

1 ZORIK MOORADIAN, Bar No. 136636  
2 HAIK HACOPIAN, Bar No. 282361  
3 MOORADIAN LAW, APC  
4 24007 Ventura Blvd., Suite 210  
5 Calabasas, CA 91302  
6 Telephone: (818) 487-1998  
7 Facsimile: (888) 783-1030

8 Attorneys for Plaintiff Alfonso Moreno, individually  
9 and on behalf of others similarly situated and other  
10 aggrieved employees

11 ANDREW B. KAPLAN, CSB 57442,  
12 WEBSTER KAPLAN LLP  
13 16830 Ventura Blvd., Suite 30  
14 Encino, CA 91426  
15 Telephone: (310) 282-9494  
16 Facsimile: (310) 282-9499

17 Attorneys for Defendant  
18 DCX-CHOL ENTERPRISES INC.

19 SUPERIOR COURT OF CALIFORNIA

20 FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

21 ALFONSO MORENO, individually and  
22 on behalf of others similarly situated and  
23 other aggrieved employees,

24 Plaintiffs,

25 v.

26 DCX-CHOL ENTERPRISES INC., an  
27 active California Corporation; and DOES  
28 1 through 10,  
Defendants.

Case No.: 19STCV19105

CLASS AND REPRESENTATIVE ACTION

*[Assigned to Hon. Kenneth R. Freeman in Dept. SS-14]*

**AMENDED STIPULATED SETTLEMENT AGREEMENT**

IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned parties, subject to the approval of the Court pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 of the California Rules of Court, that the settlement of this captioned action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Section I or elsewhere in this Agreement.

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**I.**

**DEFINITIONS**

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

1.1 “Action” means the lawsuit entitled *Alfonso Moreno, individually and on behalf of others similarly situated and other aggrieved employees v. DCX-CHOL Enterprises Inc.*, and Does 1 to 50, Los Angeles County Superior Court Case No. 19STCV19105.

1.2 “Agreement” or “Settlement Agreement” or “Settlement” means this Amended Stipulated Settlement Agreement, including any Exhibit(s) attached hereto.

1.3 “Aggrieved Employees” means all non-exempt employees who are or previously were employed by Defendant DCX-CHOL, Enterprises, Inc. in California during the PAGA Period.

1.4 “Class List and Data Report” means a list of the names, last known mailing address and Social Security number of each Settlement Class Member, number of Workweeks Worked by each Settlement Class Member during the applicable Class Period, and employment status of each Settlement Class Member as of April 20, 2022.

1.5 “Class Period” means the period starting June 3, 2015 to April 20, 2022.

1.6 “Class Notice” or “Notice of Class Action Settlement” means the notice approved by the Court in the Order of Preliminary Approval in the form substantially similar to Exhibit 1, attached hereto. The Class Notice attached as Exhibit 1 shall be provided to Settlement Class Members. The Class Notice to Settlement Class Members will contain the respective Settlement Class Member’s individual information, including name, address, number of Workweeks Worked during the Class Period, and the estimated amount each Settlement Class Member may receive in the Settlement. The Class Notice to be sent to Settlement Class Members will include a Spanish translation; provided, however, that in case of any disagreement or question regarding the translation, the English language version of the Class Notice shall control.

1.7 “Complaint” or “Complaints” mean each and every Complaint filed at any time

1 in the Action.

2 1.8 “Court” means the Superior Court for the County of Los Angeles.

3 1.9 “Defendant” or “DCX” means Defendant DCX-CHOL Enterprises Inc.

4 1.10 “Defense Counsel” means: Andrew B. Kaplan of WEBSTER KAPLAN  
5 LLP, 16830 Ventura Blvd., Suite 130, Encino California, 91436.

6 1.11 “Effective Date” means and refers to the date when all of the following events  
7 have occurred: (1) this Settlement Agreement has been executed by all Parties; (2) the Court has given  
8 preliminary approval to this Settlement Agreement; (3) the Class Notice has been sent to Settlement  
9 Class Members, providing them with an opportunity to object to the terms of this Settlement  
10 Agreement or to opt out of the Settlement; (4) the Court has held a formal fairness hearing and entered  
11 a final Order and Judgment certifying the Settlement Class, and approving this Settlement Agreement;  
12 (5) ten (10) calendar days have passed since the Court has entered a Final Approval Order and  
13 Judgment certifying the Settlement Class, and approving the Amended Stipulated Settlement  
14 Agreement; and (6) in the event there are written objections filed prior to the final fairness hearing  
15 which are not later withdrawn or denied, the later of the following events: five (5) business days after  
16 the period for filing any appeal, writ or other appellate proceeding opposing the Court’s final Order  
17 approving the Settlement has elapsed without any appeal, writ or other appellate proceeding having  
18 been filed; or, if any appeal, writ or other appellate proceeding opposing the Court’s final Order  
19 approving the Settlement has been filed, five (5) business days after any appeal, writ or other appellate  
20 proceedings opposing the Settlement has been finally and conclusively dismissed with no right to  
21 pursue further remedies or relief.

22 1.12 “Net Settlement Amount” means the portion of the Settlement Amount  
23 available for distribution to Participating Settlement Class Members under this Agreement after  
24 payment of (1) the attorneys’ fees and costs award to be paid to Settlement Class Counsel; (2) the  
25 service payment to Plaintiff; (3) all payments to or withholdings for governmental authorities for the  
26 employee portion of any payroll taxes or other required taxes or withholdings; (4) all payments to the  
27 Aggrieved Employees and the California Labor Workforce Development Agency (“LWDA”) for  
28 PAGA penalties; and (5) all costs and fees incurred by and awarded to the Settlement Administrator.

1 One hundred percent (100%) of the Net Settlement Amount, less tax withholdings on the portion  
2 characterized as wages, shall be distributed to Participating Settlement Class Members with no  
3 reversion to Defendant.

4 1.13. "PAGA Period" means the period starting May 23, 2018 to April 20, 2022.

5 1.14 "Participating Settlement Class Member" means a Settlement Class Member  
6 who has not timely opted-out of the Settlement.

7 1.15 "Parties" means Defendant and Plaintiff.

8 1.16 "Plaintiff" means named Plaintiff Alfonso Moreno.

9 1.17 "Released Claims" means: all class claims alleged in the operative complaint  
10 which occurred during the Class Period, and expressly excluding all other claims, including claims for  
11 vested benefits, wrongful termination, unemployment insurance, disability, social security, workers'  
12 compensation, and class claims outside of the Class Period.

13 1.18 "Released PAGA Claims" means all PAGA claims alleged in the operative  
14 complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and  
15 expressly excluding all other claims, including claims for vested benefits, wrongful termination,  
16 unemployment insurance, disability, social security, workers' compensation, and PAGA claims  
17 outside of the PAGA Period.

18 1.19 "Released Parties" means Defendant, including each of Defendant's respective  
19 past, present, and/or future, direct and/or indirect, officers, directors, members, managers, employees,  
20 agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent  
21 companies, subsidiaries, related entities, affiliates, divisions, predecessors, successors, assigns, and  
22 joint venturers.

23 1.20 "Settlement Administrator" means CPT Group, Inc.

24 1.21 "Settlement Amount" means and refers to the maximum amount of money  
25 Defendant will be required to pay pursuant to this Agreement. The Settlement Amount is Two Million  
26 Two Hundred Thousand Dollars and No Cents (\$2,200,000.00). The Settlement Amount shall be  
27 inclusive of: (1) all payments to Participating Settlement Class Members; (2) the attorneys' fees and  
28 costs award to be paid to Settlement Class Counsel; (3) the service award to Plaintiff; (4) all payments

1 to or withholdings for governmental authorities for the employee portion of any payroll taxes or other  
2 required taxes or withholdings; (5) all payments to the LWDA for PAGA penalties; and (6) all costs  
3 and fees incurred by and awarded to the Settlement Administrator. In addition to the Settlement  
4 Amount, Defendant shall also be responsible for employer taxes, including the employer FICA, FUTA  
5 and SDI contribution, on the wage portion of the Settlement paid to Participating Settlement Class  
6 Members. It is estimated that the Settlement Class consists of approximately 566 individuals during  
7 the Class Period who worked approximately 85,263 workweeks during the Class Period. If the  
8 workweek number is greater than 105% of the workweek estimate provided for herein, or 89,526.00,  
9 Defendant may either: (1) increase the Settlement Amount on a pro rata basis for each workweek in  
10 excess of the 105% workweek estimate; or (2) adjust the end date of the Class Period so that the  
11 number of workweeks during the Class Period does not exceed 105% of the estimate. Except as so  
12 provided, the parties agree, covenant and represent that Defendant shall be required to pay no more  
13 than the Settlement Amount of \$2,200,000.00 plus employer taxes as described above.

14 1.22 "Settlement Class" and "Settlement Class Members" means shall refer to the  
15 following: All non-exempt employees who are or previously were employed by Defendant in  
16 California during the Class Period.

17 1.23 "Settlement Class Counsel" means the following:

18 Zorik Mooradian  
19 Haik Hacopian  
20 Mooradian Law, APC  
21 24007 Ventura Blvd., Suite 210  
22 Calabasas, California 91302  
23 Telephone: (818) 487-1998  
24 Facsimile: (888) 783-1030

25 1.24 "Individual PAGA Settlement Payment" means the proportional share of the  
26 25% portion of the PAGA Payment (as defined in Paragraph 3.9) allocated and paid to the Aggrieved  
27 Employees, as calculated by the Settlement Administrator according to the terms of this Agreement.

28 1.25 "Individual Settlement Payment" means the proportional share of the Net  
Settlement Amount to be paid to Participating Class Members, as calculated by the Settlement

1 Administrator according to the terms of this Agreement.

2 1.26 “Workweek Worked” means any calendar week during the applicable Class  
3 Period in which a Settlement Class Member performed any work, as reflected in Defendant’s time and  
4 payroll records.

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6 **II.**  
7 **RECITALS**

8 2.1 On June 3, 2019, Plaintiff Alfonso Moreno filed a class action complaint against  
9 Defendant DCX-CHOL Enterprises Inc., individually and on behalf of other persons similarly situated  
10 described as “All individuals who are (or previously were) employed by [Defendant] in the State of  
11 California as a non-exempt employee at any and/or all times during the period beginning four (4) years  
12 prior to the filing of the initial Complaint in this action through the time of trial.” That lawsuit is  
13 *Alfonso Moreno v. DCX-CHOL Enterprises Inc.*, Superior Court of the State of California in and for  
14 the County of Los Angeles, Case No. 19STCV19105 (“Action”).

15 2.2 On May 23, 2019, prior to the filing of the above described action, Plaintiff  
16 Moreno communicated a notice letter pursuant to the Private Attorneys General Act (“PAGA”) to  
17 Defendant and to the Labor and Workforce Development Agency (“LWDA”). Plaintiff Moreno’s  
18 PAGA claim was assigned case no. LWDA-CM-697485-19 upon electronic submission to the LWDA.

19 2.3 On July 26, 2019, Plaintiff Alfonso Moreno filed a representative PAGA action  
20 complaint against Defendant DCX-CHOL Enterprises Inc., individually and on behalf of other  
21 aggrieved employees, based on the notice letter communicated on May 23, 2019. That lawsuit is  
22 *Alfonso Moreno v. DCX-CHOL Enterprises Inc.*, Superior Court of the State of California in and for  
23 the County of Los Angeles, Case No. 19STCV26247 (“PAGA Action”).

24 2.4 On August 14, 2020, a First Amended Complaint was filed in the Action which  
25 added additional causes of action for PAGA violations as set forth in the PAGA Action as well as  
26 causes of action for wrongful termination and statutory violations on Plaintiff’s behalf. On that date  
27 as well, the PAGA Action was dismissed.

28 2.5 On April 1, 2021, the operative Second Amended Complaint was filed after

1 meet and confer between the Parties. The Second Amended Complaint asserts the following causes of  
2 action: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Provide  
3 Meal Breaks or Premium Pay; (4) Failure to Provide Rest Breaks or Premium Pay; (5) Failure to  
4 Pay/Timely Pay Wages; (6) Failure to Provide Accurate, Itemized Wage Statements; (7) Failure to  
5 Pay all Wages Due at Time of Separation; (8) Failure to Provide Employment Records; (9) Violation  
6 of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, et seq.; (10)-(16) Violations of Labor  
7 Laws Giving Rise to an Action Under PAGA; (17) Wrongful Termination & Statutory Violations. On  
8 May 14, 2021, Defendant filed its Answer to the Second Amended Complaint.

9           2.6     On April 20, 2022, Plaintiff Alfonso Moreno and Defendant participated in a  
10 full-day mediation before Jeffrey Krivis, Esq. After extensive negotiations, the Parties were able to  
11 reach a settlement on that date, the terms of which are incorporated herein.

12           2.7     Proceedings. This Action has been vigorously litigated between the Parties,  
13 including informal discovery and production of documents and electronic records for Plaintiff and the  
14 putative class. The Parties specifically and mutually intend to settle the claims for all theories of  
15 liability alleged in the foregoing Action with respect to the Settlement Class herein. No class has been  
16 certified.

17           2.8     Reasons for Settlement. Plaintiff and Settlement Class Counsel have concluded,  
18 after taking in to account disputed factual and legal issues involved in the Action, the risks attending  
19 further prosecution, and the benefits received and to be received pursuant to the compromise and  
20 settlement of the Action, that settlement on the terms hereinafter set forth is in the best interest of  
21 Plaintiff and the Settlement Class. Defendant and Defense Counsel have concluded, after taking in to  
22 account the disputed factual and legal issues involved in the Action, the risks attending further defense  
23 and litigation, the substantial expense and burden of protracted litigation, and their desire to put the  
24 controversy to rest, that settlement on the terms hereinafter set forth is in the best interest of Defendant.

25           2.9     Defendant’s Denial of Wrongdoing. Defendant has denied and continues to  
26 deny each of the claims and contentions alleged by Plaintiff in the Action. Defendant has repeatedly  
27 asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any  
28 wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Neither





1           3.1    ***NOW, THEREFORE, IT IS HEREBY STIPULATED***, by and among  
2 Plaintiff, on his own behalf and on behalf of the Settlement Class Members, and Defendant on the  
3 other hand, and subject to the approval of the Superior Court, that the Action is hereby being  
4 compromised and settled pursuant to the terms and conditions set forth in this Agreement, subject to  
5 the definitions and recitals set forth hereinabove which by this reference become an integral part of  
6 this Agreement and subject to the following terms and conditions:

7           3.2    Full Investigation. Plaintiff Moreno has fully investigated the factual and legal  
8 bases for the causes of action asserted in the Action and the claims being released by this Settlement.

9           3.3    Conditional Certification of the Settlement Class. No class has been certified  
10 in the Action. The Parties hereby consent and agree, solely for purposes of the Settlement set forth in  
11 this Agreement, to the conditional certification of the Settlement Class, to the conditional appointment  
12 of Settlement Class Counsel, and to the conditional approval of the Representative Plaintiff Alfonso  
13 Moreno.

14           3.4    Contingent Nature of the Settlement. The agreement to conditionally certify the  
15 Settlement Class is contingent upon final approval of this Agreement by the Court and is made for  
16 settlement purposes only. If the Settlement fails to be approved or otherwise fails to be consummated  
17 for any reason whatsoever, including but not limited to the Judgment not becoming final, then the  
18 Parties retain all rights previously available to them, and any provisional certification of any class, or  
19 the adoption of any procedure herein, shall be undone and the Parties restored to their pre-settlement  
20 status as if no settlement had been reached and no decisions were made pursuant to it, except as  
21 otherwise expressly provided herein. In that event, no evidence presented or statement made as part  
22 of this Settlement, including the Class Notice, shall be admissible in subsequent proceedings to support  
23 or oppose class certification by either side.

24           3.5    Settlement Amount. Subject to entry of a Final Approval order by the Court and  
25 the additional conditions specified in this Agreement, and in consideration of the mutual covenants  
26 and promises set forth herein, Defendant agrees to make two payments under this Agreement totaling  
27 Two Million Two Hundred Thousand Dollars and No Cents (\$2,200,000.00) (the “Settlement  
28 Amount”) in full and final settlement of this matter and the Released Claims, as contemplated by the

1 schedule set forth in Paragraph 4.12 below. Defendant shall also pay employer taxes on the wage  
2 portion of the Individual Settlement Payments made to Participating Class Members. In no event shall  
3 Defendant be required to pay any amount above the Settlement Amount and employer taxes except as  
4 otherwise set forth herein.

5           3.6 Attorneys' Fees and Cost Award. Defendant agrees not to oppose or impede  
6 any application or motion by Settlement Class Counsel for attorneys' fees not in excess of Seven  
7 Hundred Seventy Thousand Dollars and No Cents (\$770,000.00), or thirty-five percent (35%) of the  
8 Settlement Amount. Defendant further agrees not to oppose any application or motion by Settlement  
9 Class Counsel for the reimbursement of any costs associated with Settlement Class Counsel's  
10 prosecution of this Action not in excess of Twenty Five Thousand Dollars and No Cents (\$25,000.00).  
11 Any amount awarded for costs to Settlement Class Counsel less than \$25,000.00 will result in the non-  
12 awarded amount of costs being distributed to Participating Settlement Class Members in this matter  
13 in an amount proportionate to the amount of their Individual Settlement Payment. Any amount  
14 awarded for attorneys' fees to Settlement Class Counsel of less than \$770,000 will result in the non-  
15 awarded amounts of attorneys' fees being distributed to Participating Settlement Class Members in  
16 this matter in an amount proportionate to the amount of their Individual Settlement Payment unless  
17 Settlement Class Counsel appeals the attorneys' fee award. The attorneys' fees can be appealed by  
18 Settlement Class Counsel without affecting the remainder of this Agreement. If an appeal on a reduced  
19 attorney fee award is taken and is unsuccessful or only partially successful, each Participating  
20 Settlement Class member shall be entitled to receive a second distribution of the difference between  
21 the amount requested and the amount awarded, which second distribution shall be distributed in an  
22 amount proportionate to the amount of each Participating Settlement Class Member's Individual  
23 Settlement Payment within thirty (30) days of a final ruling on the appeal. Settlement Class Counsel  
24 will be responsible for any second distribution, if necessary. Settlement Class Counsel shall be solely  
25 and legally responsible to pay all applicable taxes on the payment(s) made pursuant to this Paragraph.  
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1 Forms 1099 – MISC, Box 14 shall be provided to Settlement Class Counsel for the payments made  
2 pursuant to this Paragraph.

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4 3.7 Settlement Administrator. The Settlement Administrator shall be paid for the  
5 costs of administration of the settlement from the Settlement Amount. The estimate of such costs of  
6 administration is Fifteen Thousand Dollars and No Cents (\$15,000.00), and which is based on 566  
7 Settlement Class Members. Any amount awarded for costs of administration to the Settlement  
8 Administrator less than \$15,000.00 will result in the non-awarded amount to be awarded to  
9 Participating Settlement Class Members in an amount proportional to the amount of their Individual  
10 Settlement Payment. This estimate includes the required tax reporting on the settlement amounts,  
11 including but not limited to the issuing of W2 and 1099 forms (if any), as well as calculation of  
12 employee withholding taxes and the employer payroll taxes for Defendant to be remitted to the tax  
13 authorities by the Settlement Administrator. A Form 1099 – MISC, Box 7 shall be issued to the  
14 Settlement Administrator.

15 3.8 Service Award. Subject to Court approval, in exchange for the release of all  
16 Released Claims, a General Release of all claims, and for his time and effort in bringing and  
17 prosecuting this matter, Plaintiff Moreno shall be paid up to a total of Five Thousand Dollars and No  
18 Cents (\$5,000.00), or such lower amount as the Court may order. The Parties agree that a decision by  
19 the Court to award Plaintiff Moreno an amount less than the amount stated above shall not be a basis  
20 for Plaintiff Moreno or Settlement Class Counsel to void this Agreement. The Settlement  
21 Administrator shall issue a Form 1099 – MISC, Box 3 for the service awards. Any amount awarded  
22 for the service award to Plaintiff Moreno less than \$5,000.00 will result in the non-awarded funds  
23 being awarded to Participating Settlement Class Members in this matter in an amount proportionate  
24 to the amount of their Individual Settlement Payment. Plaintiff Moreno shall be solely and legally  
25 responsible to pay any and all applicable taxes on his service award and shall hold harmless Defendant  
26 from any claim or liability for taxes, penalties, or interest arising as a result of the payment. This  
27 service award shall be in addition to Plaintiff Moreno's share of the Settlement Amount as a Settlement  
28 Class Member.



1 each represent they do not have any financial interest in the Settlement  
2 Administrator or otherwise have a relationship with the Settlement Administrator  
3 that could create a conflict of interest.

4 b. Defendant will diligently and in good faith compile and provide to the Settlement  
5 Administrator the Class List and Data Report within fourteen (14) calendar days of  
6 Preliminary Approval of the Settlement. The report shall be provided to the  
7 Settlement Administrator in a computer-readable format.

8 c. Within fourteen (14) calendar days of receipt of the Class List and Data Report, the  
9 Settlement Administrator shall determine the approximate amount of each  
10 Settlement Class Member's Individual Settlement Amount and will prepare and  
11 mail the appropriate Class Notice to each Settlement Class Member.

12 d. All Settlement Class Members who do not timely opt-out of the Settlement will  
13 receive Individual Settlement Payments as Participating Settlement Class Members  
14 without having to submit any claim.

15 e. Ten (10) business days following the expiration of the period to opt-out or submit  
16 objections, the Settlement Administrator shall provide Defendant and Settlement  
17 Class Counsel a report and declaration indicating: (i) the names and number of  
18 Settlement Class Members who have objected to the Settlement; (ii) the names of  
19 the Settlement Class Members who have opted out of the Settlement; (iii) the names  
20 of each Participating Settlement Class Member and the Individual Settlement  
21 Amount for each Participating Settlement Class Member; and (iv) the total amount  
22 of employer-side taxes on the Wage Component of the Participating Settlement  
23 Class Members' Individual Settlement Payments.

24 f. The Parties agree to cooperate in the settlement administration process and to make  
25 all reasonable efforts to control and minimize the costs and expenses incurred in  
26 administration of the Settlement.

27 g. The Settlement Administrator shall be responsible for: calculating the approximate  
28 amount of the Individual Settlement Amount for each Settlement Class Member;

1 printing and mailing the Class Notice to Settlement Class Members; resolving  
2 Settlement Class Member disputes regarding the number of Workweeks Worked  
3 by the Settlement Class Member during the applicable Class Period; receiving and  
4 reporting the objections and Requests for Exclusion submitted by Settlement Class  
5 Members; notifying Defendant of the total amount to be paid to fully fund the  
6 Settlement; calculating, preparing and mailing Individual Settlement Payments to  
7 Participating Settlement Class Members; distributing the Attorney's Fees and Costs  
8 Award, PAGA Payment and service award to Plaintiff Moreno; creating all required  
9 tax and reporting forms and remitting appropriate monies to the taxing authorities;  
10 and otherwise performing all tasks required to properly administer the Settlement.  
11 The Settlement Administrator shall keep Defendant's Counsel and Settlement Class  
12 Counsel timely apprised of the performance of all Settlement Administrator  
13 responsibilities.

14 h. The Settlement Administrator, on Defendant's behalf, shall have the authority and  
15 obligation to make payments, credits and disbursements, including payments and  
16 credits in the manner set forth herein, to Participating Settlement Class Members  
17 and taxing authorities calculated in accordance with the methodology set out in this  
18 Agreement and orders of the Court.

19 i. Any tax return filing required in conjunction with the payments to be made pursuant  
20 to this Agreement shall be made by the Settlement Administrator. Any expenses  
21 incurred in connection with such filing shall be a cost of administration of the  
22 Settlement.

23 j. No person shall have any claim against Defendant or Defendant's Counsel, Plaintiff  
24 Moreno, Settlement Class Members, the Settlement Class, Settlement Class  
25 Counsel or the Settlement Administrator based on distributions and payments made  
26 in accordance with this Agreement.

27 4.3 Calculation of Individual Settlement Amounts. To determine the Individual  
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1 Settlement Amount to be included in the Class Notice sent to Settlement Class Members, the  
2 Settlement Administrator will:

- 3 a. Determine the total number of Workweeks Worked by the Settlement Class during  
4 the Class Period as provided in the Class List and Data Report, including the  
5 additional Workweeks Worked generated by subsection (c) below.
- 6 b. Divide the Net Settlement Amount, less Twelve Thousand Five Hundred Dollars  
7 (\$12,500), by the total number of Workweeks Worked by the Settlement Class and  
8 the additional Workweeks Worked generated by subsection (c) below to determine  
9 the Per Workweek Settlement Amount. The Per Workweek Settlement Amount  
10 shall then be multiplied by the number of Workweeks Worked by each Settlement  
11 Class Member during the applicable Class Period to determine each Settlement  
12 Class Member's Individual Settlement Amount. All Settlement Class Members  
13 will be entitled to payment for at least one (1) workweek.
- 14 c. Settlement Class Members whose employment has ended during the Class Period  
15 will be allocated an additional 0.25 Workweeks Worked for each Workweek  
16 Worked, up to a maximum of 6 additional Workweeks Worked credit to  
17 compensate them for their waiting time claim. These credited Workweeks Worked  
18 shall not increase or decrease the determined total number of Workweeks Worked  
19 by the Settlement Class.

20 4.4 Notice to Settlement Class Members. Notice of the Settlement shall be  
21 provided to all Settlement Class Members using the following procedures:

- 22 a. Notice By First-Class Mail. Within fourteen (14) calendar days after receipt of  
23 the Class List and Data Report, the Settlement Administrator shall mail the  
24 Class Notice to the Settlement Class Members via first-class regular U.S. mail.  
25 Class Notice to Settlement Class Members shall substantially be in the form  
26 attached hereto as Exhibit 1. Prior to mailing, the Settlement Administrator  
27 will perform a search based on the National Change of Address Database  
28 information to update and correct for any known or identifiable address

1 changes. If a new address is obtained by way of a returned Notice, then the  
2 Settlement Administrator shall promptly forward the original Class Notice and  
3 to the updated address via first-class regular U.S. mail indicating on the original  
4 Class Notice packet the date of such re-mailing.

5 b. Opt Out/Objection Deadline Date. Settlement Class Members will have Sixty  
6 (60) days from the mailing of the Class Notice to submit a Request for  
7 Exclusion or object to the Settlement.

8 c. Disputes Regarding Individual Settlement Amounts. The Parties agree that if  
9 any Class Member disputes the number of Workweeks Worked attributed to  
10 him or her during the applicable Class Period, absent clear evidence submitted  
11 by the Settlement Class Member establishing otherwise, Defendant's records  
12 shall presumptively control. The Parties further agree that any dispute shall be  
13 resolved by the Settlement Administrator with the assistance of Settlement  
14 Class Counsel and Defense Counsel. Class Members shall have Sixty (60) days  
15 from the mailing of the Class Notice to submit their dispute under this  
16 paragraph, inclusive of all documentation that they wish to have considered. To  
17 the extent the Settlement Administrator is unable to resolve the dispute to the  
18 satisfaction of the Settlement Class Member, the Parties will submit the dispute  
19 with all supporting evidence to the Court for final adjudication at the Final  
20 Approval Hearing.

21 d. Procedure for Undeliverable Notices. Any Notice returned to the Settlement  
22 Administrator as non-delivered on or before the expiration of the Opt Out and  
23 Objections Deadline Date shall be sent to the forwarding address affixed thereto  
24 within five (5) business days. If no forwarding address is provided, then the  
25 Settlement Administrator shall promptly attempt to determine a correct address  
26 using a single skip-trace, computer or other search using the name, address  
27 and/or Social Security number of the individual involved, and shall then  
28 perform a single re-mailing within five (5) business days. Those Settlement



1 Class Members that receive a re-mailed Class Notice shall have their deadline  
2 for submitting an opt-out, objection, or disputes regarding Individual  
3 Settlement Amounts to the Settlement extended by seven (7) calendar days  
4 from the post mark date of re-mailing. In the event the procedures in this  
5 Paragraph are followed and the intended recipient of a Class Notice still does  
6 not receive the Notice, the Settlement Class Member shall be bound by all terms  
7 of the Settlement and any final order entered by the Court if the Settlement is  
8 approved by the Court.

9 4.5 Procedure for Requesting Exclusion (“Opt Out”) from the Class Action  
10 Settlement. The Class Notice shall inform all Settlement Class Members that they may exclude  
11 themselves from the Settlement, but that they may not exclude themselves from the settlement of the  
12 PAGA claims.

13 a. Requesting Exclusion. If a Settlement Class Member elects to exclude  
14 herself/himself from the Settlement (“opt out”), the Settlement Class Member  
15 must submit a written Request for Exclusion requesting exclusion from the  
16 Action on or before the expiration of the Opt Out Period (60 days after the date  
17 that the Class Notice is mailed). Such Request for Exclusion must contain the  
18 name, address, telephone number, and the last four digits of the Social Security  
19 number of the person requesting exclusion. The Request for Exclusion must be  
20 returned to the Settlement Administrator as instructed in the Class Notice and  
21 must be postmarked on or before the date specified in the Class Notice. The  
22 date of the postmark on the return mailing envelope shall be the exclusive  
23 means used to determine whether a Request for Exclusion has been timely  
24 submitted.

25 b. No Solicitation of Opt-Outs. At no time shall any of the Parties or their counsel  
26 seek to solicit or otherwise encourage Settlement Class Members to opt out of  
27 the Settlement.

28 c. Effect of Exclusion. Any Settlement Class Member who requests exclusion

1 from the Settlement by timely submitting a valid Request for Exclusion will not  
2 be entitled to an Individual Settlement Payment (but will be entitled to an  
3 Individual PAGA Settlement Payment if he or she is an Aggrieved Employee),  
4 will no longer be a Settlement Class Member and will not be bound by the  
5 Agreement or have any right to object, appeal or comment thereon, except that  
6 he or she will still be bound by the release of the PAGA Released Claims if he  
7 or she is an Aggrieved Employee. Settlement Class Members who fail to submit  
8 a valid and timely Request for Exclusion on or before the expiration of the Opt  
9 Out Period shall be bound by all terms of the Agreement and the Final Approval  
10 Order and/or Order and Final Judgment.

11 4.6 Procedure for Objecting to the Class Action Settlement. Any Settlement Class  
12 Member wishing to object to the Settlement must submit an objection to the Settlement using the  
13 following procedures:

- 14 a. Procedure for Objecting. The Class Notice shall provide that those Settlement  
15 Class Members who wish to object to the Settlement may mail a written  
16 statement of objection (“Notice of Objection”) to the Settlement Administrator  
17 no later than the deadline to opt out or object. Settlement Class Members who  
18 timely opt out of the Settlement cannot submit an objection to the Settlement.  
19 The postmark date of the mailing shall be deemed the exclusive means for  
20 determining that a Notice of Objection is timely. Only Settlement Class  
21 Members who do not opt out of the Settlement may object to the Settlement.  
22 The written objection must include the Settlement Class Member’s name,  
23 address and phone number and the name of this case. Settlement Class Members  
24 who do not opt out of the Settlement and who submit a timely Notice of  
25 Objection may, at their option, include with their objection any legal briefs,  
26 papers or memoranda the objecting Settlement Class Member wishes to submit  
27 to the Court, or file such legal briefs, papers or memoranda directly with the  
28 Court no later than fifteen (15) days prior to the Final Approval Hearing. The

1 Settlement Administrator shall send all objections by .pdf to counsel for  
2 Defendant and Class Counsel, and also include the objections in its declaration  
3 which is to be submitted to the Court in support of final approval of the  
4 Settlement. Settlement Class Members who fail to submit a timely Notice of  
5 Objection to the Settlement Administrator will not be barred from making an  
6 appearance at the Final Approval Hearing to orally present their objection for  
7 consideration by the Court.

8 b. Copies of Objections to the Parties. No later than ten (10) business days after  
9 the deadline to opt out or object, the Settlement Administrator shall  
10 electronically provide to counsel for the Parties complete copies of each Notice  
11 of Objection received, including the postmark dates for each Notice, and any  
12 legal briefs, papers or memoranda in support of objections received by the  
13 Settlement Administrator.

14 c. No Solicitation of Objections. The Parties agree to use their best efforts to carry  
15 out the terms of this Settlement. At no time shall any of the Parties or their  
16 counsel seek to solicit or otherwise encourage Settlement Class Members to  
17 submit written objections to the Settlement or appeal from the final order and/or  
18 judgment.

19 d. Settlement Class Members who object to the Settlement shall be conclusively  
20 bound by the Release contained in this Agreement.

21 4.7 Failure to Respond to the Notice. Any Settlement Class Member who does not  
22 request to be excluded from the Settlement shall continue to be a Settlement Class Member and be  
23 conclusively bound by the Release contained in this Agreement and shall be entitled to his or her  
24 Individual Settlement Payment.

25 4.8 Procedure for Payment of Individual Settlement Payments: All Settlement  
26 Class Members who do not timely opt out of the Settlement will receive an Individual Settlement  
27 Payment, to be distributed through the Settlement Administrator pursuant to Section 4.13 below.  
28 Individual Settlement Payments for Participating Settlement Class Members shall be paid pursuant to

1 the settlement formula set forth herein. Should any question arise regarding the determination of  
2 eligibility for, or the amounts of, any Individual Settlement Payment under the terms of this  
3 Agreement, Settlement Class Counsel and Defendant's Counsel shall meet and confer, with the  
4 assistance of the Settlement Administrator, in an attempt to reach agreement. If they cannot agree, the  
5 Court shall make the final determination, and that determination shall be conclusive, final and binding  
6 on all Parties, including all Settlement Class Members.

7           4.9    Calculation of Individual Settlement Payments and Individual PAGA  
8 Settlement Payments. The Individual Settlement Payment to each Participating Class Member and  
9 Individual PAGA Settlement Payment to each Aggrieved Employee shall be determined by the  
10 Settlement Administrator as follows:

- 11           a. Only Participating Settlement Class Members shall be entitled to payment  
12           under the Settlement. Participating Settlement Class Members shall be entitled  
13           to the payment of the Individual Settlement Amount calculated as set forth  
14           above in Paragraph 4.3. Any portion of the Net Settlement Amount not payable  
15           to Settlement Class Members shall be distributed to Participating Settlement  
16           Class Members on a basis proportional to the number of Workweeks Worked  
17           by each Participating Settlement Class Member, including Workweeks Worked  
18           enhancements. The total payout to each Participating Settlement Class Member  
19           shall be known as the Individual Settlement Payment.
- 20           b. Twenty Percent (20%) of each Participating Settlement Class Member's  
21           Individual Settlement Payment shall be apportioned to wages ("Wage  
22           Component"). The Wage Component shall be reduced by any required legal  
23           deductions for each Participating Settlement Class Member. Standard employee  
24           payroll deductions shall be made for state and federal withholding taxes and  
25           any other applicable payroll deductions owed by the Participating Settlement  
26           Class Members as a result of the Wage Component. The Settlement  
27           Administrator will issue a check and W-2 Form to each Participating Settlement  
28           Class Member for the Net Wage Component.

- 1 c. Eighty Percent (80%) of each Participating Settlement Class Member's  
2 Individual Settlement Payment shall be apportioned to interest and penalties.  
3 No withholding shall be made on the interest and penalty portion of the  
4 Individual Settlement Payment. The Settlement Administrator will issue a  
5 second check and IRS Form 1099 for the interest and penalty component paid  
6 to each Participating Settlement Class Member.
- 7 d. All Aggrieved Employees shall be entitled to a payment of the PAGA Payment.  
8 One Hundred Percent (100%) of each Aggrieved Employee's Individual PAGA  
9 Settlement Payment shall be apportioned to penalties with an IRS Form 1099  
10 to be issued accordingly.
- 11 e. The Settlement Administrator shall be responsible for issuing the payments and  
12 calculating and withholding all required state and federal taxes.
- 13 f. Defendant will be responsible for paying all employer tax liabilities on the  
14 Wage Component separate and apart from the Settlement Amount which shall  
15 be conclusively determined upon final approval once the final number of  
16 Participating Class Members and Individual Settlement Payment Amounts are  
17 known.
- 18 g. Defendant makes no representation as to the tax treatment or legal effect of the  
19 payments called for hereunder, and the Class Representative and Class  
20 Members are not relying on any statement, representation, or calculation by  
21 Defendant or by the Settlement Administrator in this regard. The Class  
22 Representative and Class Members understand and agree that except for  
23 Defendant's payment of the employer's portion of any employment and payroll  
24 taxes and contributions, they will be solely responsible for the payment of any  
25 taxes and penalties assessed on the payments described herein and will defend,  
26 indemnify, and hold Defendant free and harmless from and against any claims  
27 resulting from treatment of such payments as non-taxable damages.
- 28 h. Participating Settlement Class Members shall be conclusively bound by the

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Release contained in this Agreement.

4.10 Nullification of Settlement Agreement. In the event: (i) the Court does not enter the Preliminary Approval Order specified herein; (ii) the Court does not finally approve the Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided herein, which becomes final as a result of the occurrence of the Effective Date; (iv) the Settlement or Final Judgment is reversed on appeal; (v) the Effective Date does not occur; or (vi) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void, any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning, and the stipulations and recitals contained herein shall be of no force or effect, and shall not be treated as an admission by any parties or their Counsel. In such a case, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by Plaintiff and Defendant in equal parts.

4.11 Final Approval Hearing and Entry of Final Judgment. At least thirty (30) business days after expiration of the Opt-Out/Objection Period, the Final Approval Hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for (i) the attorney’s fees and costs award, (ii) any service award for Plaintiff Moreno, and (iii) settlement administration costs. In advance of said hearing, Settlement Class Counsel shall timely file and serve their motion seeking final approval of the Settlement, an award of attorneys’ fees and costs consistent with the terms of this Agreement, and service award for Plaintiff Moreno. Upon final approval of the Settlement by the Court the Parties shall present a final judgment to the Court for its approval. After entry of the final judgment, the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-Final Judgment matters as may be appropriate under court rules or as set forth in this Agreement.

4.12 Creation of the Qualified Settlement Fund and Administration of the

1 Settlement. Defendant shall deliver the Settlement Amount to the Settlement Administrator who shall  
2 deposit said funds into a Qualified Settlement Fund created by the Settlement Administrator pursuant  
3 to Internal Revenue Code Section 1.468B-1 (“QSF”). Within thirty (30) days after the Effective Date,  
4 but no sooner than December 31, 2024, Defendant shall deliver the Settlement Amount, or Two  
5 Million Two Hundred Thousand Dollars and No Cents (\$2,200,000.00), and the corresponding share  
6 of employer taxes to the Settlement Administrator. To the extent Defendant fails to deliver payment  
7 by the deadline contemplated herein, interest shall accrue on the balance at the legal rate of interest  
8 until funding is completed. Plaintiff may seek entry of judgment through a noticed motion for any  
9 balance owed and be entitled to recovery of reasonable fees and costs should any such effort be  
10 undertaken. All payments that Defendant is required to make pursuant to the Settlement Agreement  
11 shall be made from this Fund. Payments from the Qualified Settlement Fund shall be made for (1) any  
12 service award to Plaintiff Moreno, as specified in this Agreement and approved by the Court; (2) the  
13 attorneys’ fees and costs award paid to Settlement Class Counsel, as specified in this Agreement and  
14 approved by the Court; (3) the Settlement Administration Costs, as specified in this Agreement and  
15 approved by the Court; (4) the amount allocated to the LWDA for its portion of the PAGA Payment;  
16 (5) all payments to Participating Settlement Class Members; and (6) payment of both the employee  
17 and employer portions of tax withholdings on the portions of the Net Settlement Amount characterized  
18 as wages.

19 4.13 Distribution by the Settlement Administrator. The Settlement Administrator  
20 shall make a distribution from the Qualified Settlement Fund not later than fourteen (14) days after  
21 receiving the Settlement Amount from Defendant. Prior to distribution, the Settlement Administrator  
22 will perform a search based on the National Change of Address Database information to update and  
23 correct for any known or identifiable address changes. If a new address is obtained by way of a returned  
24 distribution payment, then the Settlement Administrator shall promptly forward the distribution  
25 payment to the updated address via first-class regular U.S. mail indicating on the original mailing the  
26 date of such re-mailing. With the distribution, the Settlement Administrator is to make distributions to  
27 the appropriate parties for payments due under this Agreement as follows:

28 a. Settlement Class Counsel’s attorneys’ fees and costs as awarded by the Court

1 under Paragraph 3.6 herein.

2 b. The service award to Plaintiff Moreno as awarded by the Court under Paragraph  
3 3.8 herein.

4 c. The PAGA payments to the LWDA and Aggrieved Employees as set forth in  
5 Paragraph 3.9 herein.

6 d. Payment to the Settlement Administrator for the costs of settlement  
7 administration as set forth in Paragraph 3.7 herein and approved by the Court.

8 e. Individual Settlement Payments to Participating Class Members as set forth in  
9 Paragraph 4.3 and 4.9 herein.

10 4.14 Undeliverable Individual Settlement Payments. Should any Individual  
11 Settlement Payment checks be returned as undeliverable to the Settlement Administrator, the  
12 Settlement Administrator shall use reasonable efforts to identify a correct address for the Participating  
13 Class Member, and cause the Individual Settlement Payment check to be delivered to the correct  
14 address.

15 4.15 Uncashed Individual Settlement Payment Checks. All checks for Individual  
16 Settlement Payments shall remain valid and negotiable for 180 days from the date of their issuance.  
17 Any checks not cashed during the 180 day period after distribution shall be void, and the Participating  
18 Settlement Class Member's release set forth herein shall remain valid. After the 180 day period  
19 following distribution, all funds will escheat to the State of California's Unclaimed Property Fund in  
20 the name of the Class Member.

21 4.16 Certification By Settlement Administrator. Upon completion of administration  
22 and upon the distribution set forth in Section 4.15 above, the Settlement Administrator shall provide  
23 written certification of such completion, including any administration summary, to the Court and  
24 counsel for all Parties.

25 **V.**

26 **RELEASES**

27  
28 5.1 Release As To All Participating Class Members. Upon the Effective Date and



1 funding in full of the Settlement Amount by Defendant, all Settlement Class Members who do not  
2 timely opt out of the Settlement (“Participating Class Members”), including their heirs, assigns, estates  
3 and representatives, shall be deemed to fully forever, irrevocably and unconditionally release and  
4 discharge the Released Parties from the Released Claims. The Settlement Agreement shall be in full  
5 settlement, compromise, release and discharge of the Released Claims and each of them, and the  
6 Released Claims by the Class Representative, and the Released Parties shall have no further or other  
7 liability or obligation to any Class Member and/or the Class Representative with respect to the  
8 Released Claims and Class Representative’s Released Claims, except as expressly provided herein.

9 Release As To All Aggrieved Employees. Upon the Effective Date and funding in full  
10 of the Settlement Amount by Defendant, Plaintiff and the State of California shall be deemed to fully  
11 forever, irrevocably and unconditionally release and discharge the Released Parties from the Released  
12 PAGA Claims.

13 5.2 General Release By Named Plaintiff Only. In addition to the release made by  
14 the Participating Class Members as set forth in Paragraph 5.1 hereof, Plaintiff Moreno, in his  
15 individual capacity and with respect to his individual claims only, agrees to release the Released  
16 Parties from all claims, demands, rights, liabilities and causes of action of every nature and description  
17 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract,  
18 or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in  
19 connection with any act or omission by or on the part of any of the Released Parties committed or  
20 omitted prior to the execution hereof including a waiver of Civil Code §1542.

21 5.2.1. The General Release includes any unknown claims that Plaintiff Moreno does  
22 not know or suspect to exist in his favor at the time of the General Release, which, if known  
23 by him, might have affected his settlement with, and release of, the Released Parties or might  
24 have affected his decision not to object to this Settlement or the General Release.

25 5.2.2. The Class Representative hereby fully and finally releases and discharges the  
26 Released Parties from any and all of the Released Claims and from any and all claims, charges,  
27 complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown,  
28 suspected or unsuspected, that the Class Representative had, now has, or may hereafter claim to have

1 against the Released Parties arising out of, or relating in any way to, the Class Representative's hiring  
2 by, employment with, separation of employment with the Released Parties ("Class Representative's  
3 Released Claims"), arising or accruing from the beginning of time up through the date the Court  
4 preliminarily approves this Settlement. The Class Representative's Released Claims include, but are  
5 not limited to, claims arising from or dependent on the California Labor Code; the Wage Orders of the  
6 California Industrial Welfare Commission; California Business and Professions Code section 17200  
7 *et seq.*; the California Fair Employment and Housing Act, Cal. Gov't Code § 12900 *et seq.*; the  
8 California common law of contract and tort; Title VII of the Civil Rights Act of 1964; the Americans  
9 with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Employee Retirement Income Security Act of  
10 1974, 29 U.S.C. § 1001 *et seq.*; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* and the Portal  
11 to Portal Act, 29 U.S.C. § 251 *et seq.* This release expressly excludes any Worker's Compensation  
12 claims the Class Representative currently may have pending against Defendant.

13         The Class Representative further warrants that he understands that Section 1542 gives him the  
14 right not to release existing claims of which he is not now aware, unless he voluntarily chooses to  
15 waive this right. Having been so apprised, the Class Representative shall nevertheless voluntarily  
16 waive the rights described in Section 1542 only as related to the Released Claims and Class  
17 Representative's Released Claims, and elects to assume all risks as to the Released Claims set forth  
18 herein that now exist in his favor, known or unknown. Plaintiff agrees that due to irreconcilable  
19 differences he will not knowingly seek or maintain employment, independent contractor status, or any  
20 other business relationship with Defendant in the future in any position or capacity whatsoever and  
21 that Defendant is entitled to reject (and will be deemed to have rejected) with or without cause, any  
22 application for employment or agreement for independent contractor status or any other business  
23 relationship with Defendant made by Plaintiff. Plaintiff further agrees that any rejection of any  
24 application or offer made by Defendant to Plaintiff is not for retaliatory, discriminatory or any other  
25 illegal purpose and Plaintiff will not seek any redress, legally or otherwise, for such a rejection.

26             5.2.3. Plaintiff Moreno may hereafter discover facts in addition to or different from  
27 those he now knows or believes to be true with respect to the subject matter of the General  
28 Release, but he shall be deemed to have, and by operation of the Final Judgment shall have,

1 fully, finally, and forever settled and released any and all of the claims released pursuant to the  
2 General Release whether known or unknown, suspected or unsuspected, contingent or non-  
3 contingent, which now exist, or heretofore have existed upon any theory of law or equity now  
4 existing or coming into existence in the future, including, but not limited to, conduct that is  
5 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without  
6 regard to the subsequent discovery or existence of such different or additional facts.

7  
8 **VI.**

9 **MISCELLANEOUS**

10 6.1 No Public Comment. All Parties and Class Counsel agree they will not make  
11 any public disclosure of the Settlement or the previously-signed Memorandum of Understanding until  
12 after this Amended Stipulated Settlement Agreement is filed with the Court. Class Counsel will take  
13 all steps necessary to ensure all Parties are aware of, and will encourage them to adhere to, the  
14 restriction against any public disclosure of this Amended Stipulated Settlement Agreement or the  
15 previously-signed Memorandum of Understanding until after this Amended Stipulated Settlement  
16 Agreement is filed with the Court. Following the filing of this Amended Stipulated Settlement  
17 Agreement, all Parties and Class Counsel agree they will not have any communications with the media,  
18 other than to direct the media to the public records of the Action on file with the Court. Class Counsel  
19 will take all steps necessary to ensure all Parties are aware of, and will adhere to, the restriction against  
20 any media comment on this Amended Stipulated Settlement Agreement and its terms.

22 6.2 No Additional Benefits. All Individual Settlement Payments paid to  
23 Participating Settlement Class Members shall be deemed to be paid to such Participating Settlement  
24 Class Members solely in the year in which such payments actually are received by Participating  
25 Settlement Class Members. It is expressly understood and agreed that the receipt of such payments  
26 will not entitle any Participating Settlement Class Member to any additional compensation or benefits  
27 under any bonus, contest or other compensation or benefit plan or agreement currently in place and/or  
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1 that was in place during the applicable Class Period or thereafter, nor will receipt of such payments  
2 entitle any Participating Settlement Class Member to any increased retirement, 401k benefits or  
3 matching benefits, deferred compensation benefits or any other type of benefit. It is the intent of this  
4 Settlement that the Individual Settlement Payments provided for in this Agreement are the sole  
5 payments to be made by Defendant to the Participating Settlement Class Members, and that the  
6 Participating Settlement Class Members are not entitled to any new or additional compensation or  
7 benefits as a result of having received the payments, notwithstanding any contrary language or  
8 agreement in any benefit or compensation plan document currently in place and/or that was in place  
9 during the applicable Class Period or thereafter.  
10

11  
12 6.3 Dispute Resolution. Except as otherwise set forth herein, all disputes  
13 concerning the interpretation, calculation or payment of settlement claims, or other disputes regarding  
14 compliance with this Agreement shall be resolved as follows:

- 15 a. If Plaintiff Moreno, or Settlement Class Counsel, on behalf of Plaintiff Moreno,  
16 or any Settlement Class Member, or Defense Counsel at any time believe that  
17 the other Party has breached or acted contrary to the Agreement, that Party shall  
18 notify the other Party in writing of the alleged violation.
- 19 b. Upon receiving notice of the alleged violation or dispute, the responding Party  
20 shall have ten (10) business days to correct the alleged violation and/or respond  
21 to the initiating Party with the reasons why the party disputes all or part of the  
22 allegation.
- 23 c. If the response does not address the alleged violation to the initiating Party's  
24 satisfaction, the Parties shall negotiate in good faith for up to ten (10) business  
25 days to resolve their differences.
- 26 d. If the Parties are unable to resolve their differences after twenty (20) business  
27 days, either Party may file an appropriate motion for enforcement with the  
28 Court. The briefing of such motion should be in letter brief form and shall not

1 exceed five (5) single-spaced pages (excluding exhibits).

2 e. Reasonable attorney’s fees and costs for work done in resolving a dispute under  
3 this Section may be recovered by any party that prevails under the standards set  
4 forth within the meaning of applicable law.

5 6.4 Exhibits and Headings. The terms of this Agreement, including the terms set  
6 forth in the attached Notice, which is incorporated by this reference as though fully set forth herein,  
7 shall be the only terms of this Agreement. The descriptive headings of any paragraphs or sections of  
8 this Agreement are inserted for convenience of reference only and do not constitute a part of this  
9 Agreement.

10 6.5 Interim Stay of Proceedings. The Parties agree to the Court staying and holding  
11 all proceedings in the Action, except such proceedings necessary to implement and complete the  
12 Settlement, in abeyance pending the Final Settlement Hearing to be conducted by the Court.

13 6.6 Amendment or Modification. This Agreement may be amended or modified  
14 only by a written instrument signed by counsel for all Parties or their successors-in-interest and subject  
15 to the Court’s approval.

16 6.7 Entire Agreement. This Agreement and any attached exhibits constitute the  
17 entire agreement among these Parties, and no oral or written representations, warranties or  
18 inducements have been made to any Party concerning this Agreement or its exhibits other than the  
19 representations, warranties and covenants contained and memorialized in such documents.

20 6.8 Extensions of Time. Without further order of the Court, the Settling Parties  
21 hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the  
22 Settlement.

23 6.9 Waivers. The waiver by any party of any breach of this Settlement Agreement  
24 shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or  
25 contemporaneous, of this Settlement Agreement.

26 6.10 Authorization to Enter Into Settlement Agreement. Counsel for all Parties  
27 warrant and represent they are expressly authorized by the Parties whom they represent to negotiate  
28 this Agreement and to take all appropriate action required or permitted to be taken by such Parties

1 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to  
2 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other  
3 and use their best efforts to effect the implementation of the Settlement. In the event the Parties are  
4 unable to reach agreement on the form or content of any document needed to implement the  
5 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of  
6 this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The  
7 person signing this Agreement on behalf of Defendant represents and warrants that he/she is  
8 authorized to sign this Agreement on behalf of Defendant.

9           6.11 Binding on Successors and Assigns. This Agreement shall be binding upon, and  
10 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11           6.12 California Law Governs. All terms of this Agreement and the exhibits hereto  
12 shall be governed by and interpreted according to the laws of the State of California.

13           6.13 Counterparts. This Agreement may be executed in one or more counterparts. A  
14 facsimile or scanned signature shall have the same effect as an original signature and shall not affect  
15 the enforceability of this Agreement. All executed counterparts and each of them shall be deemed to  
16 be one and the same instrument provided that Counsel for the Parties to this Agreement shall exchange  
17 among themselves signed counterparts.

18           6.14 Jurisdiction of the Court. Pursuant to California Rules of Court, rule 3.769(h)  
19 and California Code of Civil Procedure Sec. 664.6, the Court shall retain jurisdiction with respect to  
20 the interpretation, implementation and enforcement of the terms of this Agreement and all orders and  
21 judgments entered in connection therewith, and the Parties and their counsel hereto submit to the  
22 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement  
23 embodied in this Agreement and all orders and judgments entered in connection therewith.

24           6.15 Cooperation and Drafting. Each of the Parties has cooperated in the drafting  
25 and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall  
26 not be construed against any of the Parties.

27           6.16 Invalidity of Any Provision. Before declaring any provision of this Agreement  
28 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible

1 consistent with applicable precedents so as to define all provisions of this Agreement valid and  
2 enforceable.

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Dated: 7/25/2023 \_\_\_\_\_

**PLAINTIFF**

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Alfonso Moreno

Represented By:

MOORADIAN LAW, APC

By:  \_\_\_\_\_  
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Zorik Mooradian, Haik Hacopian

Dated: 7/25/2023 \_\_\_\_\_

Attorney for Plaintiff Moreno and the Settlement Class

**DEFENDANT DCX-CHOL ENTERPRISES INC.**

DocuSigned by:




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Its: Neal Castleman, President

Represented By:

WEBSTER KAPLAN LLP

Dated: 7/25/23 \_\_\_\_\_

By:  \_\_\_\_\_  
Andrew B. Kaplan

Attorney for Defendant