

## JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

*Ryan Smith v. Grundfos*  
*Case No. 20CECG00674*

Subject to the Court's approval, the Parties have entered into this Agreement pursuant to the terms and conditions in this Joint Stipulation of Class Action and PAGA Settlement Agreement ("Agreement") between the Plaintiff Ryan Smith individually and on behalf of the Settlement Class, and Defendants Grundfos Americas Corporation, Grundfos CBS Inc., Grundfos Pumps Corporation, Grundfos Pumps Manufacturing Corporation, Grundfos U.S. Holding Corporation, and SFS Holding, Inc. (dba Peerless Pump Company) (collectively the "Defendants").

### I. DEFINITIONS

1. "Action" means all causes of action, claims, and allegations in the Second Amended Complaint in *Ryan Smith v. Grundfos*, No. 20CECG00674, filed on February 24, 2020 in the Superior Court of the State of California for the County of Fresno, removed to the United States District Court, Eastern District of California on March 10, 2021, and remanded on March 11, 2022. "Action" also includes all claims and allegations in Plaintiff's March 5, 2020 letter to the Labor and Workforce Development Agency (the "LWDA Letter").
2. "Agreement" or "Settlement Agreement" means the instant Joint Stipulation of Class Action and PAGA Settlement Agreement.
3. "Claims" means all claims and causes of action alleged in the Action.
4. "Class" means all current and former non-exempt, hourly paid employees who worked for any of the Defendants at any time in the State of California from February 24, 2016 through August 5, 2021 (the "Covered Period").
5. "Class Counsel" means the attorneys of record for the Class Representative and Class Members, *i.e.*, Raul Perez and Bevin Allen Pike of Capstone Law APC.
6. "Class Counsel Award" means an award of attorneys' fees, expenses and costs granted to Class Counsel and paid from the Maximum Settlement Amount.
7. "Class Data" means information about Class Members that Defendants currently have in its electronic records and will provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include for each Class Member their full name, last known address, last known telephone number, and Social Security number; as well as information sufficient to allow the Settlement Administrator to calculate the number of "Workweeks" for all Class Members during the Class Period.
8. "Class Members" means putative class members as alleged in the Action.
9. "Class Period" means the time period from February 24, 2016 through August 5, 2021 (the "Covered Period").
10. "Class Representative" means the named "Plaintiff" in this Action: Ryan Smith.

11. “Class Representative Service Award” or (“Service Award”) means the amount that the Court authorizes to be paid to the Class Representative from the Maximum Settlement Amount, which is in addition to the Class Representative’s Individual Settlement Payment.
12. “Court” means the Superior Court of the State of California for the County of Fresno.
13. “Defendants” means Grundfos Americas Corporation, Grundfos CBS Inc., Grundfos Pumps Corporation, Grundfos Pumps Manufacturing Corporation, Grundfos U.S. Holding Corporation, and SFS Holding, Inc. (dba Peerless Pump Company) (“Defendants”), as well as the Defendants’ past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.
14. “Defense Counsel” or “Counsel for Defendants” shall mean Michael J. Nader of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 500 Capitol Mall, Suite 2500, Sacramento, CA 95814.
15. “Effective Date” of this Settlement Agreement shall be the later of the following: (a) If no objections to the settlement agreement are pending, then the date the Court enters judgment granting Final Approval; (b) If an objection to the settlement is filed, then the date when the time expires to file an appeal of the Court’s grant of Final Approval of settlement; or (c) if an objection is filed, as well as a timely Notice of Appeal of the Court’s grant of Final Approval of settlement, then the date the appeal is finally resolved, with the final approval unaffected. Notwithstanding the foregoing, the Released Claims shall not be released until Defendant has made payment in full of the Maximum Settlement Amount to the Settlement Administrator.
16. “Final Approval Order” means the Court’s order and judgment granting final approval of the Settlement.
17. “Settlement Class” is defined as all Class Members who do not request to be excluded from the Settlement Agreement.
18. “Individual Settlement Payment” (“**ISP**”) means the amount payable from the Net Settlement Amount to each Settlement Class Member.
19. “Maximum Settlement Amount” or (“**MSA**”) means the maximum sum to be paid by Defendants pursuant to this Settlement, which is one million two hundred thousand dollars (\$1,200,000). The MSA shall include all payments contemplated by this Settlement Agreement, including but not limited to all ISPs, the Service Award, the Class Counsel Award, the PAGA Penalties Fund, the Settlement Administration Costs, and any award of costs or reimbursements to Class Counsel. The MSA shall not include the Defendants’ share of payroll taxes.
20. “Net Settlement Amount” or (“**NSA**”) means the MSA minus the Service Awards, the Class Counsel Award, the PAGA Penalties Fund, the Settlement Administration Costs, and any award of costs or reimbursements to Class Counsel.
21. “Notice Packet” means the Notice of Class Action and PAGA Settlement in a form substantially similar to the form attached as **Exhibit 1 (the “Notice”)**, and a pre-printed and postage-paid return envelope.
22. “PAGA” means the California Labor Code Private Attorneys General Act of 2004. Cal. Lab. Code §§ 2698-2699.5.

23. “PAGA Penalties Fund” is the amount of eighty thousand dollars (\$80,000) which shall be deducted from the MSA. The PAGA Penalties Fund shall be allocated as follows: twenty-five percent (25%) to the Settlement Class Members on a pro rata basis as defined herein, and seventy-five percent (75%) to the LWDA pursuant to Cal. Lab. Code § 2699(i).
24. “Parties” mean the Plaintiff and Defendants collectively, and “Party” shall mean either Plaintiff or Defendants, individually.
25. “Payment Ratio” means the respective Workweeks for each Settlement Class Member divided by the total Workweeks for all Class Members.
26. “Plaintiff” shall mean the named Plaintiff in this Action: Ryan Smith.
27. “Preliminary Approval Date” means the date the Court enters an order granting preliminary approval of the Settlement Agreement.
28. “Preliminary Approval Order” means the Order Granting Preliminary Approval.
29. “Qualified Settlement Fund” means the fund set up by the Settlement Administrator into which the NSA shall be deposited and disbursements from it shall be made.
30. “Released Claims” by Settlement Class Members means all Claims, causes of action, as well as factual or legal theories alleged in the Action, or reasonably could have been alleged based on the alleged facts and legal theories in the Action, including all of the following legal claims: all claims alleged in the Action, including any and all claims for unpaid wages, all claims in the SAC alleging that Defendants violated the Fair Labor Standards Act (FLSA), claims for minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates; any and all claims for meal period violations, including claims for late, short, interrupted and/or missed meal periods and/or the failure to pay premiums, and the alleged failure to properly record meal breaks; any and all claims for rest break violations, including claims for late, short, interrupted and/or missed rest breaks and/or the failure to pay premiums; any and all claims for unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phone usage and mileage; any and all claims for improper or inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9), and including claims for injuries suffered therefrom; any and all claims for waiting time penalties under Labor Code Section 203 based on the facts, claims, causes of action, or legal theories alleged in the Action; any and all claims regarding the alleged failure to maintain required records in violation of Labor Code §§ 226, 1174, 1198, 2810.5, and IWC Wage Order No. 1-2001, § 7; any and all claims for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2699 et seq. (“PAGA”) premised on the facts, claims, causes of action, or legal theories described in the PAGA Letter; any and all claims under the Business & Professions Code (including Section 17200 et seq.) premised on the facts, claims, or legal theories described in the Action; any other claims or penalties under the wage and hour laws pleaded in the Action; and all damages, penalties, interest and other amounts recoverable under all Claims under California and federal law, to the extent permissible, including but not limited to the FLSA and the California Labor Code as to the facts and theories alleged in the Action, and the applicable Wage Orders as to the facts and theories alleged in the Action (collectively, the “Released Claims.”). Released Claims also means that all Settlement Class Members will be bound by a limited Civil Code Section 1542 waiver that releases all Claims against Defendants, whether known or unknown, within the definition of the defined Released Claims, irrespective of the factual or legal basis for such claims. The scope of the Section 1542 waiver is limited to the Released Claims. The Parties understand and specifically agree that

this limited Section 1542 waiver (i) is a material part of the consideration for this Agreement; (ii) was critical in justifying the agreed upon economic value of this settlement; (iii) without it, Defendants would not have agreed to the consideration provided; and (iv) is narrowly drafted and necessary to ensure that Defendants are obtaining peace of mind regarding the resolution of all Claims that were or could have been alleged based on the facts and legal theories contained in the Action. The period of the Release shall extend to the limits of the Covered Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

31. “Released Parties” means the Defendants as defined herein.
32. “Request for Exclusion” refers to a formal request to be excluded from the Settlement Agreement as described in the “Requests for Exclusion” section herein.
33. “Response Deadline” means forty-five (45) days after the Settlement Administrator mails Notices to Class Members, and the last date on which Class Members may submit requests for exclusion or objections to the Settlement Agreement.
34. “Settlement Agreement” means this Joint Stipulation of Class Action and PAGA Settlement Agreement.
35. “Settlement Administrator” means CPT Group, Inc., as approved by the Court.
36. “Settlement Administration Costs” means the amount to be paid to the Settlement Administrator from the MSA for administration of this Settlement.
37. “Settlement Class” is defined as all Class Members who do not submit a request for exclusion from the Settlement Agreement.
38. “Settlement Class Members” (“**SCM**”) shall mean all members of the Settlement Class. SCMs will be bound by the terms of this Agreement, including the Released Claims, and any final judgment entered in this Action.
39. “Workweek” means the seven consecutive days starting on and including Monday through and including Sunday (a “week”) during which time the Class Data reflects that a given SCM worked any amount of time, and does not include weeks when an SCM was on PTO, a leave of absence, jury duty, or the like for the entire week.

## **II. RECITALS**

40. Class Certification. The Parties stipulate and agree to certification of the Settlement Class for the purposes of this Settlement Agreement only. Should the Settlement Agreement not obtain Court approval and become final and effective, class certification shall immediately be set aside and the Settlement Class immediately decertified. The Parties’ stipulation to class certification as part of the Settlement Agreement shall not be considered in connection with the issue of whether a class should be certified in this Action, and shall not be admissible in any such proceeding other than in the context of this Settlement Agreement.
41. Procedural History. On December 1, 2020, the Parties participated in a mediation with Louis Marlin, Esq., an experienced wage and hour class action mediator, and the parties entered into a written memorandum of agreement on the terms of a settlement to be further detailed in the instant Agreement. Pursuant to the terms of the agreement, Plaintiff filed the Second Amended Complaint on February 18, 2021.

42. Benefits of Settlement Agreement to Settlement Class Members. Plaintiff and Class Counsel (a) recognize the expense and length of continued proceedings necessary to litigate this Action through trial and potential appeals, (b) have considered the uncertainty, risk, difficulties, and delays inherent in such proceedings, and (c) are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendants' defenses. Thus, Plaintiff and Class Counsel have determined that the terms set forth in this Settlement Agreement are fair, adequate, and reasonable, and in the best interests of the Settlement Class Members.
43. Defendants' Reasons for Settlement Agreement. Defendants has concluded that further defense of this Action would be protracted and expensive for all Parties. Substantial amounts of Defendants' time and resources have been, and unless this Settlement Agreement is completed, will continue to be devoted to the defense of the Action. Defendants have also taken into account the risks of further litigation in reaching its decision to enter into this Settlement Agreement. Defendants firmly contends that it is not liable for any of Plaintiff's claims, but has agreed to settle along the terms set forth in this Settlement Agreement to fully resolve the Action.
44. Class Members' Claims. The Class Representative asserts that his claims have merit in regards to the putative Class Members, and Defendants disagree. The claims in this Agreement are genuinely disputed, and the Parties agree that the provisions of Labor Code section 206.5 do not apply to the consideration in this Settlement Agreement.

### **III. TERMS OF SETTLEMENT AGREEMENT**

45. Settlement Agreement Consideration by Defendants. Except for the Escalator Clause herein, Defendants shall pay the MSA and nothing more than the MSA, in the total amount of one million two hundred thousand dollars (\$1,200,000).
46. Escalator Clause. At the mediation, Defendants reported that there are approximately 450 putative class members. If, as of the date the Court grants preliminary approval of this Agreement, the total number of Settlement Class Members is greater than 495, then Defendants will proportionally increase the MSA according to the following formula: total number of class members (divided by) 495 (multiplied by) \$1,200,000 then subtract \$1,200,000. For example, if there are 500 class members on the date that the Court grants preliminary approval, then the calculation would be as follows:  $500/495 = 1.01$  (x) \$1.2M = \$1,212,121.21 (minus) \$1.2M = \$12,121 added to the MSA.
47. General Release of Claims By the Named Plaintiff. As of the Effective Date, in exchange for the consideration in this Settlement Agreement, Plaintiff, for himself and his heirs, successors and assigns, hereby waives, releases, acquits and forever discharges the Released Parties from any and all Released Claims as well as any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date his signs this Settlement Agreement, including but not limited to, any and all tort claims, contract claims, claims for unpaid wages, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family

Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq.. Plaintiff expressly waives any and all claims, rights or benefits he may have under California Civil Code § 1542, which provides as follows: **"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."** Plaintiff may later discover claims or facts in addition to, or different from, those which he knows or believes to exist, but he expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist at the time he signs this Settlement Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendants. The Parties further acknowledge, understand and agree that this Settlement Agreement would not have been finalized without this representation and commitment from the Plaintiff.

48. Conditions Precedent: This Settlement Agreement will become final and effective only upon the occurrence of all of the following events: (a) the Court enters an order granting preliminary approval of the Settlement Agreement; (b) the Court enters an order granting final approval of the Settlement Agreement and a Final Judgment; and (c) the Effective Date occurs.
49. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the claims as described herein, then (a) this Settlement Agreement shall be void and inadmissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; (b) the conditional class certification for settlement purposes shall be void and not admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and (c) none of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.
50. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Settlement Class for the Class Period for purposes of the Settlement Agreement only, and agree that the Plaintiff shall be appointed as Class Representative, and that Raul Perez and Bevin Allen Pike shall be appointed Class Counsel.
51. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments in this Agreement, and SCMs are not relying on any statement or representation by the Parties in this regard. SCMs understand and agree that they will be responsible for the payment of any taxes assessed on the ISPs they receive.
52. No Tax Advice. Neither Class Counsel nor Defendants' Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
53. Preliminary Approval Motion. Class Counsel shall file with the Court a Motion for Order Granting Preliminary Approval and supporting papers, which shall include this Settlement Agreement. Class Counsel shall provide a courtesy draft of these papers to Defense Counsel at least seven (7) days before filing the documents.

54. Settlement Administrator. By accepting the role as Settlement Administrator, the Settlement Administrator is bound to all of the terms, conditions and obligations described in this Settlement Agreement. Among these obligations, the Settlement Administrator shall have sole and exclusive responsibility for: (a) calculating the Workweeks, Payment Ratio, and the ISP for each Settlement Class Member; (b) processing and mailing payments to the Class Representative, Class Counsel, the LWDA, and the SCMs; (c) printing and mailing the Notices to the Class Members as directed by the Court; (d) receiving and reporting objections, opt outs, Requests for Exclusion, and Notices of Objection; (e) deducting all legally required taxes from the ISPs and distributing tax forms; (f) processing and mailing any tax payments to the appropriate state and federal taxing authorities; (g) providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement Agreement; and (h) other tasks that the Parties mutually agree on, or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of its duties. Defendants and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendants and Defense Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the ISPs or any other distribution of monies contemplated by this Settlement Agreement.
55. Notice Procedure.
- a. Class Data. The Class Data shall be confidential. The Settlement Administrator shall not provide the Class Data to Class Counsel or Plaintiff or any third party, or use the Class Data for any purpose other than to administer this Settlement Agreement. Defendants shall provide the Settlement Administrator with the Class Data to prepare and mail the Notices to the SCMs. This shall take place within twenty (20) calendar days after the Preliminary Approval Date.
  - b. Notice. The Notice of Class Action and PAGA Settlement Agreement mailed out to Class Members (the "Notice") shall be in a form substantially similar to the form attached as Exhibit A.
  - c. Notice By First Class U.S. Mail. After receiving the Class Data from Defendants as provided herein, the Settlement Administrator shall, within ten (10) calendar days after receipt of the Class Data, mail copies of the Notice to all Class Members by regular First Class U.S. Mail. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes.
  - d. Undeliverable Notices. Any Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed on it. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of standard search techniques, and shall then perform a re-mailing if another mailing address is identified by the Settlement Administrator. If any Notices sent to SCMs currently employed by Defendants are returned to the Settlement Administrator as non-delivered and no forwarding address is provided, the Settlement Administrator shall notify Defendants. Defendants will request that the currently employed SCM provide a corrected address to the Defendants to forward to the Settlement Administrator. Class Members who received a re-mailed Notice shall have their Response Deadline extended fifteen calendar (15) days from the original Response Deadline.
  - e. Disputes Regarding ISPs. SCMs will have the opportunity, should they disagree with the estimated number of Workweeks stated on their Notice, to provide documentation and/or

an explanation to show contrary employment dates. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any ISP under the terms of this Settlement Agreement, and that determination shall be binding upon the SCM and the Parties. The deadline for SCMs to submit disputes to the Settlement Administrator regarding their ISPs shall be the same as the Response Deadline, or in the case of re-mailed Notices, their extended Response Deadline.

- f. Disputes Regarding Administration of Settlement Agreement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement Agreement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.
- g. Requests for Exclusion.
- i. The Notice shall include an explanation that Class Members who wish to exclude themselves from the Settlement Agreement must submit a written Request for Exclusion by the Response Deadline. The written Request for Exclusion must state that the Class Member has decided to exclude oneself from the Settlement Agreement and (1) must contain the name, address, and the last four digits of the Social Security number and/or Employee ID number of the person requesting exclusion; (2) must be signed by the Class Member; (3) must be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address; and (4) contain a typewritten or handwritten notice stating in substance: “I wish to opt out of the Settlement Agreement of the class action lawsuit entitled *Smith v. Grundfos Pumps Manufacturing Corporation*, No. 20CECG00674 (Fresno County Superior Court). I understand that by requesting to be excluded from the Settlement Agreement, I will not receive any money from the Settlement Agreement described in this Notice.”
  - ii. The Request for Exclusion will not be valid if it is not timely submitted, or if it is not signed by the Class Member, or if it does not contain the name and address of the Class Member. The date of the postmark on the return mailing envelope for the Request for Exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Class Members who fail to submit a valid and timely written Request for Exclusion on or before the Response Deadline shall be Settlement Class Members (“SCMs”) who are bound by all terms of the Settlement Agreement, and any final judgment entered in this Action.
  - iii. Any Class Member who requests to be excluded from the Settlement Agreement will not be entitled to any recovery under the Settlement Agreement and will not be bound by its terms or have any right to object, appeal or comment on it. Nothing in this Settlement Agreement can be construed as a waiver of any defense that Defendants or the Released Parties have or could assert against anyone who timely serves a Request for Exclusion.
  - iv. No later than five (5) business days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted written Requests for Exclusion.
  - v. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion from the Settlement Agreement.



h. Objections.

- i. The Notice shall state that SCMs who wish to object to the Settlement Agreement must mail to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark date of the mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely.
- ii. SCMs who submit a timely Notice of Objection will have a right to appear at the Final Approval/Settlement Agreement Fairness Hearing in order to have their objections heard by the Court. The Notice of Objection must be signed by the SCM and state the case name and number, the name and address of the SCM, the last four digits of the SCM’s Social Security number and/or Employee ID number, the basis for the objection, and if the SCM intends to appear at the Final Approval/Settlement Agreement Fairness Hearing.
- iii. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage SCMs to object to the Settlement Agreement or appeal from the Order and Final Judgment.
- iv. Class Members who submit a written Request for Exclusion are not entitled to object to the Settlement Agreement.
- v. The Settlement Administrator shall send all objections to Class Counsel and Defense Counsel. Class Counsel will be responsible for filing the Notices of Objection with the Court in advance of the Final Approval Hearing. Plaintiff and/or Defendants may file oppositions to Notices of Objection no later than nine (9) court days prior to the date of the Final Approval/Settlement Agreement Fairness Hearing.
- vi. Defendants shall not be responsible for the fees, costs, or expenses incurred by Plaintiff, Class Counsel, or SCMs arising from or related to any objection to the Settlement Agreement or related to any appeals thereof.

56. Funding and Allocation of the Maximum Settlement Amount. Upon satisfaction of the preconditions described in this Settlement Agreement, and pursuant to the timeline and instructions below, Defendants will deposit the MSA into a Qualified Settlement Fund to be established by the Settlement Administrator.

- a. Funding Due Date. No later than twenty (20) calendar days after the Effective Date, Defendants shall provide the MSA to the Settlement Administrator to fund the Settlement Agreement.
- b. Individual Settlement Payments. ISPs shall be paid from the NSA and shall be paid pursuant to the following formula:
  - i. Calculation of Individual Settlement Payments (“ISPs”). Using the Class Data, the Settlement Administrator will calculate the total Workweeks for all SCMs. The respective Workweeks for each SCM will be divided by the aggregate total Workweeks for all SCMs, resulting in the Payment Ratio for each individual SCM. Each SCM’s Payment Ratio will then be multiplied by the NSA to calculate each SCM’s estimated ISP. The ISP will be provided only to the individual SCM. Each ISP will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). The ISP checks will include an endorsement confirming that by cashing the check, each SCM is releasing the Released Claims.

- ii. Tax Allocation. The Settlement Administrator will be responsible for issuing to claimants an IRS Form W-2 for any amounts deemed “wages” and an IRS Form 1099 for the portions allocated to non-wage amounts, including penalties and interest. For tax purposes, each ISP shall be allocated as follows: (a) 25% as wages subject to IRS Form W-2 reporting and applicable taxes/withholdings; and (b) 75% as non-wage income, penalties, and interest for which an IRS Form 1099 will be issued.
- iii. Mailing. ISPs shall be mailed by regular, First Class, U.S. Mail to each SCM no later than fourteen (14) days after Defendants provide the MSA funds to the Settlement Administrator for disbursement.
- iv. Uncashed Checks. Any checks issued to SCMs shall remain valid and negotiable for one hundred and eighty (180) days after the date they are issued. The Settlement Administrator will mail a reminder notice to those SCMs who have not cashed their checks after one hundred twenty (120) days and will also send a reminder via any available email address or social media for these SCMs. In the event that an ISP check has not been cashed within one hundred and eighty (180) days, then such funds, plus any accrued interest, will be tendered to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500 et seq., for the benefit of the Settlement Class Members who did not cash their settlement checks until such time that they claim their property. The Parties agree that this disposition results in no unpaid residue under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to participating settlement class members, whether or not they all cash their individual settlement payment checks. Thus, Defendants will not be required to pay any interest on this amount. The Settlement Administrator shall prepare a report on the extent of unclaimed funds, and the report shall be presented to the Court by Class Counsel.
- c. Class Representative Service Award (“Service Award”). Defendants agree not to oppose or object to a Class Representative Service Award in the amount of ten thousand dollars (\$10,000) in exchange for the Class Representative’s General Release of claims. The Service Award shall be in addition to the Class Representative’s ISP. The Settlement Administrator shall pay the Service Award out of the MSA after the Effective Date. Any portion of the requested Service Award that is not awarded to a Class Representative shall become part of the NSA. The Settlement Administrator shall issue an IRS Form 1099 - MISC to the Class Representative for the Service Award. The Class Representative shall be solely and legally responsible to pay any and all applicable taxes on the Service Award and shall hold harmless Defendants and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award. If the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke the Settlement Agreement, which shall remain binding.
- d. Class Counsel Award.
  - i. In consideration for settling the Action and for all Released Claims to the Released Parties, as well as the General Release of claims by the Class Representative, Class Counsel intends to apply for an award of attorneys’ fees not to exceed one-third of the MSA, (currently \$400,000 based on a MSA of \$1,200,000), plus actual costs and expenses as supported by declaration not to exceed \$20,000. These amounts will be issued out of the MSA.
  - ii. Class Counsel, Plaintiff and the SCMs will not apply to the Court for any additional payment of attorney fees and costs (with the exception of attorneys’ fees under Section 56(b)(v)). The Parties agree that, over and above the Court-approved Class

Counsel Award, each of the Parties, including all SCMs, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, or prosecution of the Action; the negotiation, execution, or implementation of this Settlement Agreement; and/or the process of obtaining, administering, or challenging an Order Granting Preliminary Approval and/or Final Approval.

- iii. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the MSA and shall be distributed to SCMs as provided in this Settlement Agreement.
  - iv. The Settlement Administrator shall pay the Class Counsel Award to Class Counsel from the MSA after the Effective Date.
  - v. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Award. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Class Counsel for the payment.
  - vi. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement Agreement. Class Counsel reserves the right to appeal any reduction by the Court of the class Counsel award, or the reduction in the costs or expenses requested by Class Counsel.
- e. PAGA Penalties Fund. The amount of eighty thousand dollars (\$80,000) shall be allocated from the MSA for the release of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the Fund to the California Labor and Workforce Development Agency (the "PAGA Payment"), and the remaining twenty-five (25%) of the Fund will remain in the MSA and distributed as described in this Settlement Agreement. Class Counsel will take all action required by California Labor Code section 2699(l).
- f. Settlement Administrator Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement Agreement from the MSA. Based upon estimates received, the Settlement Administrator Costs shall not exceed Fifteen Thousand Dollars. The Settlement Administrator shall be paid the Settlement Administrator Costs after Defendants provides funds to the Settlement Administrator for disbursement under this Settlement Agreement.
57. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including the execution of necessary documents and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's Preliminary and Final Approval of this Settlement Agreement. The Parties also agree to cooperate in the Settlement Administration process. The Parties each represent 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. Class Counsel will promptly notify Defense Counsel of any requests for documents or information regarding any other lawsuit filed, or potential lawsuit, against the Released Parties that covers or includes any SCMs and the Released Claims.
58. Preliminary Approval Hearing. Class Counsel shall obtain a hearing before the Court to request the preliminary approval of the Settlement Agreement, and the setting of a date for a Final Approval/Settlement Agreement Fairness Hearing. The Preliminary Approval Order

shall provide for the Notice of Class Action and PAGA Settlement (the “Notice”) to be sent to all Class Members as specified herein. Class Counsel shall file this Settlement Agreement and the proposed Notice in support of preliminary approval. Class Counsel shall provide drafts of all papers filed in support of preliminary approval to Defense Counsel at least seven (7) days before filing the documents.

59. Final Approval Motion. After the expiration of the Response Deadline, Class Counsel shall file with the Court a Motion for Order Granting Final Approval and Entering Judgment. Class Counsel shall provide a draft of the motion to Defense Counsel at least seven (7) business days before filing the documents.
  - a. Declaration by Settlement Administrator. The Settlement Administrator shall submit a declaration in support of Plaintiff’s motion for final approval of this Settlement Agreement detailing the number of Notices mailed and re-mailed to Class Members, the number of undeliverable Notices, the number of timely requests for exclusion, the number of Notices of Objections received, the amount of the average ISP, the Settlement Administration Costs, and any other information as the Parties mutually agree on, or that the Court orders the Settlement Administrator to provide.
  - b. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action and PAGA Settlement Agreement to the Court for its approval, and Judgment thereon consistent with the terms and conditions of this Settlement Agreement.
60. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Defense Counsel to review the Motions for Preliminary and Final Approval prior to filing with the Court. The Parties and their counsel will cooperate and use their best efforts to effect the Court’s approval of the Motions for Preliminary and Final Approval of the Settlement Agreement, and entry of Judgment.
61. Interim Stay of Proceedings. The Parties agree to request the Court to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement Agreement, and that the time within which to bring this action to trial under California Code of Civil Procedure Section 583.310 shall be extended from the date the Memorandum of Agreement was signed by all parties on December 1, 2020.
62. Nullification of Settlement Agreement. In the event that the Court does not grant final approval, or the Court does not enter a final judgment as provided herein, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the beginning. The entire MSA money shall be returned to the Defendants. The Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any costs already incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties. This Agreement and its terms, and the communications, negotiations, and settlement discussions related to the Action, shall be inadmissible and treated as confidential to the fullest extent allowed by law. In the event an appeal is filed from the Court’s final judgment, or any other appellate review is sought, administration of the Settlement Agreement shall be stayed pending final resolution of the appeal or other appellate review. Any fees incurred by the Settlement Administrator prior to being notified of the filing of an appeal from the Court’s Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator out of the MSA within thirty (30) days of notification.
63. Defendants’ Option To Terminate Settlement. If, after the Response Deadline and before the Final Approval Hearing, the number of Class Members who submitted timely and valid

written requests for exclusion from the Settlement is at least five percent (5%) of all Class Members, Defendants shall have, in their sole discretion, the option to terminate this Settlement and its stipulation to class certification. If Defendants exercise the option to terminate this Settlement, Defendants shall: (a) provide written notice by email to Raul Perez (Raul.Perez@capstonelawyers.com) and Bevin Allen Pike (Bevin.AllenPike@capstonelawyers.com) prior to the Final Approval Hearing and no later than seven (7) calendar days after receiving notice from the Settlement Administrator of the number of Class Members who have submitted timely and valid requests for exclusion; (b) pay all Settlement Administration Costs incurred up to the date or as a result of the termination; and (c) the Parties shall proceed in all respects as if this Agreement had not been executed.

64. No Effect on Employee Benefits. Amounts paid to the Plaintiff or other SCMs pursuant to this Settlement Agreement shall not be deemed pensionable earnings or have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff or SCMs.
65. Exhibits and Headings. The terms of this Settlement Agreement include the terms set forth in the attached Exhibits. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for ease of reference only and do not constitute a part of this Settlement Agreement.
66. Amendment or Modification. With Court approval, this Settlement Agreement may be amended or modified only by a written instrument that is signed by counsel for all Parties or their successors-in-interest, and signed by the Parties or their successors-in-interest.
67. Entire Settlement Agreement. This Settlement Agreement and its exhibits constitute the entire Settlement Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its exhibits.
68. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate actions needed by this Settlement Agreement to effectuate its terms. The person signing this Settlement Agreement on behalf of Defendants represents and warrants that they are authorized to sign this Settlement Agreement on behalf of Defendants. Plaintiff represent that he is authorized to sign this Settlement Agreement and that he has not assigned, transferred, or encumbered any claim, or part of a claim, demand, cause of action or any rights herein released and discharged or covered by this Settlement Agreement to any third-party.
69. Binding on Successors and Assigns. The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.
70. California Law Governs. All terms of this Settlement Agreement and its exhibits, and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.
71. Counterparts. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts (including by DocuSign) and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves copies or originals of the signed counterparts.

72. This Settlement Agreement Is Fair, Adequate and Reasonable. The Parties believe that this Settlement Agreement is a fair, adequate and reasonable Settlement Agreement of this Action and have arrived at this Settlement Agreement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or their counsel participated in the drafting of this Settlement Agreement.
73. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection to it, and that the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement Agreement and all orders and judgments entered in connection to it.
74. Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except as may be strictly required to effectuate the terms of the Settlement. Plaintiff and Class Counsel's agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. However, Class Counsel may disclose the name of the Parties in this action, the venue/case number, and settlement details available in the public record, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions or for seeking approval of an unrelated settlement.
75. Waiver of Certain Appeals. The Parties agree to waive all appeals from the Court's final approval of the Settlement Agreement, unless the Court modifies the Settlement Agreement.
76. Denial of Liability. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendants. The Settlement and any related statements, discussions, communications, or materials cannot be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.
77. Notice of Settlement Agreement to LWDA. Class Counsel shall provide notice of this Settlement Agreement to the Labor Workforce Development Agency ("LWDA") as required by Labor Code Section 2699(l)(2).
78. IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement Agreement and Release of Claims is voluntarily executed by the Parties and their attorneys as of the dates noted.

*(signature page follows)*

**IT IS SO AGREED:**

Dated: 8/22/2022

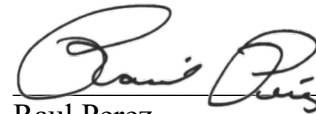
DocuSigned by:  
  
Ryan Smith  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dieter Sauer  
*As authorized agent for Defendants*

**APPROVED AS TO FORM:**

Dated: 8/22/2022

  
\_\_\_\_\_  
Raul Perez  
Capstone Law APC  
*Attorneys for Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael J. Nader  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART  
*Attorney for Defendants*  
*Approved as to form only*

**IT IS SO AGREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ryan Smith  
*Plaintiff*

Dated: August 22, 2022


  
\_\_\_\_\_  
Ansell Sims  
*As authorized agent for Defendants*

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Raul Perez  
Capstone Law APC  
*Attorneys for Plaintiff*

Dated: August 23, 2022

  
\_\_\_\_\_  
Michael J. Nader  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART  
*Attorney for Defendants*  
*Approved as to form only*