

Exhibit 1

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
2 JENNIFER L. CONNOR (SBN 241480)
jennifer@counselonegroup.com
3 **COUNSELONE, P.C.**
9301 Wilshire Boulevard, Suite 650
4 Beverly Hills, California 90210
Tel: (310) 277-9945 / Fax: (424) 277-3727
5

6 EDWIN AIWAZIAN (SBN 232943)
ARBY AIWAZIAN (SBN 269827)
TARA ZABEHI (SBN 314706)
7 **LAWYERS for JUSTICE, PC**
410 West Arden Avenue, Suite 203
8 Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021
9

10 *Attorneys for Plaintiff*

11 ROBERT A. CUTBIRTH (SBN 131279)
cutbirth@sbemp.com
12 **SLOVAK BARON EMPEY MURPHY &**
PINKNEY, LLP
13 1800 E. Tahquitz Canyon Way
Palm Spring, California 92262
14 Tel: (760) 322-2275 / Fax: (760) 322-2107
15

15 *Attorneys for Defendant*

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF ALAMEDA**

19 SHONTIARA HUBBARD, individually, and
20 on behalf of other members of the general
public similarly situated and on behalf of
21 other aggrieved employees pursuant to the
California Private Attorneys General Act,

22 Plaintiff,

23 vs.

24 TITLE 9 SPORTS, INC., a California
25 corporation; TITLE NINE, an unknown
business entity; and DOES 1 through 100,
26 inclusive,

27 Defendants.
28

Case No.: RG20048976

Honorable Winifred Y. Smith
Department 21

CLASS ACTION

**AMENDED STIPULATION OF
SETTLEMENT AND RELEASE OF
CLAIMS**

Hearing Date:
Hearing Time:
Department: 21

Complaint Filed: January 2, 2020
Jury Trial Date: None Set

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AMENDED STIPULATION OF CLASS AND REPRESENTATIVE

ACTION SETTLEMENT

IT IS HEREBY STIPULATED by and between Plaintiff Shontiera Hubbard, on behalf of herself and others similarly situated, on the one hand, and Defendant Title 9 Sports, Inc., on the other hand, and subject to the approval of the Court, that the Lawsuit is hereby being compromised and settled pursuant to the terms and conditions set forth in this Amended Stipulation of Class and Representative Action Settlement (“Settlement Agreement”) and that the Court shall make and enter judgment, subject to the continuing jurisdiction of the Court as set forth below, subject to the definitions, recitals and terms set forth herein which by reference become an integral part of this Settlement Agreement.

DEFINITIONS

1. “Administration Costs” means fees and costs of settlement administration services rendered in administrating the settlement.
2. “Attorneys’ Fees and Costs” means the amount the Court authorizes to be paid to Class Counsel for attorneys’ fees, not to exceed 35 percent of the Gross Settlement Amount, and litigation costs incurred in connection with the Lawsuit, not to exceed \$25,000, paid from the Gross Settlement Amount.
3. “Class Counsel” means CounselOne, P.C. and Lawyers *for* Justice, P.C.
4. “Class” or “Class Member(s)” means all current and former hourly-paid or non-exempt employees who worked for Defendant Title 9 Sports, Inc. at its Distribution Center facility in the State of California during the Class Period.
5. “Class List” means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet within seven (7) days after approval and/or preliminary approval of this Settlement, and shall include: each Class Member’s full name; last known address; last known home telephone number; Social Security Number; start date of employment; end date of employment; and the number of Total Weeks Worked by the Class

1 Member as a non-exempt employee for Defendants during the Class Period (“Total Weeks
2 Worked”).

3 6. “Class Notice” means the document to be sent via first class U.S. mail to the Class
4 following Preliminary Approval, in substantially the form that is attached hereto as “**EXHIBIT**
5 **1,**” or otherwise approved by the Court, which will notify Class Members of the settlement,
6 explain the basic terms of this Settlement Agreement, and inform Class Members of their options
7 with regard to the settlement.

8 7. “Class Period” means the period beginning on February 2, 2016 and ending on
9 December 4, 2021.

10 8. “Court” means the Superior Court for the State of California, County of Alameda.

11 9. “Defendant” means Title 9 Sports, Inc.

12 10. “Defendant’s Counsel” means Slovak Baron Empey Murphy & Pinkney, LLP.

13 11. “Effective Date” means the date the Court’s order approving the settlement and
14 judgment thereon (“Judgment”) becomes final. For purposes of the Settlement Agreement, the
15 Court’s Judgment “becomes final” upon the later of: (i) if no appeal is filed, the expiration date
16 of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s Judgment
17 (i.e., 30 calendar days after notice of entry of the Court’s Judgment); (ii) if an appeal is filed, the
18 date affirmance of an appeal of the Judgment becomes final; or (iii) if an appeal is filed, the date
19 of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on
20 review of any court of appeal decision relating to the Judgment.

21 12. “Enhancement Payment” means the amount that the Court authorizes to be paid to
22 Plaintiff, in addition to her Individual Settlement Payment, in recognition of her efforts and risks
23 in assisting with the prosecution of the Lawsuit and in exchange for her executing a General
24 Release of Defendant, paid from the Gross Settlement Amount.

25 13. “Final Approval Hearing” means the hearing following Preliminary Approval and
26 distribution of the Class Notice to the Class, at which the Court will determine whether to fully
27 and finally approve the fairness and reasonableness of the settlement, and at which Plaintiff will
28 request that the Court enter the Final Approval Order and Judgment, approve and award

1 Attorneys' Fees and Costs, Enhancement Payment, Individual Settlement Payments,
2 Administration Costs, and LWDA Payment, and take other appropriate or necessary action as
3 described herein.

4 14. "Final Approval Hearing Date" means the date of the Final Approval Hearing.

5 15. "Final Approval Order and Judgment" means the order or orders entered by the
6 Court that, *inter alia*, finally approve(s) this Settlement Agreement, disposes of all issues raised
7 in the Lawsuit by way of judgment in conformity with California Rules of Court 3.769, and awards
8 and orders the payment of all required amounts pursuant to the terms of this Settlement
9 Agreement.

10 16. "Gross Settlement Amount" or "GSA" means the maximum total payment of five
11 hundred and fifteen thousand dollars (\$515,000) payable by Defendant under this Settlement
12 Agreement, inclusive of all Individual Settlement Payments, Attorneys' Fees and Costs,
13 Administration Costs, Enhancement Payment to Plaintiff, and the LWDA Payment. The Gross
14 Settlement Amount is non-reversionary, subject to increase pursuant to Paragraph 52, and
15 exclusive of employer-side payroll taxes which shall be paid separately.

16 17. "Individual Settlement Share(s)" means a Settlement Class Member's *pro rata*
17 share of the Net Settlement Amount, which is to be determined in conformity with Paragraph
18 46(e), which is inclusive of the employee-side payroll taxes, contributions, and withholdings with
19 respect to the wages portion of the Individual Settlement Shares ("Employee Taxes"). The net
20 payment of each Settlement Class Member's Individual Settlement Shares (after reduction for
21 Employee Taxes), and PAGA Group Member's individual PAGA payment (if applicable) is
22 referred to as his or her "Individual Settlement Payment."

23 18. "Lawsuit" means the action entitled *Shontiara Hubbard v. Title 9 Sports, Inc.*, filed
24 in the Alameda County Superior Court and assigned case number RG20048976.

25 19. "LWDA Payment" means the payment that is to be approved by the Court pursuant
26 to Labor Code section 2699 and distributed as follows: seventy-five (75%) of the PAGA Payment
27 (*i.e.*, \$37,500) to the California Labor and Workforce Development Agency ("LWDA") and
28 twenty-five (25%) (*i.e.*, \$12,500) to the Class Members employed during the PAGA Period

1 (“PAGA Group Members”) on *pro rata* basis in conformity with Paragraph 44(d). Class Counsel
2 shall give timely notice of the settlement to the LWDA under Labor Code section 2699(1)(2).

3 20. “LWDA Released PAGA Claims” means all claims during the PAGA Period,
4 asserted under the PAGA (codified in California Labor Code §§ 2698, *et seq.*), brought by the
5 LWDA and/or on behalf of the LWDA, arising from any and all claims alleged in the operative
6 complaint filed in the Lawsuit, or that could have been asserted based on the facts alleged by
7 Plaintiff in the operative complaint filed in the Lawsuit.

8 21. “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement
9 Amount that is available for distribution to Settlement Class Members, which will be the Gross
10 Settlement Amount less the amounts awarded for Attorneys’ Fees and Costs, Enhancement
11 Payment, PAGA Payment, and Administration Costs.

12 22. “Notice Plan” means the plan for the provision of notice to all Class Members under
13 this Settlement Agreement.

14 23. “PAGA Group” or “PAGA Group Members” mean all Class Members, whether or
15 not they submit a request for exclusion from the Settlement Class, employed by Defendant during
16 the PAGA Period.

17 24. “PAGA Payment” means the payment of penalties pursuant to California Labor
18 Code sections 2968, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”),
19 that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims
20 encompassed by the underlying allegations in the Lawsuit, which is \$50,000.

21 25. “PAGA Period” means the period beginning on October 25, 2018 and ending on
22 December 4, 2021.

23 26. “Parties” means Plaintiff, individually and on behalf of all Class Members and
24 PAGA Group Members, and Defendant, who are individually referred to as “Party.”

25 27. “Plaintiff” or “Class Representative” means Shontiarra Hubbard.

26 28. “Plaintiff’s Released Claims” means that, in addition to the Settlement Class
27 Members’ Released Claims and LWDA Released PAGA Claims, in exchange for the
28 consideration recited in this Settlement Agreement, including but not limited to the Enhancement

1 Payment, Plaintiff, individually, releases, acquits, discharges, and covenants not to sue Defendant
2 and any of the Released Parties for any claim, whether known or unknown, which she has ever
3 had, or hereafter may claim to have, arising during the Class Period, relating to or arising out of
4 any aspect of her relationship with Defendant. The release by Plaintiff includes a waiver of her
5 individual rights under Section 1542 of the Civil Code of the State of California, the specific terms
6 and details of which are set forth in Paragraph 45.

7 29. "Preliminary Approval Order" means the order to be entered by the Court that
8 preliminarily approves the terms and conditions of this Settlement Agreement, including the
9 content of the Class Notice and Notice Plan, and sets a Final Approval Hearing.

10 30. "Released Parties" means Defendant Title 9 Sports, Inc., and its former and present
11 parents, subsidiaries, affiliates, shareholders, predecessors, successors, and assigns, including
12 Defendant's respective pension, profit sharing, savings, health, and other employee benefit plans
13 of any nature, as well as all agents, employees (current and former), officers, directors, insurers,
14 and attorneys.

15 31. "Response Deadline" means the date forty-five (45) days after the Settlement
16 Administrator mails the Class Notice to Class Members and the last date on which Class Members
17 may submit an opt-out/request for exclusion or object to the settlement.

18 32. "Settlement Administrator" means CPT Group, Inc., the neutral third-party
19 administrator mutually agreed upon by the Parties, subject to approval by the Court.

20 33. "Settlement Class" or "Settlement Class Members" means Class Members who
21 have not submitted a timely and valid Opt-Out/Request for Exclusion pursuant to Paragraph 53.

22 34. "Settlement Class Members' Released Claims" means that Plaintiff, the California
23 Workforce Development Agency ("LWDA"), and the Class Members will release Defendants and
24 Released Parties from all claims rights, demands, liabilities, and causes of action, whether
25 statutory, in tort, contract, or otherwise, alleged in the LWDA Notice Letter and/or the operative
26 complaint filed by Plaintiff, or that could have been alleged based on the facts alleged or asserted
27 in the LWDA Notice Letter and/or the operative complaint filed by Plaintiff in the Lawsuit, which
28 in any manner arose during the Class Period, including, but in no manner limited to, claims under

1 the California Labor Code, California Industrial Welfare Commission Wage Orders, regulations,
2 and/or other provisions of law, for failure to pay wages (including minimum wages, overtime and
3 double time wages), failure to provide compliant meal periods and associated premium pay, failure
4 to provide compliant rest periods and associated premium pay, failure to provide compliant wage
5 statements, failure to provide accurate itemized wage statements, failure to timely pay wages upon
6 termination of employment, failure to timely pay wages during employment, failure to maintain
7 requisite payroll records, unreimbursed business expenses, and derivative unfair or unlawful
8 business practices in violation of California Business and Professions Code § 17200, *et seq.* This
9 release excludes the release of claims not permitted by law. The specific terms and details of the
10 release are set forth in Paragraph 44.

11 35. “Workweek(s)” means a seven-day work week during the Class Period during
12 which, based on Defendant’s records, Class Members were actively employed by Defendant and
13 worked during at least a portion of such Workweek in an hourly-paid or non-exempt position in
14 its Distribution Center facility in the State of California.

15 **RECITALS**

16 36. **Procedural History.** Plaintiff filed her complaint in the Alameda County Superior
17 Court on January 2, 2020 alleging: (1) failure to pay overtime pursuant to Labor Code §§ 510 and
18 1198 and the Industrial Welfare Commission (“IWC”) Wage Orders; (2) failure to provide
19 compliant meal periods and/or pay premiums owed thereon in violation of Labor Code §§ 226.7
20 and 512(a) and the IWC Wage Orders; (3) failure to provide compliant rest breaks and/or pay
21 premiums owed thereon in violation of Labor Code § 226.7 and the IWC Wage Orders; (4) failure
22 to pay minimum wages pursuant to Labor Code §§ 1194, 1197, and 1197.1 and the IWC Wage
23 Orders; (5) failure to pay all wages upon termination in violation of Labor Code §§ 201-202 and
24 the IWC Wage Orders; (6) failure to pay all wages owed timely during employment in violation
25 of Labor Code § 204 and the IWC Wage Orders; (7) failure to provide accurate itemized wage
26 statements in violation of Labor Code § 226(a); (8) failure to keep requisite payroll records in
27 violation of Labor Code § 1174(d); (9) failure to reimburse necessary business expenses in
28 violation of Labor Code §§ 2800 and 2802; (10) violations of California Business and Professions

1 Code §§ 17200, *et seq.*; and (11) violation of the Private Attorneys General Act of 2004
2 (“PAGA”), codified in Labor Code §§ 2698, *et seq.*

3 37. **Pre-Filing PAGA Notice.** Plaintiff’s counsel provided pre-filing written notice to
4 the LWDA and by certified mail to Defendant on October 25, 2019 of the above-identified
5 allegations on behalf of Plaintiff and similarly situated aggrieved employees in accord with the
6 PAGA, California Labor Code §§ 2698, *et seq.*

7 38. **Discovery and Investigation.** Plaintiff’s attorneys began their investigation into
8 the at-issue allegations well in advance of filing the complaint and engaged in extensive informal
9 discovery and investigation, in addition to formal discovery after filing the complaint (including
10 filing motions to compel) and such was sufficient to allow the Parties to evaluate the case prior to
11 settlement. For example, Class Counsel requested production of and reviewed key information
12 and documents such as the number of putative class members and aggrieved employees, relevant
13 wage and hour policies, time and payroll records, rates of pay, among other things. Class Counsel
14 analyzed time and payroll records and interviewed Class Members to determine violation rates.
15 The Parties met and conferred at length regarding the information and documents produced.

16 39. After having performed extensive investigation and analysis of the legal and factual
17 issues and risks, the Parties participated in two separate full-day mediation sessions – first, before
18 mediator Kelly A. Knight, Esq., and second, before mediator Jill R. Sperber, Esq. (both of Judicate
19 West), in an attempt to resolve the Lawsuit. The settlement discussions were conducted at arm’s-
20 length. As a result of the mediation sessions, and the extensive discussions and conferences, and
21 pursuant to a mediator’s proposal, the Parties came to agreement on all material terms of this
22 settlement.

23 40. **Benefits of Settlement.** Plaintiff and Class Counsel recognize the expense and
24 length of continued proceedings necessary to litigate their disputes through trial and through any
25 possible appeals. Plaintiff has also taken into account the uncertainty and risks of the outcome of
26 further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class
27 Counsel are also aware of the burdens of proof necessary to establish liability for the claims
28 asserted in the Lawsuit, both generally and in response to Defendant’s defenses thereto, and the

1 difficulties in establishing damages for Class Members. Plaintiff and Class Counsel have also
2 taken into account the extensive settlement negotiations conducted. Based on the foregoing,
3 Plaintiff and Class Counsel have determined that the settlement set forth herein is a fair, adequate
4 and reasonable settlement, and is in the best interests of Class Members and PAGA Group
5 Members.

6 41. **Defendant's Reasons for Settlement and Non-Admission.** Defendant has
7 concluded that any further defense of this litigation would be protracted and expensive for all
8 Parties. Substantial amounts of time and resources of Defendant have and, unless this settlement
9 is made, will continue to be devoted to the defense of the claims asserted by Plaintiff, Class
10 Members, and PAGA Group Members. Defendant has also taken into account the risks of further
11 litigation in reaching its decision to enter into this Settlement Agreement. Despite continuing to
12 contend that it is not liable for any of the claims set forth by Plaintiff, Defendant has, nonetheless,
13 agreed to settle in the manner and upon the terms set forth in this Settlement Agreement to put to
14 rest the claims as set forth in the Lawsuit. Defendant has claimed and continues to claim that the
15 Plaintiff's Released Claims, Settlement Class Members' Released Claims, and LWDA Released
16 PAGA Claims have no merit and do not give rise to liability. This settlement is a compromise of
17 disputed claims.

18 42. **This Settlement is Fair, Adequate and Reasonable.** The Parties believe this
19 settlement is a fair, adequate, and reasonable settlement of this Lawsuit and have arrived at this
20 settlement after extensive arms-length negotiations, taking into account all relevant factors,
21 present and potential. In addition, the mediator may, at her discretion, execute a declaration
22 supporting the settlement and the reasonableness of this settlement, and the Court, may in its
23 discretion, contact the mediator to discuss the settlement and whether or not the settlement is fair
24 and reasonable.

25 **TERMS AND CONDITIONS**

26 **NOW, THEREFORE**, in consideration of the Recitals listed above and the promises and
27 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency
28 of the consideration and undertakings set herein, the Plaintiff, individually and on behalf of others

1 similarly situated, on the one hand, and Defendant, on the other hand, agree that the Lawsuit shall
2 be, and is finally and fully compromised and settled on the following terms and conditions, subject
3 to Court approval:

4 43. **Non-Admission of Liability.** This Settlement Agreement represents a compromise
5 and settlement of highly disputed claims. Defendant denies each and all of the claims alleged by
6 Plaintiff in the Lawsuit. The Parties enter into this Settlement Agreement to resolve the Lawsuit
7 and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement
8 Agreement, Defendant does not admit, and generally and specifically denies, that it has: violated
9 any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any
10 statute or any other applicable laws, regulations or legal requirements; violated or breached any
11 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct
12 with respect to its employees, the Class, and/or PAGA Group Members. Neither this Settlement
13 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall
14 be construed as an admission or concession by Defendant of any such violation(s) or failure(s) to
15 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this
16 Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered
17 or received as evidence in any action or proceeding to establish any liability or admission on the
18 part of Defendant or to establish the existence of any condition constituting a violation of, or a
19 noncompliance with, federal, state, local or other applicable law. In addition, as set forth herein,
20 the Parties intend this settlement to be contingent upon the Preliminary Approval and Final
21 Approval of this Settlement Agreement; and the Parties do not waive, and instead expressly
22 reserve, their respective rights to prosecute and defend the Lawsuit as if this Settlement Agreement
23 never existed in the event the settlement is not finally approved as set forth herein.

24 44. **Release of Claims.** As of the Effective Date, Plaintiff and all Class Members who
25 did not submit valid requests for exclusion from the settlement, for the period from February 2,
26 2016 and ending on December 4, 2021, will release and forever discharge Defendant Title 9
27 Sports, Inc., and its former and present Released Parties, from the Settlement Class Members'
28 Released Claims during the Class Period. The Settlement Class Members' Released Claims

1 include all wage-and-hour claims alleged in the operative complaint in the Lawsuit, or that could
2 have been asserted in the Lawsuit based on the facts alleged by Plaintiff in the operative complaint
3 during the Class Period. The Settlement Class Members' Released Claims include all claims based
4 on allegations for: (1) failure to pay all overtime wages; (2) non-compliant meal periods and/or
5 failure to make premium payments thereon; (3) non-compliant rest breaks and/or failure to make
6 premium payments thereon; (4) failure to pay minimum wages; (5) failure to pay all wages upon
7 separation of employment; (6) failure to pay all wages in a timely manner during employment; (7)
8 failure to provide accurate itemized wage statements; (8) failure to keep accurate and complete
9 payroll records; (9) failure to reimburse business expenses; and (10) unfair business practices
10 related to the Settlement Class Members' Released Claims. This release excludes the release of
11 claims not permitted by law.

12 As of the Effective Date, the LWDA releases, acquits, discharges, and covenants not to sue
13 Defendant and any of the Released Parties for any penalties pursuant to the PAGA, for the period
14 from October 25, 2018 and ending December 04, 2021, brought by the LWDA and/or on behalf
15 of the LWDA, arising from any and all claims alleged in the operative complaint filed in the
16 Lawsuit, or that could have been asserted based on the facts alleged by Plaintiff in the operative
17 complaint filed in the Lawsuit ("LWDA Released PAGA Claims").

18 45. **General Release by Plaintiff Only.** As of the Effective Date, in addition to the
19 Settlement Class Members' Released Claims and LWDA Released PAGA Claims, Plaintiff
20 individually, releases, acquits, discharges, and covenants not to sue Defendant and any of the
21 Released Parties for any claim, whether known or unknown, which she has ever had, or hereafter
22 may claim to have, arising during the Class Period relating to or arising out of any aspect of her
23 relationship with Defendant. The release by Plaintiff includes a waiver of her individual rights
24 under Section 1542 of the Civil Code of the State of California states as follows:

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

Accordingly, if the facts relating in any manner to this Settlement Agreement are found hereafter
to be other than or different from the facts now believed to be true, the release of claims contained

1 herein shall be effective as to all unknown claims (again, “Plaintiff’s Released Claims”).
2 Plaintiff’s Released Claims exclude the release of claims not permitted by law.

3 46. **Payments under the Settlement.** In consideration of the mutual covenants and
4 promises set forth herein, Defendant agrees to make a payment under this Settlement Agreement
5 for the Gross Settlement Amount of five hundred and fifteen thousand dollars (\$515,000). The
6 Gross Settlement Amount is non-reversionary, subject to increase pursuant to Paragraph 52, and
7 exclusive of employer-side payroll taxes which shall be paid separately. The Parties further agree,
8 subject to Court approval, that the Gross Settlement Amount shall be apportioned as follows:

9 a. Plaintiff will apply to the Court for an award of attorneys’ fees of no more
10 than thirty-five percent (35%) of the Gross Settlement Amount (*i.e.*, \$180,250) to Class Counsel
11 (“Attorneys’ Fees”) and for an award of reimbursement of reasonable litigation costs and expenses
12 up to twenty-five thousand dollars (\$25,000) to Class Counsel (“Attorneys’ Costs”). The
13 Attorneys’ Fees and Attorneys’ Costs (again, in the aggregate, “Attorneys’ Fees and Costs”) are
14 included in, and will be paid from, the Gross Settlement Amount. Defendant will not oppose such
15 application.

16 b. Plaintiff will also apply to the Court for payment to the Settlement
17 Administrator for the costs of notice and settlement administration not to exceed fifteen thousand
18 dollars (\$15,000) (again, “Administration Costs”). The Administration Costs are included in, and
19 will be paid from, the Gross Settlement Amount. Defendant will not oppose such application.

20 c. Plaintiff will apply to the Court for payment in the amount of seven
21 thousand five hundred dollars (\$7,500) to Plaintiff (again, “Enhancement Payment”), for her
22 services and responsibilities in prosecuting the Lawsuit. The Enhancement Payment is included
23 in, and will be paid from, the Gross Settlement Amount. Defendant will not oppose such
24 application.

25 d. The amount of fifty thousand dollars (\$50,000) is allocated towards
26 penalties pursuant to California Labor Code sections 2698, *et seq.* (“PAGA Payment”), of which
27 the LWDA will be paid in the amount of thirty seven thousand five hundred dollars (\$37,500)
28 (“LWDA Payment”) and the amount of twelve thousand five hundred dollars (\$12,500) will

1 remain available for distribution on a *pro rata* pay periods basis to all PAGA Group Members
2 (*i.e.*, individual recovery depends on each PAGA Group Member’s ratio of his or her pay periods
3 relative to the total of pay periods of all PAGA Group Members) who worked during the PAGA
4 Period, and irrespective of whether he or she is a Settlement Class Member. The PAGA Payment
5 will be included in, and will be paid from, the Gross Settlement Amount.

6 e. The Net Settlement Amount will be the amount that is available for
7 distribution to Settlement Class Members on a *pro rata* basis based on Workweeks. The
8 Settlement Administrator will determine each Settlement Class Member’s individual Workweeks
9 in accordance with Paragraph 35. The sum of all Settlement Class Members’ individual
10 Workweeks will be the “Total Workweeks.” The Net Settlement Amount will be divided by the
11 Total Workweeks to yield the “Workweek Value.” Each Settlement Class Member’s Individual
12 Settlement Share will be determined by multiplying his or her individual Workweeks by the
13 Workweek Value.

14 f. The net payment of each Settlement Class Member’s Individual Settlement
15 Share (after reduction of Employee Taxes) and individual PAGA payment (if applicable) is
16 referred to as his or her Individual Settlement Payment.

17 47. **No Credit Toward Benefit Plans.** Payments made to Plaintiff, Settlement Class
18 Members, and PAGA Group Members under this Settlement Agreement shall not be utilized to
19 calculate any additional benefits under any benefit plans to which they may be eligible, including,
20 but not limited to, under profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
21 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’
22 intention that this Settlement Agreement will not affect any rights, contributions, or amounts to
23 which Plaintiff, Settlement Class Members, and PAGA Group Members, may be entitled under
24 any benefit plans.

25 48. **Taxation of Settlement Proceeds.**

26 a. The Parties agree that twenty-five percent (25%) of each Individual
27 Settlement Share will be considered taxable wages and will be reported as such to each Settlement
28 Class Member on a W-2 Form. The Parties agree that seventy-five percent (75%) of each

1 Individual Settlement Share will be considered interest and penalties and will be reported as such
2 to each Settlement Class Member on an IRS Form 1099 (if required).

3 b. The Settlement Administrator shall calculate and remit to applicable taxing
4 authorities sufficient amounts for the Employee and Employer Taxes. Any funds returned by
5 taxing authorities due to cancellation of any Individual Settlement Payment checks will be
6 transmitted in accordance with Paragraph 56(d), the same as all other residual funds associated
7 with Individual Settlement Payment checks.

8 c. The Settlement Administrator will issue appropriate tax forms to each
9 Settlement Class Member consistent with the foregoing breakdown.

10 d. All Parties represent that they have not received, and shall not rely on,
11 advice or representations from Class Counsel or Defendant's Counsel regarding the tax treatment
12 of payments under federal, state, or local law, and that no representations have been made to them
13 regarding the taxability of any payments under this Settlement Agreement.

14 e. Class Counsel will be issued an IRS Form 1099 for Attorneys' Fees and
15 Costs awarded by the Court. Except as provided herein, each of the Parties shall bear his, her,
16 their, or its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or
17 settlement of the Lawsuit.

18 f. Plaintiff will be issued an IRS Form 1099 for any Enhancement Payment.
19 The Enhancement Payment payable to Plaintiff shall be in addition to the Individual Settlement
20 Payment he is contemplated to receive under this Settlement Agreement.

21 49. **Notice Procedure.**

22 a. The Parties shall use CPT Group, Inc. as the Settlement Administrator to
23 distribute the Class Notice, distribute payments under this Settlement Agreement, handle tax
24 reporting, establish and host a dedicated case settlement website, and field questions with a
25 telephonic hotline.

26 b. Defendant will provide the Settlement Administrator with the Class List
27 within twenty (20) calendar days following the date of Preliminary Approval. The Class List and
28 any other data provided by Defendant to the Settlement Administrator shall be treated as

1 confidential and shall not be used by the Settlement Administrator for any purpose other than as
2 permitted by this Settlement Agreement. The Settlement Administrator will keep the list
3 confidential, use it only for the purposes described herein, and ensure that any other
4 communications with Class Members shall not include the Class Members' Social Security
5 number except for the last four digits.

6 c. The Settlement Administrator shall be responsible for:

7 i. Mailing the Class Notice to the Class Members as directed by the
8 Court;

9 ii. Consulting with counsel for the Parties concerning any relevant
10 issue(s), including (without limitation) the estimated amounts of Individual Settlement Shares and
11 Individual Settlement Payments;

12 iii. Receiving and processing Workweek Disputes and rejecting timely
13 or improper Workweek Disputes;

14 iv. Keeping track of Requests for Exclusion, and rejecting untimely or
15 improper Requests for Exclusion;

16 v. Keeping track of Objections that it receives;

17 vi. Calculation and distribution of payments in accordance with this
18 Settlement Agreement and the Court's orders;

19 vii. Providing weekly status reports to counsel for the Parties, including:
20 (a) the number of Class Notices mailed; (b) the number of Workweek Disputes received; (c) the
21 number of Objections received; and (d) the number of Requests for Exclusion received;

22 viii. No later than twenty-one (21) calendar days before the Final
23 Approval Hearing, preparing and providing to Class Counsel and Defendant's Counsel, for filing
24 with the Court in support of Plaintiff's motion for final approval of the settlement, a declaration
25 of due diligence setting forth its compliance with its obligations under this Settlement Agreement;

26 ix. Notifying Defendant's Counsel, within three (3) business days after
27 the Effective Date, of the wiring instructions to fund the Gross Settlement Amount, which must
28

1 be paid by Defendant in the amounts and in accordance with the deadlines set forth in Paragraph
2 56(a);

3 x. Distributing payments due under this Settlement Agreement;
4 xi. Issuing a W-2 Form to each Settlement Class Member for the wage
5 portion of each Individual Settlement Share, a 1099 Form (if required) to each Settlement Class
6 Member for the non-wage portion of each Individual Settlement Share, a 1099 Form (if required)
7 to each PAGA Group Member, a 1099 Form to Plaintiff for the Enhancement Award, a 1099 Form
8 to Class Counsel for the Attorneys' Fees and Costs award, and a 1099 Form to the Settlement
9 Administrator for all Administration Costs; and,

10 xii. Such other tasks as the Parties mutually agree or the Court orders the
11 Settlement Administrator to perform, including responding to questions from Class Members.

12 d. Within thirty (30) calendar days after Preliminary Approval, the Settlement
13 Administrator shall mail the Class Notice to all persons shown by Defendant's records to be Class
14 Members, as reflected in the Class List, via first class U.S. mail, using the most current mailing
15 address available after a National Change of Address search. The Class Notice shall state an
16 estimate of each Class Member's respective Individual Settlement Share and the number of
17 Workweeks and pay periods (if applicable) credited to him or her.

18 e. Any Class Notice(s) returned to the Settlement Administrator as undelivered
19 within fifteen (15) calendar days of initial mailing and bearing a forwarding address shall be re-
20 mailed by the Settlement Administrator within three (3) business days following receipt of the
21 returned mail. For any such Class Notice returned to the Settlement Administrator without a
22 forwarding address, the Settlement Administrator shall first conduct a National Change of Address
23 search as required for undeliverable notices, followed by a "skip trace" search to obtain an updated
24 address, and shall promptly re-mail the Class Notice to any newly-found address or addresses.
25 The Settlement Administrator shall also re-mail by first class U.S. mail any such Class Notice
26 returned by the Post Office with a forwarding address. It shall be conclusively presumed that those
27 Class Members whose re-mailed Class Notice is not returned to the Settlement Administrator as
28 undeliverable within five (5) calendar days after re-mailing, received the Class Notice.

1 f. Class Counsel shall provide the Court with a declaration from the Settlement
2 Administrator confirming that the Class Notice was mailed to all Class Members as required by
3 this Settlement Agreement, as well as any additional information Class Counsel deems appropriate
4 to provide to the Court, before the Final Approval Hearing.

5 50. **Settlement Payments.** Class Members and PAGA Group Members are not
6 required to submit a claim form to receive a settlement payment.

7 51. **Submission of Workweek Disputes.**

8 a. If any Class Member disputes the Workweeks set forth on the Class Notice
9 during the Class Period (“Workweek Dispute”), the Class Member may submit documentation
10 supporting his or her position by mail to the Settlement Administrator no later than forty-five (45)
11 calendar days from the date the Class Notice is originally mailed by the Settlement Administrator,
12 (“Response Deadline”). Workweek Disputes not postmarked or confirmed received by the
13 Settlement Administrator on or before the Response Deadline will be considered late and may be
14 summarily rejected by the Settlement Administrator, in consultation with Class Counsel and
15 Defendant’s Counsel.

16 b. The Settlement Administrator will notify counsel for the Parties via email.
17 If there is a dispute, the Settlement Administrator will consult with the Parties to determine
18 whether an adjustment is warranted. The Parties and the Settlement Administrator will evaluate
19 the evidence and discuss in good faith how many Workweeks to be credited and in conformity
20 with Paragraph 46(e). If the Parties and the Settlement Administrator do not reach agreement, the
21 Court will make the final determination as to how many Workweeks should be credited.

22 52. **Pro-Rata Increase of Gross Settlement Amount.** Defendant’s best estimate of
23 the total number of Workweeks for the Class is 15,000, and it has represented that there are 216
24 Class Members. Plaintiff is entering into this Settlement Agreement based on such representations.
25 In the event it is determined that the actual number of Workweeks exceeds this estimate by more
26 than 5 percent, the Gross Settlement Amount shall increase by the percentage amount in excess of
27 5 percent. For example, if the actual number of Workweeks is determined to be 6 percent higher
28 than 15,000 Workweeks, the Gross Settlement Amount shall be increased by 1 percent.

1 53. **Opt-Out Procedure.**

2 a. Class Members will have forty-five (45) days until the Response Deadline to
3 mail by first class U.S. mail, with proof of date of submission to be the postmark date, a written
4 request to opt out of the settlement (“Request for Exclusion”). Unless a Class Member submits a
5 timely and valid Request for Exclusion, he or she shall be bound by the terms and conditions of
6 this Settlement Agreement, including the release of claims as set forth herein.

7 b. A Request for Exclusion, in order to be deemed valid, must: (1) be signed by
8 the Class Member; (2) contain the case name and number of the Lawsuit; (3) contain the Class
9 Member’s full name, telephone number, mailing address and last four digits of the Class Member’s
10 Social Security number; (4) clearly state that the Class Member wants to opt out of the settlement;
11 and (5) be postmarked no later than the Response Deadline.

12 c. Upon receipt of any timely Request for Exclusion, the Settlement
13 Administrator shall review the request to verify the information contained therein and confirm that
14 the request complies with the requirements of this Settlement Agreement.

15 d. Any Class Member who fails to submit via first class U.S. mail a timely,
16 complete, and valid Request for Exclusion shall be barred from opting out of the settlement. The
17 Settlement Administrator shall not review or consider any Request for Exclusion postmarked after
18 the Response Deadline. Under no circumstances shall the Settlement Administrator have the
19 authority to extend the Response Deadline for Class Members to file a Request for Exclusion,
20 except as ordered by the Court or mutually agreed by the Parties.

21 e. Plaintiff agrees not to request to be excluded from the settlement.

22 54. **Defendant’s Right to Cancel.**

23 If more than ten percent of the Class Members submit a timely and valid Request for
24 Exclusion, Defendant shall have the sole and absolute discretion to withdraw from this Settlement
25 Agreement within ten (10) calendar days after the Response Deadline by providing written notice
26 of such withdrawal to Class Counsel. In the event that Defendant elects to withdraw as set forth
27 in this provision, the withdrawal shall have the same effect as a termination of this Settlement
28 Agreement; the settlement shall become null and void and have no further force or effect. If

1 Defendant exercises its option to terminate this settlement pursuant to this section, it shall pay all
2 Administration Costs incurred up to the date and as a result of the termination.

3 **55. Objections to Settlement.**

4 a. Any Settlement Class Member may object to the settlement by mailing a
5 written objection (“Objection”) to the Settlement Administrator. To be timely, Objections must be
6 mailed to the Settlement Administrator, postmarked on or before the Response Deadline.

7 b. An Objection must: (1) be signed by the Settlement Class Member; (2)
8 contain the case name and number of the Lawsuit; (3) contain the Settlement Class Member’s full
9 name, telephone number, and mailing address; (4) clearly state the factual and legal basis for
10 objecting to the settlement; (5) indicate whether the Settlement Class Member is represented by
11 counsel and identify said counsel; and (6) indicate whether the Settlement Class Member intends
12 to appear at the Final Approval Hearing and seeks to be heard at the Final Approval Hearing. The
13 Settlement Administrator will provide the Parties’ counsel with any objections received and also
14 attach the objections as exhibits to its declaration regarding due diligence that will be filed with
15 the Court in advance of the Final Approval Hearing.

16 c. Settlement Class Members have the right to appear and have their
17 Objections heard or offer comments at the Final Approval Hearing, either in person or through a
18 lawyer retained at their own expense. Class Counsel will not represent any Settlement Class
19 Members with respect to such Objections.

20 **56. Settlement Proceeds Distribution Deadlines.**

21 a. Defendant shall fund the Gross Settlement Amount within ten (10) business
22 days after the Effective Date. If the Gross Settlement Amount increases pursuant to Paragraph 52,
23 then the amount to be paid by Defendant will proportionally increase.

24 b. Prior to disbursement of any funds, the Settlement Administrator will
25 provide a disbursement summary for review and approval by Class Counsel and Defendant’s
26 Counsel.

27 c. No later than ten (10) calendar days after Defendant fully funds the Gross
28 Settlement Amount, the Settlement Administrator shall distribute payments in accordance with

1 this Settlement Agreement and the Court's orders, as follows: (i) payment of the Enhancement
2 Payment to Plaintiff; (ii) payment of the LWDA Payment to the Labor and Workforce
3 Development Agency; (iii) payment of Individual Settlement Payments to Settlement Class
4 Members and PAGA Group Members; (iv) payment of Attorneys' Fees and Costs to Class
5 Counsel; and (v) payment of Administration Costs to the Settlement Administrator.

6 d. Settlement checks will be valid for a period of one hundred and eighty (180)
7 calendar days from the date of issuance, and after this time period, any uncashed check(s) will be
8 cancelled and the funds associated with such cancelled checks will be transmitted as *cy pres* to the
9 California Labor Workforce Development Agency in conformity with the requirements of
10 California Code of Civil Procedure section 384.

11 e. The remittance of all Court ordered and approved payments, under this
12 Settlement Agreement, to the Settlement Administrator shall constitute the full and complete
13 discharge of the entire obligation of Defendant under this Settlement Agreement.

14 f. No person shall have any claim against the Settlement Administrator,
15 Defendant, Class Counsel, Defendant's Counsel, or any other agent designated by Plaintiff or
16 Defendant based upon the distribution of payments made in accordance with this Settlement
17 Agreement or further orders of the Court.

18 g. Defendant shall not be obligated to make any payments contemplated by
19 this Settlement Agreement prior to the Effective Date.

20 57. **Binding Effect.**

21 a. Subject to Final Approval, all Settlement Class Members shall be bound by
22 this Settlement Agreement, the contemplated Final Approval Order and Judgment, the release of
23 Settlement Class Members' Released Claims, and shall be enjoined from pursuing, or seeking to
24 reopen, Settlement Class Members' Released Claims against the Released Parties.

25 b. Subject to Final Approval, the LWDA shall be bound by this Settlement
26 Agreement, the contemplated Final Approval Order and Judgment, the release of LWDA Released
27 PAGA Claims, and shall be enjoined from pursuing, or seeking to reopen, LWDA Released PAGA
28 Claims against the Released Parties.

1 58. **Provisional Approval of Settlement.** After execution of this Settlement
2 Agreement, Plaintiff shall promptly file a motion in the Lawsuit requesting Preliminary Approval
3 of the settlement consistent with the terms of this Settlement Agreement. Defendant shall not
4 oppose the Motion for Preliminary Approval of the settlement so long as the motion and
5 supporting papers are consistent with the terms of this Settlement Agreement. By way of the
6 motion, the Court will be requested to enter a Preliminary Approval Order that:

- 7 a. Preliminarily approves this Settlement Agreement;
- 8 b. Conditionally certifies the Class, for purposes of settlement;
- 9 c. Preliminarily appoints Plaintiff as representative of the Class for settlement
10 purposes;
- 11 d. Preliminarily appoints CounselOne, PC and Lawyers *for* Justice, PC as Class
12 Counsel for the Class for settlement purposes;
- 13 e. Approves and appoints CPT Group, Inc. as the Settlement Administrator to
14 administer the settlement as required by this Settlement Agreement;
- 15 f. Approves the form of the Class Notice and requires that it be sent to Class
16 Members by first class U.S. mail;
- 17 g. Approves the Notice Plan;
- 18 h. Schedules the Final Approval Hearing; and
- 19 i. Approves the procedure and deadlines (including the Response Deadline) for
20 Class Members to submit Requests for Exclusion, Objections, and Workweek Disputes.

21 59. **Non-Interference with Settlement Administration.** The Parties and their counsel
22 agree that they shall not seek to solicit or otherwise encourage Class Members to submit Requests
23 for Exclusion or Objections to the settlement or to appeal from the Final Approval Order and
24 Judgment.

25 60. **Final Approval Order and Judgment.** Plaintiff will request, and Defendant will
26 concur in said request, that the Court enter, after the Final Approval Hearing, a Final Approval
27 Order and Judgment drafted by Plaintiff in the form that is consistent with this Settlement
28 Agreement and subject to prior review and approval by Defendant. Plaintiff will request that the

1 Final Approval Order and Judgment find that this settlement is fair, just, equitable, reasonable,
2 adequate and in the best interests of the Class, enter judgment in accordance with California Rules
3 of Court 3.769, and require the Parties to carry out the provisions of this Settlement Agreement.

4 61. **Voiding of Settlement Agreement if Settlement Not Finalized or for Failure to**
5 **Satisfy Conditions.**

6 a. The Court may award less to Plaintiff, Class Counsel, Settlement
7 Administrator, and/or the LWDA than is provided for herein, without impacting the validity and
8 enforceability of this Settlement Agreement.

9 b. If for any reason the settlement set forth in this Settlement Agreement is
10 terminated as provided under this Paragraph or Paragraph 54 or does not otherwise become final:

11 i. The settlement shall be null and void and the orders and judgment
12 to be entered pursuant to this Settlement Agreement shall be vacated; and the Parties will be
13 returned to the status quo as of October 4, 2021, with respect to the Lawsuit and Plaintiff's class
14 and representative claims, as if the Parties had never entered into this Settlement Agreement.

15 ii. This Settlement Agreement and all negotiations, court orders and
16 proceedings relating thereto shall be without prejudice to the rights of any and all Parties hereto
17 and Class Members, whom shall be restored to their respective positions existing prior to the
18 execution of this Settlement Agreement, and evidence relating to this Settlement Agreement and
19 all negotiations shall not be admissible or discoverable in the litigation and/or Lawsuit or
20 otherwise.

21 iii. Defendant will not have waived, and instead expressly reserves, its
22 rights to challenge the continuing propriety of class certification or representative adjudication for
23 any purpose.

24 iv. Plaintiff and Class Counsel will not have waived, and instead
25 expressly reserve, their rights to move for collective and/or class certification and seek
26 representative adjudication.

27 v. To the extent one exists, the Preliminary Approval Order shall be
28 vacated in its entirety and neither this Settlement Agreement, the Preliminary Approval Order, nor

1 any other document in any way relating to any of the foregoing, shall be relied upon, referred to,
2 or used in any way for any purpose in connection with any further proceedings in this or any
3 related action, including class certification proceedings.

4 62. **No Publicity.** The Parties and their counsel will not initiate nor respond to public
5 relations or media inquiries about the settlement except as required by the settlement approval
6 process. In addition, the Parties and their counsel agree that they will not engage in any advertising
7 or distribute any marketing materials relating to the settlement of the Lawsuit in any manner that
8 identifies Defendant, including but not limited to any postings on any websites maintained by
9 Class Counsel.

10 63. **Notices.** All notices, requests, demands, and other communications required or
11 permitted to be given pursuant to this Settlement Agreement to the Parties shall be in writing, and
12 shall be delivered by first class U.S. mail through counsel, as follows:

13 For Plaintiff and the Class:

14 Anthony J. Orshansky
15 Jennifer L. Connor
16 CounselOne, P.C.
17 9301 Wilshire Boulevard, Suite 650
18 Beverly Hills, CA 90210

19 Edwin Aiwazian
20 Lawyers *for* Justice, P.C.
21 410 West Arden Avenue, Suite 203
22 Glendale, CA 91203

23 For Defendant:

24 Robert A. Cutbirth
25 Slovak Baron Empey Murphy & Pinkney, LLP
26 1800 E. Tahquitz Canyon Way
27 Palm Springs, CA 92262

28 64. **Modification in Writing.** This Settlement Agreement may be altered, amended,
modified or waived, in whole or in part, only in a writing signed by counsel for the Parties and
approved by the Court. This Settlement Agreement may not be amended, altered, modified or
waived, in whole or in part, orally.

1 65. **Ongoing Cooperation.** Plaintiff and Defendant and each respective counsel shall
2 execute all documents and perform all acts necessary and proper to effectuate the terms of this
3 Settlement Agreement. The executing of documents must take place prior to the Final Approval
4 Hearing.

5 66. **Binding on Successors.** This Settlement Agreement shall be binding and shall
6 inure to the benefit of the Parties and their respective successors, assigns, executors,
7 administrators, heirs, and legal representatives.

8 67. **Entire Agreement.** This Settlement Agreement constitutes the full, complete, and
9 entire understanding, agreement, and arrangement between the Parties with respect to the
10 settlement of the Lawsuit and Release of Claims. This Settlement Agreement supersedes any and
11 all prior oral or written understandings, agreements, and arrangements between the Parties with
12 respect to the settlement of the Lawsuit and Release of Claims. Except as to those set forth and
13 included expressly in this Settlement Agreement, there are no other agreements, covenants,
14 promises, representations, or arrangements between the Parties with respect to the settlement of
15 the Lawsuit.

16 68. **Execution in Counterparts.** This Settlement Agreement may be signed in one or
17 more counterparts and electronic signatures are acceptable. All executed copies of this Settlement
18 Agreement, and photocopies thereof (including facsimile copies of the signature pages), shall have
19 the same force and effect and shall be as legally binding and enforceable as the original.

20 69. **Captions.** The captions and section numbers in this Settlement Agreement are
21 inserted for the reader's convenience and in no way define, limit, construe, or describe the scope
22 or intent of the provisions of this Settlement Agreement.

23 70. **Governing Law.** This Settlement Agreement shall be interpreted, construed,
24 enforced, and administered in accordance with the laws of the State of California, without regard
25 to conflict of law rules.

26 71. **Reservation of Jurisdiction.** Notwithstanding entry and filing of the Final
27 Approval Order and Judgment, the Court shall retain jurisdiction for purposes of interpreting and
28 enforcing the terms of this Settlement Agreement.

1 72. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms
2 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement shall not
3 be construed more strictly against one Party than another merely by virtue of the fact that it may
4 have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-
5 length negotiations between the Parties, all Parties have contributed to the preparation of this
6 Settlement Agreement.

7 73. **Representation by Counsel.** The Parties acknowledge that they have been
8 represented by counsel throughout all negotiations that preceded the execution of this Settlement
9 Agreement and that this Settlement Agreement has been executed with the consent and advice of
10 counsel. Further, Plaintiff and Class Counsel warrant and represent, to their knowledge, that there
11 are no liens on this settlement.

12 74. **Warranties and Representations.** With respect to themselves, each of the Parties
13 to this Settlement Agreement and/or their agents or counsel represent, covenant, and warrant that
14 (a) they have full power and authority to enter into and consummate all transactions contemplated
15 by this Settlement Agreement and have duly authorized the execution, delivery, and performance
16 of this Settlement Agreement and (b) the person executing this Settlement Agreement has the full
17 right, power, and authority to enter into this Settlement Agreement on behalf of the Party for whom
18 he/she/it has executed this Settlement Agreement, and the full right, power, and authority to
19 execute any and all necessary instruments in connection herewith, and to fully bind such Party to
20 the terms and obligations of this Settlement Agreement.

21 **IT IS SO AGREED:**

22
23 Dated: 08 / 16 / 2022, 2022

_____ *SH*
Plaintiff Shontiera Hubbard

25 Dated: 16 August, 2022

_____ *Stephanie Wight*
Name: Stephanie Wight
Title: Director, Human Resources

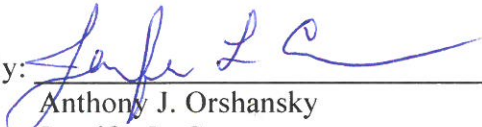
On Behalf of Defendant Title 9 Sports, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM

Dated: 8-16-2022

CounselOne, PC

By: 
Anthony J. Orshansky
Jennifer L. Connor
Attorneys for Plaintiff Hubbard

Slovak Baron Empey Murphy & Pinkney, LLP

Dated: August 16, 2022


By: 
Robert A. Cutbirth
Attorneys for Defendant

Exhibit 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

SHONTIARA HUBBARD, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiff,

v.

TITLE 9 SPORTS, INC., a California corporation; TITLE NINE, an unknown business entity; and DOES 1 through 100, inclusive; and DOES 1 through 100 inclusive,

Defendants.

Case No. Case No. RG20048976

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT AND
HEARING DATE FOR COURT
APPROVAL**

Complaint Filed: January 2, 2020

TO ALL CLASS MEMBERS DEFINED AS:

All current and former hourly-paid or non-exempt employees who worked for Defendant Title 9 Sports, Inc. at its Distribution Center facility in the State of California from February 2, 2016 and ending on December 4, 2021.

**YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT.
PLEASE READ THIS NOTICE CAREFULLY.**

The settlement involves claims against Title 9 Sports, Inc., (“Defendant”) alleging claims for: (a) failure to pay all minimum and overtime wages for all hours worked including, but not limited to, those resulting from off-the-clock work, interrupted meal breaks, and/or rounding due to automatization of time punches; (b) failure to provide timely and compliant duty-free meal periods and pay premiums owed thereon; (c) failure to provide timely and compliant duty-free rest breaks and pay premiums owed thereon; (d) failure to reimburse all necessary business expenses incurred; (e) failure to maintain and furnish accurate itemized wage statements; (f) failure to timely pay wages during employment and all final wages owed upon separation; (g) engaging in unfair and unlawful business practices; and (h) violation of the Private Attorneys’ General Act of 2004 (“PAGA”).

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you are a Class Member (as defined above) and received this Notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment. If you accept your settlement amount, you will release the claims described in Section V below.

I. INTRODUCTION

This “Notice of Proposed Class Action and PAGA Settlement And Hearing Date For Court Approval” (“Notice”) is to inform you that Defendant has agreed to settle a class and representative action lawsuit on behalf of all Class Members which claimed, among other things, that Defendant violated various wage-and-hour laws by failing to provide all minimum and overtime wages due, off-duty meal periods and rest breaks and/or pay missed meal period and rest break premiums, failing to reimburse all necessary business expenses incurred, failing to maintain and provide accurate itemized wage statements, and failing to pay wages owed in a timely manner and upon separation, and thereby engaging in unfair business practices under California Bus. & Prof. Code Section 17200, and accruing penalties under California Labor Code provisions forming the basis for a PAGA claim for derivative civil penalties.

The Court has granted preliminary approval of the Settlement and the Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

II. DESCRIPTION OF THE LAWSUIT

Plaintiff’s Claims. On February 02, 2020, Plaintiff Shontiarra Hubbard initiated this Lawsuit in the Superior Court of the State of California, County of Alameda on behalf of herself and a class of similarly situated individuals against Defendant Title 9 Sports, Inc. On behalf of the putative class, Plaintiff alleged causes of action for: (a) failure to pay all minimum and overtime wages for all hours worked including, but not limited to, those resulting from off-the-clock work, interrupted meal breaks, and/or rounding due to automatization of time punches (Labor Code §§ 510, 1194, 1197, 1197.1, and 1198); (b) failure to provide timely and compliant duty-free meal periods and pay premiums owed thereon (Labor Code §§ 226.7 and 512); (c) failure to provide timely and compliant duty-free rest breaks and pay premiums owed thereon (Labor Code § 226.7); (d) failure to reimburse all necessary business expenses incurred (Labor Code §§ 2800, 2802); (e) failure to maintain and furnish accurate itemized wage statements (Labor Code §§ 226, 1174(d)); (f) failure to timely pay wages during employment and all final wages owed upon separation (Labor Code §§ 201-203, 204); (g) engaging in unfair and unlawful business practices (Business & Professions Code § 17200 *et seq.*); and (h) violating California’s Private Attorneys General Act of 2004 (Labor Code § 2699) (collectively, “Claims”).

Defendant has denied liability, has denied the allegations in the operative Complaint, and has raised various defenses to these Claims. Defendant contends that it complied in good faith with California wage-and-hour laws and has dealt legally and fairly with Plaintiff and Class Members. Defendant further denies that, for any purpose other than settling this Lawsuit, these Claims are appropriate for class or representative treatment. Defendant wishes to settle this case, however, to avoid costly, disruptive, and time-consuming litigation and does not admit to any wrongdoing or liability.

The Court has not ruled on the merits of Plaintiff’s Claims. By approving the Settlement and issuing

this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Defendant and Plaintiff have concluded that it is in their respective best interests and the interests of the Class Members to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided extensive discovery and information to counsel for the Class Members, the Settlement was reached after arms-length non-collusive negotiations between the parties, including two separate full-day mediation sessions with highly respected mediators in California. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a fair, reasonable and adequate way to resolve the disputed Claims.

The Plaintiff and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

Under this Settlement, the following Class will be certified under California law for Settlement purposes only:

Class or Class Members: All current and former hourly-paid or non-exempt employees who worked for Defendant Title 9 Sports, Inc. at its Distribution Center facility in the State of California at any time from February 02, 2016 through December 04, 2021 (the “Class Period”).

Plaintiff Shontiara Hubbard, and her counsel, Jennifer Connor, Esq. and Anthony Orshansky, Esq. of CounselOne, P.C. and Edwin Aiwazian, Esq. of Lawyers for Justice, P.C. (“Class Counsel”), believe that the settlement described below is fair, adequate, reasonable and in the best interests of Plaintiff and the Class.

On _____, the Court preliminarily approved the Settlement and conditionally certified the above Class for settlement purposes only. This Notice is being sent to you because Defendant’s records indicate that you are a Class Member.

IF YOU STILL WORK FOR DEFENDANT, PARTICIPATION IN THIS SETTLEMENT WILL NOT AFFECT, NOR DISRUPT YOUR WORK IN ANY MANNER.

California law strictly prohibits retaliation. Further, Defendant is prohibited by law from taking any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement.

III. TERMS OF THE SETTLEMENT

Defendant has agreed to pay a non-reversionary \$515,000.00 (the “Gross Settlement Amount”) to resolve claims in the operative Complaint, including all Class Members’ claims under Labor Code and Business & Professions Code for: (1) unpaid minimum wages; (2) unpaid overtime; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to pay wages timely during employment; (6) failure to pay wages timely upon separation; (7) failure to provide accurate itemized wage statements; (8) failure to maintain accurate payroll records; (9) unreimbursed

business expenses; (10) violation of unfair competition law; and (11) violation of the Private Attorneys General Act of 2004.

In no event shall Defendant be required to pay any amount above the Gross Settlement Amount, except that the payment of employer's share of payroll taxes and contributions in connection with the wages portion of the payouts to Class Members will be in addition to the Gross Settlement Amount. The parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved CPT Group, Inc., to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, up to \$15,000.00 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Class Counsel Attorneys' Fees and Expenses. Class Counsel – which includes attorneys from two separate law firms - have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. To date, the parties have aggressively litigated many aspects of the case including settlement efforts and a full day mediation session. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or litigation expenses. Class Counsel will collectively ask for fees of thirty-five percent (35%) - *i.e.*, \$180,250.00 - of the Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit. Class Counsel also will ask for reimbursement of up to \$25,000.00 for the costs Class Counsel incurred in connection with the Lawsuit.

Class Representative Service Award. Plaintiff Shontiara Hubbard will seek an award of \$7,500.00, in addition to her Individual Settlement Payment, for her efforts and risks in assistance with the prosecution of the Lawsuit and in exchange for her execution of a general release.

PAGA Penalties. The parties have agreed on a reasonable sum to be paid in settlement of the PAGA claims included in the Lawsuit, which is \$50,000.00. The PAGA Penalties is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (*i.e.*, \$37,500.00) to the Labor & Workforce Development Agency ("LWDA") and twenty-five percent (25%) (*i.e.*, \$12,500.00) to the Class Members. Class Counsel shall give timely notice of the Settlement to the LWDA under Labor Code section 2699(1)(2).

Net Settlement Amount. After deducting the amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount for distribution to the Class Members who do not timely request exclusion from the Settlement.

You can view the Settlement Agreement and other Court documents related to this case by visiting [www_____](http://www._____).

IV. YOUR INDIVIDUAL SHARE OF THE SETTLEMENT AMOUNT

The individual settlement payment for each Settlement Class Member (Settlement Class Members are those individuals who do not timely request exclusion from the Settlement) will be paid from the Net Settlement Amount and will be calculated as follows: The Settlement Administrator shall calculate the sum of all Settlement Class Members' individual Workweeks, which will be the "Total Workweeks." The Net Settlement Amount shall be divided by the Total Workweeks for all Class Members to yield the "Workweek Value." Each Class Member's individual settlement share will be determined by multiplying his or her individual Workweeks by the Workweek Value.

The net payment of each Settlement Class Member's individual settlement share (after reduction of Employee Taxes), plus any individual PAGA payment (if applicable), is referred to as the "Individual Settlement Payment."

Workweeks Credited to You. The Workweeks you worked as a qualifying Class Member for Defendant at its Distribution Center facility in California during the Class Period – which is from February 02, 2016 through December 04, 2021 - will be calculated based on Defendant's record. According to Defendant's records:

During the Class Period, from February 02, 2016 through December 04, 2021, you were employed by Defendant as a non-exempt employee in California for [____] Workweeks.

If applicable, the Pay Periods worked by PAGA Group Members during the PAGA Period – which is from October 25, 2018 through December 04, 2021 – will likewise be calculated based on Defendant's records. According to Defendant's records:

During the PAGA Period, from October 25, 2018 through December 04, 2021, you worked for Defendant as a PAGA Group Member for [____] Pay Periods.

If you feel that you were not credited with the correct number of Workweeks and/or Pay Periods, you may submit evidence to the Settlement Administrator postmarked or confirmed received on or before **[Insert Response Deadline]** with documentation to establish the number of Workweeks/Pay Periods you claim to have actually worked during the Class Period and/or PAGA Period. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The parties and Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many Workweeks and/or Pay Periods should be credited. The Settlement Administrator will make the final decision as to how many Workweeks and/or Pay Periods are credited and report the outcome to you. If you are unsatisfied with the decision, you may submit an Objection, as discussed below.

Furthermore, **irrespective of whether or not you request exclusion from the Settlement**, qualifying Class Members employed during the PAGA Period shall receive his or her share of the PAGA Payment allocation as part of the Individual Settlement Payment.

Your Estimated Settlement Award. As explained above, your estimated settlement award is based on the number of Workweeks (and, if applicable, Pay Periods for PAGA Group Members) credited to you during the applicable period.

Under the terms of the settlement, your Individual Settlement Share is estimated to be <<estAmount >> and your individual PAGA Payment (if applicable) is estimated to be <<PAGA_Amount>>. The Individual Settlement Share is subject to reduction for employment taxes and withholding with respect to the wage portion of the Individual Settlement Share.

Individual Settlement Payments will only be distributed if the Court grants final approval to the settlement.

Tax Withholdings. Each Settlement Class Member's individual settlement payment will be reduced by any legally mandated tax withholdings for each Settlement Class Member. All individual settlement payments paid to Class Members are to be reported as income on IRS Form 1099 and IRS Form W-2s where required by law. Of the amounts paid to individual Settlement Class Members, seventy-five percent (75%) shall be designated as penalties and penalties for which an IRS Form 1099 shall issue and twenty-five percent (25%) shall be designated as wages for which an IRS Form W-2 shall issue. Settlement Class Members are responsible for the proper income tax treatment of the individual settlement payments received. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

V. THE RELEASE OF CLAIMS

If the Court approves the Settlement, the Court will enter judgment and the Settlement Agreement will bind all Class Members who have not requested exclusion from the Settlement, and will bar all Settlement Class Members from bringing certain claims against Defendant as described below.

The Settlement includes a release by Settlement Class Members (defined as those Class Members who do not submit a timely request to be excluded) of Defendant Title 9 Sports, Inc, and its former and present parents, subsidiaries, affiliates, shareholders, predecessors, successors, and assigns, including Defendant's respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, as well as all agents, employees (current and former), officers, directors, insurers, and attorneys ("Released Parties"), and each of them, of and from all Settlement Class Members' Released Claims as set forth below:

Settlement Class Members' Released Claims: As of the Effective Date, Plaintiff and Class Members who did not submit valid requests for exclusion from the Settlement, for the Class Period from February 2, 2016 and ending on December 4, 2021, will release and forever discharge Defendant Title 9 Sports, Inc. and Released Parties from the Settlement Class Members' Released Claims during the Class Period. The Settlement Class Members' Released Claims include all wage-and-hour claims alleged in the operative complaint in the Lawsuit, or that could have been asserted in the Lawsuit based on the facts alleged by Plaintiff in the operative complaint during

the Class Period. The Settlement Class Members' Released Claims include all claims based on allegations for: (1) failure to pay all overtime wages; (2) non-compliant meal periods and/or failure to make premium payments thereon; (3) non-compliant rest breaks and/or failure to make premium payments thereon; (4) failure to pay minimum wages; (5) failure to pay all wages upon separation of employment; (6) failure to pay all wages in a timely manner during employment; (7) failure to provide accurate itemized wage statements; (8) failure to keep accurate and complete payroll records; (9) failure to reimburse business expenses; and (10) unfair business practices related to the Settlement Class Members' Released Claims. This release excludes the release of claims not permitted by law ("Settlement Class Members' Released Claims").

LWDA Released PAGA Claims. As of the Effective Date, the LWDA releases, acquits, discharges, and covenants not to sue Defendant and any of the Released Parties for any penalties pursuant to the PAGA, for the period from October 25, 2018 and ending December 04, 2021, brought by the LWDA and/or on behalf of the LWDA, arising from any and all claims alleged in the operative complaint filed in the Lawsuit, or that could have been asserted based on the facts alleged by Plaintiff in the operative complaint filed in the Lawsuit ("LWDA Released PAGA Claims").

The Class Representative further agrees to a general release of all claims against Defendant during the Class Period, and agrees to waive her rights under Civil Code Section 1542 ("Plaintiff's Released Claims").

VI. WHAT ARE YOUR OPTIONS?

A. Do Nothing and Receive Your Portion of the Settlement.

You are automatically included as a Class Member and will receive a settlement payment and do not have to take any further action to receive your settlement payment. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The estimated amount of your settlement payment if you do nothing is as indicated in Section IV.

B. Request To Be Excluded from the Class and the Settlement.

If you **do not** wish to take part in the Settlement, you may exclude yourself (*i.e.*, opt-out) by sending to the Settlement Administrator a written Request for Exclusion from the Settlement letter postmarked no later than **[Insert Response Deadline]**, and that includes: (a) your full name, address, telephone number, and last four digits of Social Security number; (b) case name and number; and (c) your signature. The written request should also include a clear and unequivocal statement that you wish to be excluded from the Class and the Settlement.

Send the Request for Exclusion letter directly to the Settlement Administrator at the following address **by no later than [Insert Response Deadline]**:

Hubbard v. Title 9 Sports, Inc., Settlement Administrator
c/o CPT Group, Inc.
[Insert ADDRESS]

Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt, no longer be a Class Member, shall be barred from participating in the class action portion of the Settlement, and shall receive no benefits as a Class Member from the Settlement. If you want confirmation of receipt of your Request for Exclusion letter, please send it by U.S. certified mail, return receipt requested and/or contact the Settlement Administrator.

C. Object to the Settlement.

You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you must file with the Settlement Administrator a written objection stating: your name, address, and telephone number; the case name and number; each specific factual and legal reason in support of your objection; whether you are represented by counsel, and if so, identify said counsel; and indicate whether you intend to appear and be heard at the Final Approval Hearing. Objections must be in writing and must be mailed to the Settlement Administrator at: Hubbard v. Title 9 Sports, Inc., Settlement Administrator, Settlement Administrator, c/o CPT Group, Inc., [Insert Address], **by no later than [Response Deadline]** for your objection to be considered. **OBJECTIONS THAT DO NOT INCLUDE ALL REQUIRED INFORMATION, OR THAT ARE NOT SUBMITTED TIMELY, MAY NOT BE CONSIDERED BY THE COURT.**

If you object to the Settlement, you will remain a member of the Class, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

D. Your Right to Appear at the Final Approval and Fairness Hearing Through an Attorney or In Person.

If you choose to object to the Settlement, you may also appear at the Final Approval and Fairness Hearing scheduled for _____, at _____ in Department 21 of the Alameda County Superior Court, located at the Administration Building, Fourth Floor, 1221 Oak Street, Oakland, California 94612. You have the right to appear either in person or through your own attorney at this hearing. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [Response Deadline]. All objections or other correspondence must state the name and number of the case, which is *Hubbard v. Title 9 Sports, Inc.*, Case No. RG20048976

You can also view the final approval order and final judgment and payment schedule at:
www._____.

VII. UPDATE FOR YOUR CHANGE OF ADDRESS?

If you move after receiving this Notice or if it was mis-addressed, you must provide your correct mailing address to the Settlement Administrator as soon as possible. Please send updated address information to the Settlement Administrator at: Hubbard v. Title 9 Sports, Inc., Settlement Administrator, c/o CPT Group, Inc., [Insert Address]. **THIS IS IMPORTANT SO THAT FUTURE NOTICES AND/OR THE SETTLEMENT PAYMENT REACH YOU.**

VIII. IF THE STIPULATION OF SETTLEMENT AND RELEASE OF CLASS ACTION IS NOT APPROVED

If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the conditional Settlement will be voided, no money will be paid, and the case will return to litigation. If that happens, there is no assurance: (1) that the Class will be certified; (2) that any decision at trial would be in favor of Class Members; (3) that a trial decision, if any, would be as favorable to the Class Members as this Settlement; or (4) that any favorable trial decision would be upheld if an appeal was filed.

IX. QUESTIONS OR COMMENTS

PLEASE DO NOT CALL OR CONTACT THE COURT. If you have any questions about the Settlement, you may contact the Settlement Administrator at: Hubbard v. Title 9 Sports, Inc., Settlement Administrator, c/o CPT Group, Inc., [Insert Address] or by e-mail at _____ . You may also contact Class Counsel at the address or phone number listed below.

THE ATTORNEYS REPRESENTING THE CLASS MEMBERS ARE:

COUNSELONE, P.C.
Anthony J. Orshansky, Esq.
anthony@counselonegroup.com
Jennifer L. Connor, Esq.
jennifer@counselonegroup.com
9301 Wilshire Boulevard, Suite 650
Beverly Hills, California 90210
Telephone: (310) 277-9945
Facsimile: (424) 277-3727

LAWYERS *for* JUSTICE, P.C.
Edwin Aiwasian, Esq.
edwin@lfjpc.com
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Facsimile: (818) 265-1021