Class Member fails to timely dispute the number of
20 Workweeks attributed to him or her in conformity with the instructions in the Class
21 Notice, then he or she shall be deemed to have waived any objection to its accuracy
22 and any claim to any additional settlement payment based on different data.

23 If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement
24 Administrator will attempt to obtain a current address for the Settlement Class Member to whom the
25 returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class
26 Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and (2) undertaking skip
27 tracing. If the Settlement Administrator is successful in obtaining a new address, it will promptly re-mail
28 the Class Notice to the Settlement Class Member. Further, any Class Notices that are returned to the

1 Settlement Administrator with a forwarding address before the Response Deadline shall be promptly re-
2 mailed to the forwarding address affixed thereto.

3 No later than seven (7) calendar days from the Response Deadline, the Settlement Administrator
4 shall provide counsel for the Parties with a declaration attesting to the completion of the notice process,
5 including the number of attempts to obtain valid mailing addresses for and re-sending of any returned
6 Class Notices, as well as the identities, number of, and copies of all Requests for Exclusion and Objections
7 received by the Settlement Administrator.

8 **B. Objections**

9 Only Participating Class Members may object to the Settlement. To object, the Participating Class
10 Member shall file a written objection and a notice of intention to appear at the hearing on the Motion for
11 Final Approval with the Clerk of the Superior Court of the State of California for the County of San
12 Bernadino and send copies to the Settlement Administrator, Class Counsel, and Defense counsel. Any
13 written objection should state each specific reason in support of the objection and any legal support for
14 each objection. The individual must state his or her full name, address, date of birth, and, if applicable,
15 the dates he or she worked as an employee for Defendant. To be valid and effective, any written objections
16 to approval of the Settlement must be filed with the Clerk of the Court or delivered to the Settlement
17 Administrator, Class Counsel, and/or Defense Counsel no later than sixty (60) calendar days after the
18 Settlement Administrator mails the Class Notice to the Class Members. Class Counsel and Defense
19 Counsel may respond to any objection lodged with the Court up to five (5) court days before the hearing
20 on the Motion for Final Approval. Objections may also be made at the hearing on the Motion for Final
21 Approval without a written objection being submitted, but only with the Court's express permission. If
22 the Court rejects the objection, the individual will be bound by the terms of the Settlement. PAGA
23 Members shall have no right to object to the PAGA Released Claims or any portion of the Settlement
24 pertaining to the PAGA Released Claims.

25 **C. Requesting Exclusion**

26 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the Settlement by
27 mailing a written request to be excluded from the Settlement ("Request for Exclusion") to the Settlement
28 Administrator, postmarked on or before the Response Deadline. To be valid, a Request for Exclusion

1 must include: (1) the Class Member's name; (2) the Class Member's Social Security Number; (3) the
2 Class Member's signature; and (4) the following statement: "Please exclude me from the Settlement Class
3 in the *Aguilar v. Distribution Alternatives, Inc.* matter" or any statement of similar meaning standing for
4 the proposition that the Class Member does not wish to participate in the Settlement. The Settlement
5 Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel and
6 Defense Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its
7 declaration to be provided in advance of the Final Fairness and Approval Hearing. Any Settlement Class
8 Member who requests exclusion using this procedure will not be entitled to receive any payment from the
9 Settlement and will not be bound by the Settlement Agreement or have any right to object to, appeal, or
10 comment on the Settlement. Any Settlement Class Member who does not opt out of the Settlement by
11 submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
12 those pertaining to the Class Released Claims, as well as any Judgment that may be entered by the Court
13 if Final Order Approving Settlement is granted. A Settlement Class Member cannot submit both a Request
14 for Exclusion and an objection. If a Settlement Class Member submits an Objection and a Request for
15 Exclusion, the Request for Exclusion will control and the Objection will be overruled. Settlement Class
16 Members who worked during the PAGA Period that submit a valid Request for Exclusion will still be
17 deemed PAGA Members, will still receive their Individual PAGA Payments, and will be bound by the
18 release of the PAGA Released Claims.

19 **D. Disputes Regarding Settlement Class Members' Workweek Data**

20 Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on
21 his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to the Settlement
22 Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The
23 Settlement Administrator shall immediately provide copies of all disputes to Class Counsel and counsel
24 for Defendant and shall immediately attempt to resolve all such disputes directly with relevant Settlement
25 Class Member(s) with the assistance of Defendant and Class Counsel. If the dispute cannot be resolved in
26 this manner, the Court shall adjudicate the dispute.

27 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA PAYMENTS**

28 Individual Settlement Payments will be calculated and distributed to Participating Class

1 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
2 Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to
3 PAGA Members will be calculated and distributed to PAGA Members from the PAGA Payment on a
4 *pro rata* basis based on PAGA Members' respective number of Workweeks during the PAGA Period.
5 Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to PAGA
6 Members will be made as follows:

7 **A.** The Settlement Administrator will determine the total number of Workweeks worked by
8 each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the
9 aggregate number of Workweeks worked by all Settlement Class Members during the Class Period
10 ("Class Workweeks"). Additionally, the Settlement Administrator will determine the total number of
11 Workweeks worked by each PAGA Member during the PAGA Period ("PAGA Member's
12 Workweeks"), as well as the aggregate number of Workweeks worked by all PAGA Members during
13 the PAGA Period ("PAGA Workweeks").

14 **B.** To determine each Settlement Class Member's Individual Settlement Share, the
15 Settlement Administrator will use the following formula: Individual Settlement Share = (Settlement
16 Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

17 **C.** To determine each Participating Class Member's Participating Individual Settlement
18 Share, the Settlement Administrator will determine the aggregate number of Workweeks worked by all
19 Participating Class Members during the Class Period ("Participating Class Workweeks") and use the
20 following formula: Individual Settlement Share = (Participating Class Member's Workweeks ÷
21 Participating Class Workweeks) × Net Settlement Amount.

22 **D.** The net amount of the Participating Individual Settlement Share is to be paid out to
23 Participating Class Members by way of check and is referred to as "Individual Settlement Payment(s)".

24 **E.** To determine each PAGA Member's Individual PAGA Payment, the Settlement
25 Administrator will use the following formula: PAGA Member's Individual PAGA Payment = (PAGA
26 Member's Workweeks ÷ PAGA Workweeks) x \$5,000.00 (the PAGA Payment).

27 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid to
28 Participating Class Members and/or PAGA Members by way of check. When a Participating Class

1 Member is also an PAGA Member, one check may be issued that aggregates both the Individual
2 Settlement Payment and the Individual PAGA Payment.

3 **G.** Defendant represents between March 29, 2018 and the date of the Parties' mediation,
4 Class Members worked approximately 55,175 Workweeks. If, as of the close of the Class Period, the
5 actual number of Workweeks worked by Class Members during the Class Period is greater than 60,693
6 Workweeks, then Defendant must either: (i) proportionally increase the Gross Settlement Amount (i.e.,
7 Proportionally Increased Gross Settlement Amount = Total Workweeks ÷ 60,693 × \$700,000.00); or
8 (ii) Defendant, in its sole discretion, may elect to cut off the Class Period and PAGA Period on the date
9 when the total number of Workweeks actually exceeded 60,693.

10 **11. DISTRIBUTION OF PAYMENTS**

11 **A. Distribution of Individual Settlement Payments**

12 Participating Class Members will receive an Individual Settlement Payment and PAGA
13 Members will receive an Individual PAGA Payment. Individual Settlement Payment and Individual
14 PAGA Payment checks shall remain valid and negotiable for one-hundred and eighty (180) calendar
15 days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day
16 period, checks for such payments shall be canceled and funds associated with such checks shall be
17 considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section
18 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
19 Procedure section 384, shall be transmitted to the Justice Gap Fund maintained by the State Bar of
20 California, the *cy pres* recipient. The Settlement Administrator shall prepare a report regarding the
21 distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be presented to
22 the Court by Class Counsel along with a proposed amended judgment that is consistent with the
23 provisions of Code of Civil Procedure section 384. In the event a Participating Class Member fails to
24 cash/deposit his or her Individual Settlement Payment, the Participating Class Member shall
25 nevertheless remain bound by the Settlement.

26 **B. Funding of Settlement**

27 Defendant shall, within ten (10) calendar days of the Effective Date, make payment of the Gross
28 Settlement Amount and Employer Taxes to the Settlement Administrator pursuant to Internal Revenue

1 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”) with an
2 FDIC insured banking institution, for distribution in accordance with this Agreement and the Court’s
3 Orders and subject to the conditions described herein.

4 **C. Time for Distribution**

5 Within ten (10) calendar days after payment of the full Gross Settlement Amount and Employer
6 Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator shall distribute
7 Payments from the QSA for: (1) the Service Award to Plaintiff as specified in this Agreement and
8 approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid to Class Counsel, as specified
9 in this Agreement and approved by the Court; (3) the Settlement Administrator Costs, as specified in this
10 Agreement and approved the Court; (4) the LWDA Payment, as specified in this Agreement and approved
11 by the Court; and (5) Individual PAGA Payments as specified in this Agreement and approved by the
12 Court. The balance remaining shall constitute the Net Settlement Amount from which Individual
13 Settlement Payments shall be made to Participating Class Members, less applicable taxes and
14 withholdings. All interest accrued shall be for the benefit of the Class Members and distributed on a *pro*
15 *rata* basis to Participating Class Members based on the number of Workweeks worked by them in the
16 Class Period.

17 **D. Tax Liability and Circular 230 Disclaimer**

18 Defendant makes no representation as to the tax treatment or legal effect of the payments called
19 for hereunder, and the Named Plaintiff and Participating Class Members are not relying on any
20 statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard.
21 Participating Class Members and Class Counsel understand and agree that they shall be responsible for the
22 payment of all taxes and penalties assessed on the payments specified herein, and shall hold the Parties,
23 Class Counsel and Defense Counsel free and harmless from and against any claims resulting from treatment
24 of such payments as non-taxable, including the treatment of such payments as not subject to withholding or
25 deduction for payroll and employment taxes.

26 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
27 “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE
28 ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT

1 (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
2 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
3 ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR
4 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE
5 WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
6 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
7 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL
8 FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
9 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF
10 ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
11 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
12 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY
13 BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO
14 ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
15 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
16 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
17 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
18 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
19 BY THIS AGREEMENT.

20 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

21 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys' fees of up
22 to one-third of the Gross Settlement Amount, which amounts to TWO HUNDRED THIRTY-THREE
23 THOUSAND THREE HUNDRED THIRTY-THREE DOLLARS AND ZERO CENTS (\$233,333.00).
24 Class Counsel shall further apply for, and Defendant shall not oppose, an application or motion by Class
25 Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as
26 set forth by declaration testimony in an amount up to FIFTEEN THOUSAND DOLLARS AND ZERO
27 CENTS (\$15,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement
28 Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain Final

1 Order Approving Settlement in the Action. The “future” aspect of the amounts stated herein includes,
2 without limitation, all time and expenses expended by Class Counsel (including any appeals therein).
3 There will be no additional charge of any kind to either the Settlement Class Members or request for
4 additional consideration from Defendant for such work. Should the Court approve attorneys’ fees and/or
5 litigation costs and expenses in amounts that are less than the amounts provided for herein, then the
6 unapproved portion(s) shall be a part of the Net Settlement Amount.

7 Class Counsel shall be solely and legally responsible to pay all applicable taxes on the award of
8 attorneys’ fees. Class Counsel shall provide the Settlement Administrator with properly completed and
9 signed copies of IRS Form W-9 in order for the Settlement Administrator to process such fees approved
10 by the Court. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the Class
11 Counsel Award.

12 **13. SERVICE AWARD TO PLAINTIFF**

13 Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an amount not to exceed
14 TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00) to Plaintiff, for participation in and
15 assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from the Gross
16 Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves the Service Award
17 to Plaintiff in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the
18 Net Settlement Amount.

19 The Named Plaintiff will be solely and legally responsible to pay any and all applicable taxes on
20 the Service Award and shall hold harmless Defendant, Class Counsel and Defense Counsel from any claim
21 or liability for taxes, penalties, or interest arising as a result of payment of the Service Award. Any amount
22 requested by the Named Plaintiff for the Service Award and not awarded by the Court shall become part
23 of the Net Settlement Amount and shall be distributed to Participating Class Members as part of their
24 Individual Settlement Payment.

25 **14. TAXATION AND ALLOCATION**

26 Each Individual Settlement Share shall be allocated as follows: 20% as wages (to be reported on
27 an IRS Form W-2); and 80% as interest and penalties (to be reported on an IRS Form 1099). Each
28 Individual PAGA Payment shall be allocated entirely as penalties. The Parties agree that the employees’

1 share of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share will
2 be withheld from the Individual Settlement Share in order to yield the Individual Settlement Payment. The
3 amount of federal income tax withholding will be based upon a flat withholding rate for supplemental
4 wage payments in accordance with Treasury Regulation § 31.3402(g)-1(a)(2) as amended or
5 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
6 withholding codes or regulations.

7 All monies received by Participating Class Members under the Settlement which are attributable
8 to wages shall constitute income to such Participating Class Members solely in the year in which such
9 monies actually are received by the Participating Class Members. It is the intent of the Parties that
10 Individual Settlement Payments provided for in this Agreement are the sole payments to be made by
11 Defendant to Participating Class Members in connection with this Settlement, with the exception of the
12 Named Plaintiff, and that the Participating Class Members are not entitled to any new or additional
13 compensation or benefits as a result of having received the Individual Settlement Payments. Furthermore,
14 the receipt of Individual Settlement Payments by Participating Class Members shall not, and does not, by
15 itself establish any general, special, or joint employment relationship between and among the Participating
16 Class Member(s) and Defendant.

17 Forms W-2 and/or Forms 1099 will be distributed by the Settlement Administrator at times and
18 in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this
19 Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed
20 after the date of this Agreement, the processes set forth in this Section may be modified in a manner to
21 bring Defendant into compliance with any such changes.

22 All Employer Taxes will be paid by Defendant separate, apart, and in addition to the Gross
23 Settlement Amount.

24 Neither Counsel for Plaintiff nor Defendant intend anything contained in this Agreement to
25 constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such
26 within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended)
27 or otherwise.

1 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

2 The Parties agree to allocate TWENTY DOLLARS AND ZERO CENTS (\$20,000.00) of the
3 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%)
4 of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA and twenty-five percent
5 (25%) (\$5,000.00) will be distributed to PAGA Members on a *pro rata* basis based upon their respective
6 Workweeks worked as PAGA Members during the PAGA Period.

7 **16. COURT APPROVAL**

8 This Agreement is contingent upon an order by the Court granting Final Order Approving
9 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it becomes
10 impossible to secure approval of the Settlement by the Court and the LWDA, the Parties shall be restored
11 to their respective positions in the Action prior to entry of this Settlement. If this Settlement Agreement
12 is voided, not approved by the Court or approval is reversed on appeal, it shall have no force or effect and
13 no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any
14 appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Settlement
15 Agreement specifically stated to survive the Settlement Agreement being voided or not approved, and
16 which control in such an event.

17 **17. WITHDRAWAL FROM SETTLEMENT BASED ON REQUESTS FOR EXCLUSION**

18 Defendant shall retain the option to nullify the Agreement in the event that more than 10% of
19 Class Members submit timely and valid Requests for Exclusion. Defendant must provide written notice
20 to Class Counsel of their withdrawal within thirty (30) calendar days of receiving sufficient information
21 to determine that the opt out rate exceeds 10%. If Defendant nullifies the Agreement, then Defendant
22 will be responsible for all settlement administration expenses incurred up to the date of nullification.

23 **18. NOTICE OF JUDGMENT**

24 In addition to any duties set out herein, the Settlement Administrator shall provide notice of the
25 Final Judgment entered in the Action by posting the same on its website for a period of no less than four
26 (4) years.

1 **19. LIMITATIONS ON USE OF THIS SETTLEMENT**

2 **A. Non-Evidentiary Use**

3 Whether or not the Effective Date occurs, neither this Agreement, nor any of its terms, nor the
4 Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to
5 be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not
6 limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties
7 of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or
8 offered in evidence against any of the Released Parties in any further proceeding in the Action, except for
9 the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that
10 a Class Member has resolved any of his or her claims released through this Agreement.

11 **B. Nullification**

12 The Parties have agreed to the certification of the Class encompassing all claims alleged in the
13 Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason fail to
14 certify this Class for settlement, or (b) the Court should for any reason fail to approve this Settlement, or
15 (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, or
16 declared or rendered void, or (e) the Court should for any reason fail to dispose of the Action in its entirety,
17 then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related
18 negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall stand in
19 the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the
20 Court; and (iv) the fact that the Parties were willing to stipulate to class certification of all causes of action
21 pled in the Action as part of the Settlement will have no bearing on, and will not be admissible in
22 connection with, the issue of whether the Class should be certified by the Court in a non-settlement context
23 in this Action or any other action, and in any of those events, Defendant expressly reserves the right to
24 oppose certification of the Class

25 Additionally, should the Settlement not become final for any reason, any Settlement
26 Administration Costs already incurred by the Settlement Administrator shall be split evenly amongst the
27 Parties. If Defendant elect to revoke the Settlement, as specified in Paragraph 17, the Parties and any
28 monies required to be paid under this Settlement shall be returned to their respective statuses as of the date

1 and time immediately prior to the execution of this Settlement, and the Parties shall proceed in all respects
2 as if this Settlement had not been executed, except that any Settlement Administration Costs already
3 incurred by the Settlement Administrator shall be paid to the Settlement Administrator by Defendant.

4 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the Gross
5 Settlement Amount shall not be distributed pending the completion of the appeal.

6 **20. MISCELLANEOUS PROVISIONS**

7 **A. Interpretation of the Agreement**

8 This Agreement constitutes the entire agreement between the Parties with respect to its subject
9 matter. Except as expressly provided herein, this Agreement has not been executed in reliance upon any
10 other written or oral representations or terms, and no such extrinsic oral or written representations or terms
11 shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this
12 Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic
13 evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both
14 in its procedural and substantive aspects, without regard to its conflict of law provisions. Any claim
15 arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and
16 exclusively in the Superior Court of the State of California for the County of San Bernadino, and Plaintiff
17 and Defendant hereby consent to the personal jurisdiction of the Court in the Action over it solely in
18 connection therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
19 and each of them, participated in the negotiation and drafting of this Agreement and had available to them
20 the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant may claim that
21 any ambiguity in this Agreement should be construed against the other. The Agreement may be modified
22 only by a writing signed by counsel for the Parties and approved by the Court.

23 **B. Further Cooperation**

24 The Parties and their respective attorneys shall proceed diligently to prepare and execute all
25 documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary to
26 consummate the Settlement as expeditiously as possible. The Parties agree that they will not take any
27 action inconsistent with this Agreement, including, without limitation, encouraging Class Members to opt
28 out of the Settlement. In the event the Court finds that any Party has taken actions inconsistent with the

1 Settlement, including, without limitation, encouraging Class Members to opt out of the Settlement, the
2 Court may take any corrective actions, including enjoining any Party from communicating regarding the
3 Settlement on an *ex parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary
4 and/or terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
5 opt-outs and/or objections. Nothing in this paragraph shall be construed to restrict Class Counsel's ability
6 to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class
7 Members.

8 **C. Counterparts**

9 The Agreement may be executed in one or more actual or non-original counterparts, all of which
10 will be considered one and the same instrument and all of which will be considered duplicate originals.

11 **D. Authority**

12 Each individual signing below warrants that he or she has the authority to execute this Agreement
13 on behalf of the Party for whom or which that individual signs.

14 **E. No Third-Party Beneficiaries**

15 Plaintiff, Participating Class Members, PAGA Members, the State of California, Class Counsel,
16 and Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

17 **F. Deadlines Falling on Weekends or Holidays**

18 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal
19 holiday, that deadline shall be continued until the following business day.

20 **G. No Public Comment**

21 The Parties and their counsel agree that they will not issue any press releases, initiate any contact
22 with the press, respond to any press inquiry, or have any communication with the press about the fact,
23 amount or terms of the Agreement. Class Counsel further agrees not to use the Agreement or any of its
24 terms for any marketing or promotional purposes. Nothing herein will restrict Class Counsel from
25 including publicly available information regarding this settlement in future judicial submissions regarding
26 Class Counsel's qualifications and experience. Further, Class Counsel will not include, reference or use
27 the Agreement for any marketing or promotional purposes, or for attempting to influence business
28 relationships at Defendant's locations, either before or after the Motion for Preliminary Approval is filed.

1 **H. Duty to Support and Defend the Settlement**

2 The Parties agree to abide by all of the terms of this Agreement in good faith and to support the
3 Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether
4 by appeal or collateral attack.

5 **I. Jurisdiction of the Court**

6 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction
7 with respect to the interpretation, implementation, and enforcement of the terms of this Settlement
8 Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel
9 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing
10 the settlement embodied in this Settlement Agreement and all orders and judgments entered in connection
11 therewith.

12 **J. Severability**

13 In the event that one or more of the provisions contained in this Agreement shall for any reason be
14 held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall
15 in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties and
16 the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable
17 provision had never been included in this Agreement.

18 **IT IS SO AGREED:**

19 **Plaintiff and Class Representative**

20
21 Dated: 8/15/2023

DocuSigned by:
Angelica Aguilar
ANGELICA AGUILAR
7A25F0879D3467

22
23 **Defendant**

24
25 Dated: _____

DISTRIBUTION ALTERNATIVES, INC.

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27 By: _____
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APPROVED AS TO FORM:

Dated: 8/2/2023

CAPSTONE LAW APC

By: 

Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi
Attorneys for Plaintiff

Dated: _____

JACKSON LEWIS P.C.

By: _____

Leila Nourani
Martin P. Vigodnier
Attorneys for Defendant

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APPROVED AS TO FORM:

Dated: _____

CAPSTONE LAW APC

By: _____

Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi
Attorneys for Plaintiff

Dated: July 31, 2023

JACKSON LEWIS P.C.

By:  _____

Leila Nourani
Martin P. Vigodnier
Attorneys for Defendant

Exhibit A

Aguilar v. Distribution Alternatives, Inc., No. CIVSB2206760
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN BERNARDINO
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All hourly, non-exempt employees who are currently or have been directly employed by Defendant Distribution Alternatives, Inc. (“Defendant”) in the State of California at any time during the period from March 29, 2018 through the earlier of September 10, 2023 or the date the Court preliminarily approves the Settlement Agreement (“Class Members”).

All hourly, non-exempt employees who are currently or have been directly employed by Defendant in the State of California at any time during the period from April 6, 2020 through the earlier of September 10, 2023 or the date the Court preliminarily approves the Settlement Agreement (“PAGA Members”).

On _____, the Honorable Joseph T. Ortiz of the San Bernardino County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at _ :00 _m. on _____, 2023 in Department S17 of the San Bernardino County Superior Court located at 247 West Third Street, San Bernardino, California 92415.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit [\[settlement website\]](#) for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be deemed a “Participating Class Member,” and will be eligible for a payment from the Net Settlement Fund and, if you are also a PAGA Member, the PAGA Fund. In exchange, you will be bound by the terms of the proposed Settlement and give up your right to assert wage and hour claims against Defendant based on the facts alleged in the Action during the Class Period.
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the class settlement by sending the Settlement Administrator a written Request for Exclusion. Once excluded, you will no longer be eligible for a payment from the Net Settlement Fund and will not be bound by the terms of the proposed class settlement.
The Opt-out Deadline is [DATE]	You cannot opt-out of the PAGA portion of the proposed Settlement. PAGA Members remain eligible to receive a payment from the PAGA Fund and must give up their rights to pursue PAGA penalty claims against Defendant based on the facts alleged in the Action during the PAGA Period.

<p>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</p> <p>Written Objections Must be Submitted by [DATE]</p>	<p>All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed class settlement, but not the PAGA settlement.</p>
<p>You Can Participate in the [DATE] Final Approval Hearing</p>	<p>The Court’s Final Approval Hearing is scheduled to take place on [DATE] in Department S17 of the San Bernardino County Superior Court located at 247 West Third Street, San Bernardino, California 92415. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing.</p> <p>If the Court grants final approval of the Settlement despite your objection, you will receive a payment from the Net Settlement Fund and you will be bound by the terms of the Settlement.</p>

Summary of the Litigation

Plaintiff Angelica Aguilar, on her behalf and on behalf of other current and former non-exempt employees, filed a putative wage-and-hour class and representative action alleging causes of action against Defendant for (1) unpaid overtime; (2) unpaid minimum wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) non-compliant wage statements and failure to maintain payroll records; (6) wages not timely paid upon termination; (7) failure to timely pay wages during employment; (8) unreimbursed business expenses; (9) civil penalties for violations of California Labor Code, pursuant to PAGA; (10) unlawful business practices; and (11) unfair business practices.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On April 17, 2023, the parties participated in a mediation with Michael Young, Esq., an experienced and well-respected class action mediator. With Mr. Young’s guidance, the parties were able to negotiate a complete settlement of Plaintiff’s claims.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Capstone Law APC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny any liability whatsoever, denies the factual and legal allegations in the case, and contends that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a negotiated compromise with Plaintiff of highly contested factual and legal issues.

Summary of The Proposed Settlement Terms

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for a Gross Settlement Amount of \$700,000. This amount is inclusive of: (1) individual settlement payments to all Class Members who do not opt out (“Participating Class Members”); (2) a Class Representative Enhancement Payment of \$10,000 to Angelica Aguilar for her services on behalf of the class, and for a release of all claims arising out of her employment with Defendant; (3) \$233,333 in attorneys’ fees and up to \$15,000 in litigation costs and expenses; (4) a \$20,000 settlement of claims under the Labor

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Code Private Attorneys General Act of 2004 (“PAGA”), inclusive of a \$15,000 payment to the California Labor and Workforce Development Agency (“LWDA”) in connection with the PAGA, and a \$5,000 payment (“PAGA Fund”) to all PAGA Members; and (5) reasonable Settlement Administrator’s fees and expenses currently estimated at \$10,000. After deducting the above payments, a total of approximately \$_ will be allocated to Class Members who do not opt out of the Settlement Class (“Net Settlement Fund”). Additionally, all PAGA Members will receive a proportional share of the \$5,000 PAGA Fund, regardless whether they opt out of the Settlement Class.

Payments from Net Settlement Fund. Defendant will calculate the total number of Workweeks worked by each Class Member from March 29, 2018 through the earlier of September 10, 2023 or the date the Court preliminarily approves the Settlement Agreement (“Class Period”) and the aggregate total number of Workweeks worked by all Class Members during the Class Period. To determine each Class Member’s estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Workweeks, resulting in the “Workweek Value.” Each Class Member’s share of the Net Settlement Fund will be calculated by multiplying each individual Class Member’s total number of Workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member’s share of the Net Settlement Fund according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

According to Defendant’s records, you worked during the Class Period in a non-exempt position for a total of ____ Workweeks. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$ ____.

Payments from PAGA Fund. Defendant will calculate the total number of Workweeks worked by each PAGA Member from April 6, 2020 through the earlier of September 10, 2023 or the date the Court preliminarily approves the Settlement Agreement (“PAGA Period”) and the aggregate total number of Workweeks worked by all PAGA Members during the PAGA Period. To determine each PAGA Member’s estimated share of the PAGA Fund, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of Workweeks, resulting in the “PAGA Workweek Value.” Each PAGA Member’s share of the PAGA Fund will be calculated by multiplying each individual PAGA Member’s total number of Workweeks by the PAGA Workweek Value. A Request for Exclusion does not exclude a PAGA Member from the release of claims under California Labor Code §§ 2698, *et seq.* and the PAGA Member will receive their portion of the PAGA fund even if he or she submits a valid Request for Exclusion.

According to Defendant’s records, you worked during the PAGA Period in a non-exempt position for a total of ____ Workweeks. Accordingly, your estimated payment from the PAGA Fund is approximately \$ ____.

Your Estimated Payment: Based on the above, your estimated payment from the settlement is approximately \$ _____. If you believe the Workweek information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator
c/o _____
Fax No. _____

If you dispute the information stated above, Defendant’s records will control unless you are able to provide documentation that establishes otherwise.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 20% of each settlement payment will be allocated as wages for which IRS Forms W-2 will be issued, and 80% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – *Automatically Receive a Payment from the Settlement*

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the Released Class Claims and Released PAGA Claims:

Released Class Claims: Any and all claims alleged or that reasonably could have been alleged in Plaintiff's Operative Complaint based on the facts alleged, which arose during the Class Period, including but not limited to (1) all claims for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide meal periods or compensation in lieu thereof; (4) all claims for failure to provide rest periods or compensation in lieu thereof; (5) all claims for failure to pay all wages due upon separation from employment; (6) all claims for failure to issue accurate and compliant wage statements; (7) all claims for failure to indemnify necessary expenditures or losses; and (8) all claims asserted through California Business & Professions Code section 17200, *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint (the "Class Released Claims").

Released PAGA Claims: All claims exhausted in Plaintiff's notice(s) sent to the LWDA and alleged in the Operative Complaint and/or based on the Class Released Claims, which arose during the PAGA Period, regardless of whether PAGA Members opt out of the Class Settlement, including claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699 in connection with alleged violations of Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7, 256, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2699, and 2802 ("PAGA Released Claims").

Option 2 – *Opt Out of the Settlement*

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o _____

The Request for Exclusion must be postmarked or faxed not later than _____, 2023. If you submit a Request for Exclusion which is not postmarked or faxed by _____, 2023, your Request for Exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive a Payment from the Net Settlement Fund.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

- Not release the Released Class Claims.
- If you are a PAGA Member, you will still be bound by the release of the Released PAGA Claims, and will receive a payment from the PAGA Fund.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Written objections must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator’s address]. PAGA Members shall have no right to object to the PAGA Released Claims or any portion of the Settlement pertaining to the PAGA Released Claims.

All written objections must be received by the administrator by not later than _____ 2023. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of San Bernardino and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released PAGA Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Raul Perez
Capstone Law APC
1875 Century Park E., Suite 1000
Los Angeles, CA 90067
Phone: *Case-Specific Number*

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT’S ATTORNEYS WITH INQUIRIES.

4870-4510-4762, v. 1

Questions? Contact the Settlement Administrator toll free at 1-*-***-******