

## **STIPULATION OF RESOLUTION AND RELEASE**

This Stipulation of Resolution and Release is made by and between Damas Mazariegos ("Employee"), on behalf of himself and on behalf of other similarly situated employees and the State of California (pursuant to the Labor Code Private Attorneys General Act), on the one hand, and (a) Vtoynapa, Inc., dba Jimmy Vasser Toyota; and (b) VS Automotive, Inc., dba Jimmy Vasser Chevrolet, on the other hand (together, the "Companies").

### **1. BACKGROUND**

On or about October 1, 2020, Employee submitted a letter to the LWDA, presaging an intent to bring an enforcement action under PAGA, seeking penalties on behalf of the State of California based on alleged Labor Code violations attributed to the Companies. These alleged Labor Code violations included (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) rest break liability under Labor Code section 226.7; (4) meal period liability under Labor Code section 226.7; (5) failure to pay all wages owed timely and upon separation of employment; (6) failure to maintain and provide accurate itemized employee wage statements; (7) failure to reimburse business expenses; and (8) violations of Business & Professions Code sections 17200, *et seq.* In addition, Employee, through counsel, indicated an intention to bring similar claims on behalf of a putative class of similarly situated individuals.

After thoroughly investigating the foregoing claims and the defenses thereto available to the Companies (including, *inter alia*, the existence of an enforceable arbitration agreement that would preclude class treatment of claims), the Parties engaged in good faith, arms-length negotiations concerning possible resolution. The Parties participated in mediation with neutral Jill R. Sperber, Esq. of Judicate West, an experienced mediator in PAGA and wage and hour class actions, and reached a preliminary agreement as to the primary terms of resolution. The Parties have since engaged in extensive negotiations about the terms and conditions of the settlement and now enter into a more detailed, formalized settlement agreement for submission to an Arbitrator for approval.

Class Counsel have conducted an investigation of the law and facts relating to the claims asserted and have concluded, taking into account the sharply contested issues involved, the expense and time necessary to pursue the matter through trial, the risks and costs of further prosecution, the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be received by Employee and the Settlement Class Members pursuant to this Agreement, that a settlement with the Companies on the terms and conditions set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class.

The Companies have concluded that, because of the substantial expense of defending this action, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to their business operations, it is in their best interests to accept the terms of this settlement. The Companies deny each of the allegations and claims asserted against them. However, the Companies nevertheless desires to settle the claims for the purpose of avoiding the burden, expense and uncertainty of continuing to defend the action and for the purpose of putting to rest the controversies engendered by the claims in this matter.

This Stipulation of Resolution and Release is intended to and does effectuate the full, final, and complete resolution of all allegations and claims that were asserted, or could have been asserted, by Employee, the State of California as Real Party in Interest, and by any Settlement Class Member, against the Companies or

any Released Party based on the facts alleged in the initial LWDA letter, at the mediation, and in the complaint in arbitration as set forth in Section 6.

## **2. DEFINITIONS**

The Parties have defined the following terms to be used in this Stipulation of Resolution.

- 2.1. Administrative Costs:** All administrative costs of settlement, including cost of notice to the Settlement Class, claims administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Stipulation of Resolution and Release.
- 2.2. Agreement** (or “**Settlement Agreement**” or “**Resolution**”): This Stipulation of Resolution and Release.
- 2.3. Arbitration:** The arbitration of the disputes between Employee (and aggrieved employees under PAGA and the members of the Settlement Class) and the Companies, submitted in arbitration before Hon. Herbert B. Hoffman (Ret.) (“**Arbitrator**”).
- 2.4. Class Counsel:** CounselOne, P.C., counsel for and acting on behalf of Employee, the aggrieved employees under PAGA, and the members of the Settlement Class.
- 2.5. Effective Date:** The date of (i) final approval of the settlement if no Settlement Class Members file objections to the settlement; or (ii) if a Settlement Class Member files an objection to the settlement, the Effective Date shall be the date of 60 calendar days after final approval of the settlement if no appeal is initiated by an objector; or (iii) if a timely appeal is initiated by an objector or by class counsel to an order which reduces their requested attorneys’ fees and costs, the Effective Date shall be 60 calendar days following the date of final resolution of that appeal, resulting in final judicial approval of the settlement.
- 2.6. Eligible Pay Periods:** Any semi-monthly pay period falling within the period between October 1, 2016, and August 31, 2021. Any payroll frequency other than semi-monthly will be adjusted to reflect semi-monthly equivalents. These Eligible Pay Periods may also be referred to as the **Settlement Period**.

Based on data available at mediation, members of the Settlement Class collectively worked during all or part of an estimated 2,950 aggregated pay periods during the period from October 1, 2019, through April 30, 2021, with an average of approximately 97 active members of the Settlement Class per pay period during the pay periods prior to the pandemic shutdown, after which the number of active employees plummeted. For the purposes of mediation, the parties extrapolated the aggregate number of Eligible Pay Periods worked between October 1, 2016, and September 30, 2019, using that average, resulting in an additional estimated aggregated Eligible Pay Periods of 6,984, or a total estimated aggregated Eligible Pay Periods through April 30, 2021, of 9,934 semi-monthly pay periods. There were an average of approximately 69 active members of the Settlement Class per pay period during the 12-month period from May 1, 2020, through April 30, 2021 (after the shutdown). Extrapolating using that average over the 4-month period from May 1, 2021,

through August 31, 2021, results in an additional estimated aggregated Eligible Pay Periods of 552, bringing the total number of estimated aggregated Eligible Pay Periods for the entire Settlement Period to 10,486.

Following execution of this Stipulation of Resolution and Release, the Companies will manually audit payroll records to determine the number and identity of members of the Settlement Class, together with the actual aggregate Eligible Pay Periods worked during the Settlement Period by members of the Settlement Class. If the actual number of aggregate Eligible Pay Periods worked during the Settlement Period by members of the Settlement Class is more than 15% greater than the estimate of 10,486 semi-monthly pay periods (or the equivalent thereof), then the Settlement Amount (see Paragraph 2.13 below) shall be increased by the percentage by which the actual number of aggregate Eligible Pay Periods exceeds the estimate of 10,486. There will be no reduction in the Settlement Amount should the actual number of aggregate Eligible Pay Periods be lower than the estimate.

- 2.7. **Net Settlement Amount:** The Settlement Amount minus any award of Class Counsel's attorneys' fees and costs, Administrative Costs, enhancement payment to the Employee, and penalties recoverable pursuant to the PAGA.
- 2.8. **Net Settlement Payments:** shall include payments made to the Settlement Class as part of the Resolution, including wages, penalties and interest.
- 2.9. **PAGA:** California's Private Attorneys General Act.
- 2.10. **Released Parties:** includes the Companies and their past and present officers, directors, shareholders, partners, managers, employees, agents, assigns; parents, subsidiaries, corporate siblings, and affiliated entities.
- 2.11. **The Companies:** Vtoynapa, Inc., dba Jimmy Vasser Toyota; and VS Automotive, Inc., dba Jimmy Vasser Chevrolet.
- 2.12. **Settlement Administrator:** CPT Group, Inc., which will be responsible for claims administration.
- 2.13. **Settlement Amount:** the sum of \$370,000, which shall be paid by the Companies, and from which all of the following shall be paid, except as provided herein: Net Settlement Payments, Arbitrator-approved attorneys' fees and costs pursuant to Section 10, Administrative Costs pursuant to Section 7, enhancement payment to Employee pursuant to Section 9.3, , and PAGA Settlement (inclusive of payments to the State of California Labor and Workforce Development Agency ("LWDA") and to Settlement Class Members employed during the PAGA Period pursuant to Section 12). The Settlement Amount is non-reversionary; the entirety of the fund shall be paid out. The Companies shall pay employer-side payroll taxes with respect to the wages portion of the settlement in addition to the Settlement Amount. The Settlement Amount is subject to potential increase pursuant to the terms of Paragraph 2.6, *supra*.)
- 2.14. **Settlement Class:** For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as:

All persons who are or were employed by the Companies, or either of them, at Jimmy Vasser Toyota and/or Jimmy Vasser Chevrolet in the State of California as non-exempt employees paid, in whole or part, on a commission basis, at any time during the Settlement Period.

### **3. STIPULATION OF CLASS CERTIFICATION**

The Parties expressly note and agree that class certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or any other standard from this or any jurisdiction, and in fact the Companies (and all other Released Parties) take the position that no class action settlement can be maintained either in court or in arbitration absent the limited, revocable waiver herein for the particular Employee for the purposes of this settlement only. If for any reason this settlement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the settlement.

Indeed, the Companies maintain that the Parties' pre-dispute agreements to submit to binding arbitration generally prohibit class-wide or other representative actions and/or relief. However, in the interest of efficiency—and solely for the purpose of and expressly conditioned upon obtaining all required arbitral, judicial and administrative approvals required to fully implement this Settlement Agreement—the Companies have each elected to agree to a limited waiver on the prohibition against class and other representative actions. Should final approval not be ordered and/or confirmed by the Superior Court consistent with this Settlement Agreement—or should final approval be ordered on terms that vary from those set forth in this Settlement Agreement—then neither this Settlement Agreement, nor the limited waiver, can or should be interpreted as supporting any right by any party or any other putative class member to insist upon class-wide or other representative relief being available under the Parties' arbitration agreements. Moreover, any individual(s) who elects to exclude himself or herself from the Settlement Agreement and the terms thereof (through opt-out or otherwise) will not be able to benefit from any of the terms of the class settlement and shall not have the benefit of the limited waiver on class and/or representative claims including, but expressly not limited to the Companies' waiver of any claims or defenses, including, but expressly not limited to defenses against class-wide and other representative relief in arbitration, statute of limitations defenses, and defenses that would preclude the certification or establishment of any class of aggrieved or similarly situated claimants. The Parties expressly recognize that there has been no finding in this action that class-wide or other representative relief is justified under the facts and circumstances relating to the allegations raised by Employee in any action. Indeed, the Companies contend there is sharp dispute between the Parties as to whether class-wide or other representative relief would be available or appropriate, both because of the existence of arbitration obligations between the Parties and between all other members of the Settlement Class and any Released Parties (which agreements do not provide for class-wide or other representative relief), and because the facts and circumstances relating to the allegations raised by Employee in this action do not support class-wide relief under the California Code of Civil Procedure, because of questions of commonality, typicality, etc. No member of the Settlement Class (including any who choose to exclude himself or herself from the Settlement Class) may rely on this Settlement Agreement or the terms thereof as they may be applied to other members of the Settlement Class as a basis for seeking to bring any existing or future class claims.

#### **4. MOTION FOR PRELIMINARY APPROVAL**

Employee will move, unopposed before the Arbitrator, for an order preliminarily approving the Stipulation of Resolution and Release, including the *Notice of Pendency of Class and Representative Action and Settlement* and *Notice of Settlement Award*, which are attached hereto as Exhibits A and B, respectively, and including conditional certification of the Settlement Class for settlement purposes only.

#### **5. STATEMENT OF NO ADMISSION**

The Companies, and each of them, denies liability to Employee or to any member of the Settlement Class upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by the Companies as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Arbitration.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement or the Resolution, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Arbitrator that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders the Arbitrator entered in connection with the Resolution.

None of the documents produced or created by Employee or any member of the Settlement Class during the course of the negotiations leading to this Agreement or the Resolution constitute, and they are not intended to constitute, an admission by the Companies, or any of them, of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

#### **6. RELEASE**

##### **6.1. Release as to Settlement Class Members.**

Upon the date the Arbitrator makes the award granting final approval of the settlement, for the applicable Settlement Period, Employee and Settlement Class Members, except those that make a valid and timely request to be excluded from the Settlement Class, waive, release, discharge, and promise never to assert in any forum any and all wage-related claims against the Companies or any Released Party (including all respective subsidiaries, affiliates, predecessors or successors in interest, or the officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, re-insurers, or any of them) that were asserted in the Arbitration or which could have been asserted based on the facts alleged in the Arbitration, for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) rest break liability under Labor Code section 226.7; (4) meal period liability under Labor Code section 226.7; (5) failure to timely pay wages due at termination or resignation; (6) failure to maintain and provide accurate itemized employee wage statements;

(7) failure to reimburse business expenses; (8) violations of Business & Professions Code sections 17200, et seq.; and (9) penalties pursuant to the Private Attorneys General Act (Labor Code § 2698, et seq.).

## **6.2. General Release by Employee Only.**

In addition to the release made in Section 6.1, Employee makes the additional following general release of all claims, known or unknown.

Employee releases the Companies (and each of them) and all Released Parties together with their respective subsidiaries, corporate siblings, predecessors or successors in interest, or the officers, directors, shareholders, attorneys, agents, assigns, insurers, re-insurers, of any of them, for the period from October 1, 2016, through August 31, 2021, from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Companies, Released Parties, or any of them. (The release set forth in this Paragraph shall be referred to hereinafter as the "General Release.")

With respect to the General Release, for the period from October 1, 2016, through August 31, 2021, Employee stipulates and agrees that upon the date the Arbitrator makes the award granting final approval Employee shall be deemed to have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

Accordingly, if the facts relating in any manner to this Resolution are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall nevertheless be effective as to all unknown claims.

## **7. SETTLEMENT ADMINISTRATOR**

Employee and the Companies, through their respective counsel, have selected CPT Group, Inc. as the Settlement Administrator to administer the Resolution, which includes, but is not limited to, distributing and responding to inquiries about the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award (together, "Notice"), determining the validity of the opt-outs and calculating all amounts to be paid from the Settlement Amount. Any charges and expenses of the Settlement Administrator, not to exceed \$12,000, will be paid from the Settlement Amount.

## **8. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

### **8.1. Notice.**

The Parties, through their respective attorneys, have jointly prepared the Notice, which in substance will be provided to the Settlement Class as follows:

Ten (10) calendar days following preliminary approval of the Stipulation or Resolution and Release, the Companies will provide to the Settlement Administrator the following information about each Settlement Class Member ("Class List"): (1) name; (2) last known mailing address; (3) number of Eligible Pay Periods (including semi-monthly equivalents, as may be) as a Settlement Class Member as defined herein during the applicable Settlement Period; (4) social security number, and (5) start and end dates of employment as Settlement Class Member. The Companies further agree to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator.

The Settlement Administrator shall run all the addresses provided through the United States Postal Service National Change of Address (NCOA) database (which provides updated addresses for any individual who has moved in the previous four years and who has notified the U.S. Postal Service of a forwarding address) to obtain current address information, and shall mail the Notice to the Settlement Class via first-class U.S. Mail using the most current mailing address information available within twenty (20) calendar days of the preliminary approval date. The Notice shall provide Settlement Class Members forty-five (45) calendar days' notice of all applicable dates and deadlines.

The Notice will also include information regarding the nature of the Arbitration, a summary of the terms of the Resolution, the definition of the Settlement Class, a statement that the Arbitrator has preliminarily approved the Resolution, the procedure and time period for objecting to the Resolution, information regarding the opt-out procedure, and the date and location of the final approval hearing. The Notice mailed to each Settlement Class Member will indicate his/her estimated individual settlement payment from the Net Settlement Amount, as well as the calculation by the Company of the number of semi-monthly pay periods (or their equivalent) that the Settlement Class Member worked during the Settlement Period ("Eligible Pay Periods").

If a Notice is returned from the initial notice mailing, the Settlement Administrator will submit the applicable and available information, including name, social security number, and original mailing address, to a company that specializes in address skip tracing to attempt to locate a more current address. If the Settlement Administrator is successful in locating a new address, it will re-mail the Notice to the Settlement Class Member. Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-deliverable before the deadline date, shall be sent to the forwarding address affixed thereto. Upon completion of these steps by the Settlement Administrator, the Parties and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice to the Settlement Class.

Settlement Class Members will have the opportunity, should they disagree with the number of Eligible Pay Periods stated in their Notice, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked no later than forty-five (45) calendar days after the date the Settlement Administrator initially mails the Notice to the Settlement Class. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator's decision as to the number of Eligible Pay Periods shall be final and non-appealable. The Settlement Administrator shall send written notice of the decision on any such claim to the Settlement Class Member, to Class Counsel, and counsel for the Companies within ten (10) calendar days of receipt of the dispute.

No later than twenty (20) business days prior to the final approval hearing, the Settlement Administrator shall provide counsel for the Companies and Class Counsel with a declaration attesting to the completion of the notice plan, including the number of attempts to obtain valid mailing addresses for and re-sending of any

returned Notices, as well as the number of valid opt-outs and objections which the Settlement Administrator received.

The Settlement Administrator will not provide Class Counsel or other Settlement Class Members with any information by which a participating Settlement Class Member might be identified; except for good cause shown (such as enforcement of a release).

## **8.2. Objections.**

In order for any Settlement Class Member to object to this Resolution, or any term of it, the person making the objection must not submit a request for exclusion (i.e., must not opt out) and should, by no later than forty-five (45) calendar days after the Notice was initially mailed to the Settlement Class, submit with the Settlement Administrator and serve on Class Counsel and counsel for the Companies a written statement of the grounds of objection, signed by the objecting Settlement Class Member or his or her attorney, along with all supporting papers. All such objections and written notices of intention to appear must be signed and must contain the Settlement Class Member's current address and the address of counsel, if any. The objection should clearly explain why the Settlement Class Member objects to the Resolution and state whether the Settlement Class Member (or someone on his or her behalf) intends to appear at the final approval hearing. If a Settlement Class Member submits a timely and complete objection and written notice of intention to appear, he or she may appear personally or through an attorney, at his or her own expense, at the final approval hearing to present his or her objection directly to the Arbitrator. Any attorney who will represent an individual objecting to this Resolution must file a notice of appearance with the Arbitrator and serve Class Counsel and counsel for the Companies no later than forty-five (45) calendar days after the Notice was initially mailed to the Settlement Class. If a Settlement Class Member objects to this Resolution, he or she will remain a Settlement Class Member and if the Arbitrator approves this Agreement, the Settlement Class Member will be bound by the terms of the Resolution and final approval in the same way and to the same extent as a Settlement Class Member who does not object. The date of mailing of the Notice to the objecting Settlement Class Member shall be conclusively determined according to the records of the Settlement Administrator. The Arbitrator retains final authority with respect to the consideration and admissibility of any Settlement Class Member objections. Provided the Settlement Administrator mailed the Notice to a Settlement Class Member as set forth in Paragraph VIII.A., the deadlines set forth herein to file an objection shall apply notwithstanding assertion by any Settlement Class Member of non-receipt of the Notice.

Notwithstanding the foregoing, any Settlement Class Member who appears at the final approval hearing without having made a timely written objection shall nonetheless be heard and have his or her concerns ruled upon by the Arbitrator.

Employee and the Companies will be permitted to respond in writing to such objections no later than seven (7) calendar days before the final approval hearing. Employee waives any right to object to the Resolution, and hereby endorse the Resolution as fair, reasonable and adequate and in the best interests of the Settlement Class.

## **8.3. Opportunity for Exclusion.**

In order for any Settlement Class Member to validly exclude himself or herself from the Settlement Class and this Resolution (i.e., to validly opt out), a written request for exclusion ("Request to be Excluded") must be signed by the Settlement Class Member or his or her authorized representative and must be sent to the



Settlement Administrator, postmarked by no later than forty-five (45) calendar days after the date the Settlement Administrator initially mails the Notice to the Settlement Class. The Notice shall contain instructions on how to opt out. The date of the initial mailing of the Notice, and the date the signed Request to be Excluded was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Settlement Class Member who timely and validly submits a Request to be Excluded from the Settlement Class and this Resolution will not be entitled to any individual class settlement payment, will not be bound by the terms and conditions of this Resolution, and will not have any right to object, appeal, or comment thereon.

Notwithstanding the foregoing, the PAGA settlement and related release provisions will apply to all aggrieved individuals whether or not part of the class when approved by the Superior Court pursuant to California law, and each Settlement Class Member will receive their portion of the PAGA settlement amount without regard to any exclusion from the class settlement.

**8.4. Cooperation.**

The Parties and their respective counsel agree not to encourage Settlement Class Members to opt out of this settlement, or to object to the settlement, directly or indirectly, through any means. However, if a Settlement Class Member contacts Class Counsel, Class Counsel may discuss the terms of the Resolution, and the Settlement Class Member's options.

**8.5. Opt-Out Limit.**

The Parties agree that if more than ten percent (10%) of Settlement Class Members validly exclude themselves from this Resolution, the Companies shall have the right, but not the obligation, to void the entire settlement.

**9. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

**9.1. Distribution Formula.**

Net Settlement Payments will be distributed to Settlement Class Members who do not submit a timely and valid Request to be Excluded. Net Settlement Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a percentage of the Net Settlement Amount based upon his or her Eligible Pay Periods during the applicable Settlement Period.

Each Net Settlement Payment will be determined by dividing the Net Settlement Amount by the total number of Eligible Pay Periods (including any semi-monthly equivalents, where applicable) worked by all Settlement Class Members during the Settlement Period (the "Pay Period Amount") and then multiplying the amount by the number of Eligible Pay Periods of the individual Settlement Class Member as determined by the Settlement Administrator in accordance with Section 7, above, less any applicable withholding taxes based on the Parties' stipulated allocation of the Net Settlement Amount as provided for in Section 11, below.

**9.2. Time for Distribution.**

The Settlement Administrator shall cause the Net Settlement Payments, Arbitrator-approved enhancement payment to Employee, Arbitrator-approved attorney's fees and costs, and PAGA Settlement to be mailed within ten (10) business days following the Effective Date.

### **9.3. Enhancement Payments To Employee**

The Companies shall not oppose an application by Employee for Employee's participation in and assistance with the Arbitration and Employee shall not seek or receive an amount in excess of \$7,500. Any enhancements awarded to Employee by the Arbitrator shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099.

### **9.4. Uncashed Checks.**

Funds from any checks remaining uncashed six months after distribution of funds will be sent by the Settlement Administrator to an approved charity, the details of which distribution shall be set forth in the Final Approval motion and related papers.

### **9.5. No Contributions To Employee Benefit Plan.**

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by the Companies, or any of them. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by the Companies (or any of them), policies or bonus programs. Any payments made under the terms of this Resolution shall not be applied retroactively, currently, or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of any benefit plan, policy or bonus program of the Companies (or any of them). The Companies, and each of them, retain the right to modify the language of any benefit plans, policies, and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Resolution are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Resolution.

## **10. ATTORNEYS' FEES AND COSTS**

The Companies shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive, an amount in excess of 35 percent of the Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle and administer this action. Additionally, the Companies shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive, an amount in excess of \$15,000, which represents all past and future costs and expenses necessary to prosecute, settle, and administer this action. Any attorneys' fees or costs awarded to Class Counsel by the Arbitrator shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount.

## **11. TAXATION AND ALLOCATION**

### **11.1. Allocation and Withholdings.**

The Parties agree that applicable employment taxes and other legally required withholdings will be withheld from payments to Settlement Class Members and Employee based on the Parties stipulated allocation of the Net Settlement Amount as provided for in this Section.

The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):

20% as wages; and  
80% as penalties and interest.

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

The Company shall pay employer-side payroll taxes with respect to the wages portion of the settlement in addition to the Settlement Amount.

#### **11.2. Circular 230 Disclaimer.**

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

## **12. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

In order to implement the terms of this Resolution and to settle claims alleged under the Private Attorneys General Act, California Labor Code section 2698, *et seq.*, the Parties agree to allocate Twenty Thousand Dollars (\$30,000) of the Settlement Amount as the PAGA Settlement. Seventy-five percent (75%) of the PAGA Settlement (or \$22,500), is to be paid by the Companies, through the Settlement Administrator, to the California Labor and Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%) to members of the Settlement Class, without regard to any individual requests for exclusion.

Distribution of the 25% to Settlement Class Members shall be allocated proportionally based on the ratio of the number of Eligible Pay Periods worked by each individual during the PAGA Period (October 1, 2019 through August 31, 2021) to the total number of Eligible Pay Periods worked by all Settlement Class Members during the same period.

In the event that the Arbitrator finds the PAGA allocation insufficient, the PAGA allocation will be increased by reducing the Net Settlement Amount by the minimum amount needed to obtain all required approvals; this reallocation shall not change the Settlement Amount.

Settlement Administrator shall be responsible for any and all disbursements to the LWDA in connection with this allocation that may be necessary to effect a full and complete release of all claims contemplated by this Agreement.

### **13. ARBITRATOR APPROVAL**

This Agreement and the Resolution is contingent upon final approval of the Stipulation of Resolution by the Arbitrator. Employee and the Companies agree to take all steps as may be reasonably necessary to secure both preliminary approval and final approval of the Resolution, to the extent not inconsistent with the terms of this Agreement and will not take any action adverse to each other in obtaining Arbitrator approval. Employee and the Companies expressly agree that they will not file any objection to the terms of this Stipulation of Resolution or assist or encourage any person or entity to file any such objection.

If for any reason approval of the settlement cannot be secured, the class and representative action shall be filed in state court and deemed, for purposes of any applicable statute of limitations, to have been filed by Employee on October 1, 2019.

### **14. MISCELLANEOUS PROVISIONS**

#### **14.1. Interpretation of the Agreement.**

This Agreement constitutes the entire agreement between the Parties. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively before the Arbitrator, and Parties hereby consent to the personal jurisdiction of the Arbitrator over them solely in connection therewith. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of any arbitration agreements signed by employees of the Companies. Employee, on Employee's own behalf and on behalf of the Settlement Class, and the Companies participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Employee nor the Companies may claim that any ambiguity in this Agreement should be construed against the other.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between Employee and the Companies with respect to the Resolution of the Arbitration.

The Agreement may be modified only by a writing signed by the original signatories and approved by the Arbitrator.

**14.2. Further Cooperation.**

Employee and the Companies and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approval from the Arbitrator, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

**14.3. Enforcement.**

In the event that one or more of the Parties to this Agreement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Resolution or to declare rights and/or obligations under this Agreement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

**14.4. Counterparts.**

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

**14.5. Binding on Assigns.**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, assigns, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, insurers, affiliates, and privies, and upon Settlement Class Members who do not opt out of the settlement agreed to in this Resolution.

**14.6. Force Majeure.**

The failure of any party to perform any of its obligations hereunder shall not subject such party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions, floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such party.

**14.7. Other Actions Enjoined.**

The Companies shall have the right to request that the Arbitrator enter an order that, pending final approval, Settlement Class Members who do not opt out of the settlement are barred from instituting or prosecuting any claims or actions against the Companies or any Released Parties which fall within the scope of the release herein and that any pending actions against the Companies or any Released Parties, whether in court or arbitration, are stayed on an interim basis only as to any claims which fall within the scope of the release herein.

**14.8. Deadlines Falling on Weekends or Holidays.**

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

**14.9. Severability.**

If any term of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.

**14.10. Notices to Counsel.**

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally or mailed, postage prepaid, by first-class United States mail, to the undersigned persons at their respective addresses as set forth herein:

For Class Counsel:

Anthony J. Orshansky  
COUNSELONE, PC  
9301 Wilshire Boulevard, Suite 650  
Beverly Hills, California 90210  
(310) 277-9945 Tel.

For the Companies:

David Reese  
FINE, BOGGS & PERKINS LLP  
111 West Ocean Blvd., Suite 2400  
Long Beach, California 90802  
(562) 366-0861 Tel.

**14.11. Authority.**

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

[signatures follow on next page]

