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19 Attorneys for Defendants

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF ORANGE**

22 LOGAN SHANE CRABTREE, individually, on
23 behalf of the Class, and all similarly situated
24 aggrieved employees,

25 Plaintiff,

26 v.

27 VIVINT, INC., a Delaware corporation;
28 VIVINT SMART HOME, INC., a Delaware
corporation; SMART HOME PROS, INC., a
Delaware corporation; ARM SECURITY, INC.,
a corporation state unknown; and DOES 1
through 50, inclusive,

Defendants.

Case No: 30-2020-01141910-CU-OE-CXC

*Assigned to for all purposes to:
Judge Glenda Sanders, Dept. CX101*

**AMENDED AND RESTATED JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT**

It is stipulated and agreed by and among the undersigned Parties, subject to the approval of the Court, that the full and final Settlement of this Action shall be effectuated upon and subject to the

1 following terms and conditions in this Amended and Restated Joint Stipulation of Class Action
2 Settlement (hereinafter the “**Agreement**,” “**Settlement**,” or “**Settlement Agreement**”), which
3 amends, restates and supersedes the Joint Stipulation of Class Action Settlement entered into by the
4 Parties on May 3, 2022. Capitalized terms used in this Agreement shall have the meanings set forth
5 in Article I or as defined elsewhere.

6 This Agreement is made and entered into by and between Plaintiffs LOGAN SHANE
7 CRABTREE, BRAYDEN HUMPHERYS and JEREMY HATCHER each on behalf of himself and
8 other similarly situated and aggrieved employees (referred to hereafter collectively as the
9 “**Plaintiffs**”), on the one hand, and Defendants VIVINT, INC., a Delaware corporation; VIVINT
10 SMART HOME, INC., a Delaware corporation; SMART HOME PROS, INC., a Delaware
11 corporation; ARM SECURITY, INC., a corporation (collectively referred to as the “**Defendants**”),
12 on the other. Plaintiffs and Defendants collectively are referred to in this Agreement as the “**Parties**.”

13 The Parties agree that the Action shall be, and hereby is, settled and resolved by agreement
14 of Defendants to: (a) pay Six Million Five Hundred Thousand and 00/100th Dollars (\$6,500,000.00)
15 as provided in Section 3.06 below (“**Gross Settlement Fund**”); and (b) release and waive claims
16 against Settlement Class Members who separated from employment on or before June 1, 2022 and
17 who do not Opt-Out of this Settlement for (i) claimed outstanding or unearned wage advances given
18 by Defendants, other than those precluded by Section 5.04 below; and (ii) for violation of post-
19 termination employee non-solicitation restrictions which occurred on or before Preliminary Approval
20 of the Settlement as provided in Section 5.04 below.

21 **ARTICLE I**

22 **DEFINITIONS**

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

25 a. “**Action**” means the entire action as set forth in the complaint originally filed by
26 LOGAN SHANE CRABTREE in this case on June 3, 2020, a First Amended Complaint filed by
27 LOGAN SHANE CRABTREE on September 15, 2020, and the to be filed Second Amended
28 Complaint by Plaintiffs (the “**SAC**”), which will be filed before or concurrently with Plaintiffs’

1 Preliminary Approval Motion and serve as the Operative Complaint.

2 b. "Agreement," "Settlement," or "Settlement Agreement" means this Amended and
3 Restated Joint Stipulation of Class Action Settlement, including Exhibits "A & B" attached hereto.

4 c. "Class" or "Settlement Class" means:

5 All persons **currently and formerly** employed by Defendants in solar or alarm sales in the
6 State of California on a door-to-door basis who made at least one sale in California between
7 June 3, 2016 and June 1, 2022 (the "Class Period").

8 d. "Class Counsel" or "Plaintiffs' Counsel" means the attorneys for the Settlement
9 Class, who are:

<p>10 Jason E. Baker, Esq. John J. Weber, Esq. KEEGAN & BAKER, LLP 11 5820 Oberlin Drive, Suite 205 San Diego, CA 92121 12 Telephone: (858) 558-9402 13 Facsimile: (858) 558-9401 Email: jbaker@keeganbaker.com Email: jweber@keeganbaker.com</p>	<p>Eric D. Norvell, Esq. ERIC D. NORVELL, ATTORNEY, P.A. 14 445 Marine View Ave., Suite 300 Del Mar, CA 92014 15 Telephone: (760) 452-0808 16 Facsimile: (760) 454-3802 Email: enorvell@norvellfirm.com</p>
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17 e. "Class List" means a true and complete list of all members of the Class that
18 Defendants will compile, based on its business records, and provide to the Settlement Administrator.
19 The Class List shall be formatted in Microsoft Office Excel and shall include to the extent known or
20 readily ascertainable each Class Member's: (1) full name and badge number or employee ID number;
21 (2) last known mailing address; (3) last known telephone number; (4) social security number; (5)
22 personal email address (if known); (6) beginning and ending dates of employment during the Class
23 Period; (7) number of California solar systems installed under each individual badge number during
24 the Class Period; (8) number of California alarm systems installed under each individual badge
25 number during the Class Period; (9) claimed outstanding advances applicable to each Class Member
26 terminated during the Class Period; (10) the names of persons currently engaged in litigation or
27 arbitration over the repayment of such advances who are excluded from the Release for unpaid
28 advances and (11) any other information reasonably required by the Settlement Administrator in

1 order to effectuate the terms of the Settlement. Defendants shall provide Class Counsel with the
2 Class List concurrently with the Settlement Administrator, but eliminating the first five digits of the
3 social security numbers for the Class.

4 f. **“Class Member(s)”** mean(s) all members of the Class.

5 g. **“Class Period”** is defined in subsection c., above.

6 h. **“Cooperating Class Members”** means JACOB KAEMPFER, KIEFFER TAYLOR
7 and TRISTAN YODER.

8 i. **“Court”** means the Orange County Superior Court in which the Action is pending.

9 j. **“Defendants’ Counsel”** or **“Defense Counsel”** means:

10 CHET A. KRONENBERG (SBN: 222335)
11 ckronenberg@stblaw.com
12 SIMPSON THACHER & BARTLETT LLP
13 1999 Avenue of the Stars, 29th Floor
Los Angeles, California 90067
Telephone: (310) 407-7500

14 k. **“Effective Date”** of this Settlement shall be the later of the time when: (i) if an appeal
15 from the Judgment is filed, the date of final affirmance of the Judgment on an appeal of the Judgment
16 or the date of final dismissal of any appeal from the Judgment; (ii) if one or more objections are
17 submitted and not withdrawn and no notices of appeal are filed, the sixty-first (61st) day after the
18 Court enters final approval of the Settlement and the Judgment approving this Agreement or the other
19 expiration of time for filing of an appeal of the Final Order; and (iii) if no objections are made (or
20 objections are made but withdrawn), the Court’s entry of the Court’s Final Approval Order and
21 Judgment.

22 l. **“Enhancement Award”** means a monetary amount of no more than Ten Thousand
23 Dollars (\$10,000), subject to Court approval, for each Lead Plaintiff; Ten Thousand Dollars
24 (\$10,000), subject to Court approval, for each Cooperating Class Member; and Thirty Thousand
25 (\$30,000) for the PAGA Plaintiff, subject to Court approval, which shall be inclusive of his individual
26 claims raised in arbitration.

27 m. **“Final Approval Hearing”** means the hearing at which the Court enters a judgment
28 or other order approving the Settlement and terminating the Action.

1 n. **“Final Order Approving Settlement of Class Action”** or **“Final Order”** means the
2 final formal court order or judgment signed by the Court at or after the Final Approval Hearing in
3 accordance with the terms herein approving this Agreement.

4 o. **“Gross Settlement Fund”** means the settlement sum of Six Million Five Hundred
5 Thousand and 00/100th Dollars (\$6,500,000.00). The Gross Settlement Fund is non-reversionary and
6 no portion will return to Defendants.

7 p. **“Individual Settlement Payments”** or **“Verified Settlement Class Member**
8 **Payments”** means the amounts of money from the Net Settlement Amount that shall be paid to the
9 Verified Settlement Class Members. Individual Settlement Payments will be each Verified
10 Settlement Class Member’s share of the Net Settlement Amount (which share shall be determined
11 by the calculations provided in this Agreement).

12 q. **“Lead Plaintiffs”** means BRAYDEN HUMPHERYS and JEREMY HATCHER.

13 r. **“LWDA”** means the California Labor and Workforce Development Agency.

14 s. **“Net Settlement Amount”** means the Gross Settlement Fund less all of the
15 following: (a) costs of settlement administration performed by the Settlement Administrator; (b)
16 Enhancement Awards; (c) PAGA Penalties; (d) an award of attorneys’ fees to Class Counsel; and (e)
17 Court-approved costs of Class Counsel.

18 t. **“Non-Verified Class Member(s)”** means those Class Members who submit to the
19 Settlement Administrator a valid and timely Opt-Out Request pursuant to Section 3.04(c) below.

20 u. **“Notice Packet,” “Class Notice”** or **“Notice”** means the Notice of Class Action
21 Settlement and Final Approval Hearing substantially in the form attached hereto as Exhibit “A”.

22 v. **“Operative Complaint”** means the SAC to be filed and then pending in this Action.

23 w. **“Opt-Out Request”** or **“Opt-Out”** means a written election to be excluded from the
24 Settlement pursuant to Section 3.04(c) below, with a sample suitable form attached to and sent with
25 the Notice Packet.

26 x. **“PAGA”** means the Private Attorneys General Act of 2004, California Labor Code
27 §2698 *et seq.*

28 y. **“PAGA Penalties”** represents two percent (2%), or such other amount that may be

1 approved by the Court, of the Gross Settlement Fund allocated to statutory penalties under PAGA,
2 seventy-five percent (75%) of which will be paid to the LWDA and twenty-five percent (25%) which
3 will be disbursed to the PAGA Represented Employees on a pro-rata basis pursuant to Section 3.06(e)
4 below. PAGA Represented Employees will receive payment from the employee portion of the
5 PAGA Penalties regardless of their decision to participate in the class action if the PAGA Penalties
6 are approved by the Court.

7 z. **“PAGA Period”** means September 15, 2019 through the date of Preliminary
8 Approval.

9 aa. **“PAGA Plaintiff”** means LOGAN SHANE CRABTREE.

10 bb. **“PAGA Represented Employees”** means “All persons currently and formerly
11 employed by Defendants in solar or alarm sales in the State of California on a door-to-door basis
12 who made at least one sale in California during the PAGA Period.”

13 cc. **“Preliminary Approval Date”** or **“Preliminary Approval”** means the date on which
14 the Court preliminarily approves the Settlement embodied in this Agreement, including, without
15 limitation, the Class Notice which is attached hereto as Exhibit “A.”

16 dd. **“Settlement Class”** consists of all Verified Settlement Class Members.

17 ee. **“Settlement Administration Costs”** means all costs incurred by the Settlement
18 Administrator in administration of the Settlement as set forth in this Agreement.

19 ff. **“Settlement Administrator”** means CPT Group, Inc., which was mutually selected
20 by the Parties for the administration of the Settlement.

21 gg. **“Total Workweeks”** means the total aggregate number of Workweeks of all
22 Settlement Class Members during the Class Period.

23 hh. **“Verified Settlement Class Members”** means all Class Members who do not timely
24 Opt-Out or request exclusion from the Class as provided in Section 3.04(c).

25 ii. **“Workweek”** means a week during the Class Period commencing on Sunday and
26 ending on the following Saturday in which a Class Member verifiably worked for Defendants in
27 California.

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ARTICLE II

FACTUAL BASIS FOR SETTLEMENT

a. This Action was filed and has been pending since June 3, 2020.

b. During the pendency of the Action, the Parties engaged in extensive informal discovery, exchanging thousands of pages of documents, propounding of 63 wage authorizations from Class Members (and related wage audits). The Parties also exchanged voluminous detailed data about the wage, hours and working conditions of the Class under the mediation privilege.

c. The Parties participated in three (3) mediation sessions with the Honorable Francisco Firmat (Ret.), a preeminent wage and hour class action mediator out of Orange County, California. The settlement discussions were conducted at arm’s-length. The Settlement is the result of an informed and detailed analysis of the risks facing all Parties in litigating this case, including but not limited to, careful consideration of the legal and factual obstacles to Plaintiffs’ prospects of obtaining class certification and prevailing on the merits, and Defendants’ defenses, as well as Defendants’ potential exposure and the additional costs of litigating the Action and potential serial individual arbitrations.

d. Plaintiffs and Class Counsel have each conducted a thorough investigation into the facts of this class action case, including an extensive review of relevant documents, and have diligently pursued an investigation of Class Members’ claims against Defendants. Based on their respective own independent investigation and evaluation, Plaintiffs and Class Counsel are each of the opinion that the Settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by the Court, the risk of classwide arbitration waivers, the defenses asserted by Defendants, and numerous potential appellate issues.

e. In the Action, Plaintiffs have alleged related theories of wage and hour liability under the California Labor Code, which Defendants dispute. Prior to or concurrently with the motion for preliminary approval of the Settlement, Plaintiffs will move for an order for the Lead Plaintiffs to file the SAC to assert and clarify its theories and/or causes of action for: (i) “independent contractor”

1 misclassification; (ii) “direct seller” misclassification; (iii) failure to pay training time and/or non-
2 sales work activity (including meetings); (iv) failure to pay overtime; (v) failure to provide meal and
3 rest breaks; (vi) failure to reimburse business expenses; (vii) failure to pay all commissions due; (viii)
4 failure to pay wages and unlawful wage forfeitures; (ix) failure to provide accurate or complete
5 itemized wage statements; (x) failure to timely pay final wages; (xi) unlawfulness of retention and/or
6 relocation advances; (xii) unlawful contractual provisions, including mutual attorneys’ fees clauses
7 and post-termination employee non-solicitation clauses; (xiii) failure to provide a written contract
8 outlining the current method of calculating and/or paying commissions and/or a signed copy thereof;
9 (xiv) failure to properly maintain accurate employment records; (xv) failure to maintain a copy of all
10 documents signed by sales representatives and/or to provide a copy of such documents upon request;
11 (xvi) misleading advertisements, solicitations (*see* Labor Code §§ 970 and 976), and/or
12 communications designed to mislead prospective sales representatives; and (xvii) violation of
13 Business and Professions Code § 17200. The PAGA Plaintiff will assert his causes of action in the
14 SAC for recovery of penalties under PAGA. The SAC will be filed before or concurrently with the
15 motion for preliminary approval of the Settlement, and the Parties will request that the Court deem
16 it filed for purposes of the Settlement upon preliminary approval of the Settlement by the Court. The
17 SAC shall become the Operative Complaint in this Action. All material allegations in the SAC shall
18 be deemed denied by Defendants without the necessity of Defendants filing an Answer to the SAC
19 or any other pleading in the Action and are to be resolved by this Settlement.

20 f. It is the desire of the Parties to fully, finally, and forever settle, compromise and
21 discharge any and all known and unknown claims that were raised, or could have been raised, during
22 the Class Period based upon the facts alleged in this Action as set forth in this Agreement.

23 g. The Parties hereby stipulate to certification of the Class with respect to all causes of
24 action alleged in the Operative Complaint in this Action for settlement purposes only, requiring
25 further approval of the Court.

26 h. In settlement of this Action, Defendants shall pay the Gross Settlement Fund as
27 provided in this Agreement.

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ARTICLE III.

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT

The procedure for obtaining Court approval of and implementing this Agreement shall be as follows:

Section 3.01 Motion for Class Certification and Preliminary Approval

Promptly upon execution of this Agreement, the Parties shall submit this Agreement to the Court and request preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Class Counsel will prepare and file the SAC, the motion for preliminary approval of settlement and cause this Agreement to be filed with the LWDA before or at the same time this Agreement is submitted to the Court. Upon receipt of the motion for preliminary approval and all supporting papers, Defendants shall have a minimum of three (3) business days to review the motion for preliminary approval of settlement before Class Counsel files the motion for preliminary approval with the Court.

In seeking preliminary approval of this Agreement, the Parties shall apply to the Court for the entry of a preliminary order (in the form annexed hereto as Exhibit B) seeking certification of this Action under section 382 of the California Code of Civil Procedure and Rules 3.760 *et seq.* of the California Rules of Court as a class action for purposes of settlement only.

Section 3.02 The Settlement Administrator

The Parties have chosen CPT Group, Inc. to act as the Settlement Administrator, by performing such tasks as are customary and necessary to administer the Settlement including, but not limited to, distributing any notices that must be provided to the Class, posting the SAC, this Agreement and Exhibits hereto on its website, performing address and email updates and verifications as necessary prior to the first mailing, performing a single email and mail address follow-up on any returned mail or undeliverable email, responding to inquiries about the Notice Packet, determining the validity of all Opt-Out Requests, calculating the Net Settlement Amount and the Individual Settlement Payments, preparing tax statements and/or reports, providing necessary progress reports, preparing declarations required by the Court, preparing a detailed declaration that sets forth each of Class Members who did not submit valid Opt-Out Requests, and, with notice and

1 consent of the Parties, generating and issuing the Individual Settlement Payment checks and
2 distributing them to Verified Settlement Class Members, and issuing court approved payments from
3 the Gross Settlement Fund, processing and sending uncashed checks, post-disbursement reporting to
4 the Parties and the Court and any other actions of the Settlement Administrator as set forth in this
5 Agreement.

6 The Settlement Administrator shall expressly agree to all of the terms and conditions of this
7 Agreement relating to the administration of the Settlement as a condition of appointment. The Parties
8 each represent that they do not have any financial interest in the Settlement Administrator or
9 otherwise have a relationship with the Settlement Administrator that could create a conflict of
10 interest.

11 Between Preliminary Approval and the Final Order, the Settlement Administrator shall
12 provide Defense Counsel and Class Counsel a weekly report that certifies: (i) the number of Class
13 Members to whom the Settlement Administrator has mailed and emailed the Notice Packet; (ii) the
14 number of Notice Packets that were returned as undeliverable; (iii) the number and identity of Class
15 Members who have submitted valid Opt-Out Requests; (iv) the number and identity of Class
16 Members who have submitted challenges or objections to any information contained in the Notice
17 Packet; and (v) the number and identity of Settlement Class Members who have submitted objections
18 to the Settlement.

19 Additionally, the Settlement Administrator will provide to Defense Counsel and Class
20 Counsel any updated reports regarding the administration of the Settlement Agreement upon
21 reasonable request.

22 The Settlement Administrator shall maintain throughout the administration of the Settlement
23 all of the Opt-Out Requests that it receives. At the conclusion of the administration of the Settlement,
24 the Settlement Administrator shall retain all Opt-Out Requests for an additional four years. The
25 Settlement Administrator shall identify all persons who submitted Opt-Out Requests to be included
26 by Class Counsel in the Final Order.

27 All costs of administering the Settlement shall be paid to the Settlement Administrator from
28 the Gross Settlement Fund upon Final Order. The Settlement Administrator has agreed to administer

1 the Settlement for Thirty-Two Thousand Five Hundred Dollars (\$32,500).

2 The Settlement Administrator shall be required to acknowledge that in its role as Settlement
3 Administrator it owes fiduciary obligations to the Lead Plaintiffs and Class Members and will be
4 required to attest that it will make payments consistent with the terms of this Agreement, including
5 the allocation instructions set forth in this Agreement, except as modified by the Court. The
6 obligations of the Settlement Administrator are released upon (1) all funds being disbursed by the
7 Settlement Administrator pursuant to this Agreement and/or order(s) of the Court; (2) any post-
8 disbursement reporting to the Court; (3) any post-disbursement tax reporting; and (4) otherwise
9 complying with this Agreement and the Final Order.

10 Disputes relating to the Settlement Administrator's performance of its duties will be referred
11 to the Court, if necessary, which will have continuing jurisdiction over this Settlement until all
12 payments and obligations contemplated by this Settlement have been fully carried out.

13 **Section 3.03 Notice to the Settlement Class**

14 Notice of the Settlement, dated as of the date of mailing submission, shall be provided to the
15 Class Members, and the Class Members may submit objections to the Settlement and/or requests for
16 exclusion from the Class by using the following procedures:

17 Within twenty (20) days after the Court preliminarily approves the Settlement, Defendants
18 will provide the Class List to the Settlement Administrator and the modified Class List to Class
19 Counsel. Within seven (7) days after receipt of the Class List, the Settlement Administrator shall
20 update the addresses using the United States Postal Service's NCOALink system and mail the Notice
21 Packet (with the information populated from the Class List) by first-class United States mail to each
22 Class Member and email the Notice Packet to each Class Member with a known or readily obtainable
23 email address. Any mailed Notice returned to the Settlement Administrator as non-delivered on or
24 before the Dispute Deadline Date shall be re-mailed once to the forwarding address affixed thereto
25 and emailed to a known or readily obtainable email address. If no forwarding mailing address is
26 provided or email address is not known or readily obtainable, the Settlement Administrator shall
27 promptly attempt to determine a correct mailing address and email address by use of skip-tracing,
28 and shall then perform one re-mailing and/or re-emailing, if other contact information is identified

1 by the Settlement Administrator. The Settlement Administrator shall also make the Settlement
2 Agreement and Notice available on its website. The Settlement Administrator shall notify Class
3 Counsel and Defense Counsel weekly if any Notice Packets are returned as undeliverable and no
4 forwarding address is available or determinable. Settlement Class Members who receive a re-mailed
5 or re-emailed Notice within ten (10) days of the Dispute Deadline Date and Objection/Exclusion
6 Deadline Date, as set forth in Sections 3.04(b) and (c) below, shall have their Dispute Deadline Date
7 and Objection/Exclusion Deadline Date extended ten (10) days from the original Dispute Deadline
8 Date and Objection/Exclusion Deadline Date.

9 No later than twenty-one (21) court days prior to the Final Approval Hearing, the Settlement
10 Administrator shall provide Class Counsel and Defense Counsel with a declaration attesting to
11 completion of the notice process, including any attempts to obtain valid mailing and email addresses
12 for Class Members and re-sending any returned Notice Packets, as well as the number of Opt-Out
13 Requests that the Settlement Administrator received and the dates that the Settlement Administrator
14 received those Opt-Out Requests.

15 Except as otherwise modified by the Court, compliance with the procedures described in this
16 Section shall constitute due and sufficient notice to Class Members of this proposed Settlement and
17 the Final Approval Hearing and shall satisfy the requirements of due process. Nothing else shall be
18 required of, or done by, the Parties, Class Counsel, Defense Counsel, or the Settlement Administrator
19 to provide notice of the proposed Settlement and the Final Approval Hearing.

20 **Section 3.04 Responses to Notice**

21 **a. No Claim Forms.** Settlement Class Members are not required to submit claim forms
22 to receive their share of the Net Settlement Amount.

23 **b. Dispute Resolution Process of Class Data.** Any Class Member who disagrees with
24 the data used to calculate his or her claim as reflected in the Notice shall be allowed to indicate and
25 explain such disagreement in writing. Such written dispute must be sent (via email or mail) to the
26 Settlement Administrator no later than 5:00 p.m. PST thirty (30) days after the date of the Notice (the
27 “**Dispute Deadline Date**”), unless extended pursuant to the terms of this Agreement, and include
28 written support for such disagreement. The Settlement Administrator shall identify and provide

1 contact information to Class Counsel and Defense Counsel for the Class Member raising such dispute
2 and provide the basis for such dispute. The Settlement Administrator shall attempt to resolve the
3 disagreement with the Verified Class Member using the records provided by Defendants and the
4 Class Member, in consultation with Class Counsel and Defense Counsel within ten (10) days, with
5 the burden of proof on such Class Member by a preponderance of the evidence. Absent evidence
6 rebutting Defendants' records, Defendants' records will be presumed determinative. Any disputes
7 not otherwise resolved by the Settlement Administrator and Class Counsel and Defense Counsel
8 concerning administration of the Settlement may be resolved by the Court or such Class Member
9 may elect to exclude themselves from the Settlement as set forth in Section 3.04(c) below. The date
10 of the postmark on the return envelope or receipt by the dedicated email address for the Settlement
11 Administrator shall be the exclusive means used to determine whether a Class Member has timely
12 disputed the calculation or application of the formula for determining Individual Settlement
13 Payments. Class Members who do not timely dispute the data used to calculate his or her claim as
14 reflected on the Notice with sufficient corroboration will be deemed to have agreed to the data and
15 method of calculation.

16 **c. Request for Exclusion from Class.** Each Class Member will have the opportunity
17 to exclude themselves (a/k/a Opt-Out) from the Class. Any Class Member who elects to Opt-Out of
18 the Class will not be entitled to any recovery from this Settlement; will not be bound by the
19 Settlement or any release of claims by Defendants in the Action; will not have any right to object,
20 appeal, or comment on the Settlement; and will not receive any release of claims or other benefits
21 under this Settlement (other than a pro-rata share of PAGA Penalties if eligible). The Notice shall
22 provide that Class Members who wish to exclude themselves from the Class must submit a written
23 Opt-Out Request to the Settlement Administrator (via mail or email to a dedicated email address)
24 requesting exclusion from the Class on or before 5:00 p.m. PST sixty (60) days from the date of the
25 Notice (the "**Objection/Exclusion Deadline Date**") and include a sample Opt-Out Request form as
26 part of the Notice Packet; *provided, however*, any Class Member who timely submits a written
27 dispute pursuant to Section 3.04(b) above, will have their Objection/Exclusion Deadline Date
28 extended for ten (10) days. Such Opt-Out Request must contain the name, address, email address,

1 telephone number, and last four digits of the Social Security number of the person requesting
2 exclusion, must be signed by the Class Member requesting exclusion, must be returned to the
3 Settlement Administrator at a specified address or dedicated email address, and must be postmarked
4 or received at a specified email address on or before the Objection/Exclusion Deadline Date (unless
5 extended by this Agreement). The postmark on the return mailing envelope or receipt at the dedicated
6 email address shall be the exclusive means used to determine whether an Opt-Out Request has been
7 timely submitted. Class Members who fail to submit a valid and timely Opt-Out Request on or before
8 5:00 p.m. PST on the Objection/Exclusion Deadline Date shall be bound by all terms of the
9 Settlement and any Final Order entered in this Class Action if the Settlement is approved by the
10 Court, including a full and final release of all Released Claims set forth in this Agreement. A Class
11 Member who is also a PAGA Represented Employee and timely submits an Opt-Out Request will
12 still be bound by the PAGA Release set forth in Section 5.06 below and receive a pro-rata share of
13 PAGA Penalties if approved by the Court in the Final Order. Verified Settlement Class Members
14 who do not negotiate their Individual Settlement Payment will still be bound by the Settlement. No
15 later than five (5) days after the Objection/Exclusion Deadline Date, the Settlement Administrator
16 shall provide Defense Counsel and Class Counsel with a complete list of all Class Members who
17 have timely and properly submitted an Opt-Out Request from the Settlement. By entering into this
18 Agreement, each Lead Plaintiff agrees that he is not requesting and will not be requesting exclusion
19 from the Class.

20 **d. Objections to Settlement.** The Notice shall provide that Verified Class Members
21 who wish to object to the Settlement must submit a written objection to the Settlement Administrator
22 on or before 5:00 p.m. PST on the Objection/Exclusion Deadline Date with a sample objection form
23 included in the Notice Packet. All objections must include the Verified Class Member's name,
24 address, email address, telephone number, and last four digits of his or her Social Security number
25 and must state the factual and legal basis on which the objections are asserted and whether the
26 Verified Class Member intends to appear at the Final Approval Hearing. The Parties will be
27 permitted to respond in writing to such objections before the Final Approval Hearing or within the
28 time period set by the Court. Absent good cause found by the Court, Verified Class Members who

1 fail to make objections in the manner specified above shall be deemed to have waived any objections
2 and shall be foreclosed from making any objections (whether by appeal or otherwise) to the
3 Settlement. Class Members who submit a valid and timely Opt-Out Request may not object to the
4 Settlement.

5 **e. No Solicitation of Settlement Objections or Exclusions.** The Parties agree to use
6 their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their
7 counsel, directly or indirectly, seek to solicit or otherwise encourage Class Members to submit oral
8 or written objections to the Settlement or Opt-Out Requests, appeal from the Court's Final Order or
9 seek to vacate or set aside the Final Order. Further, at no time shall any of the Parties or their counsel
10 discourage any Class Members from participating in the Settlement. Finally, Plaintiffs' counsel
11 agrees not to represent any Class Members who Opt-Out of the Settlement provided this Agreement
12 has not been rescinded or denied Preliminary or Final Approval by the Court.

13 **f. Parties' Right to Void Agreement; Proportionality Increase**

14 (i) If more than twenty (20) Class Members submit timely and valid Opt-Out Requests
15 as described in Section 3.04(c) above and thus become Non-Verified Class Members, Defendants
16 will have the right, but not the obligation, to revoke and void this Agreement at Defendants' sole
17 discretion. Defendants must exercise this right to revoke this Agreement within ten (10) days of
18 being informed by the Settlement Administrator that more than twenty (20) of the Class Members
19 timely submitted Opt-Out Requests of this Agreement. If Defendants exercise this right to void the
20 Agreement, then the Parties and their respective counsel will have no further obligations under the
21 Agreement.

22 (ii) Defendants represent and warrant that the Class includes 5,541 Class Members.
23 If, upon Preliminary Approval, the Class List indicates that the number of persons in the Class
24 exceeds the number in the preceding sentence by more than ten percent (10%), Plaintiffs may revoke
25 the Settlement unless Defendants agree to pay a proportionate increase of the Gross Settlement
26 Amount based on the total increase of Class Members greater than the 10% allowance. If Plaintiffs
27 exercise this right to void the Agreement, then the Parties and their respective counsel will have no
28 further obligations under the Agreement.

1 **Section 3.05 Final Approval Hearing**

2 A Final Approval Hearing shall be held before the Court on the date set forth in the Order for
3 Preliminary Approval and Notice Packet. At the Final Approval Hearing, the Court shall (1) review
4 this Agreement and determine whether the Court should give it final approval, (2) set the amounts of
5 the Enhancement Awards, PAGA Penalties and Class Counsel award of attorneys' fees and
6 reimbursement of costs, and (3) consider any timely objections made pursuant to Section 3.04(d)
7 above and all responses by the Parties to such objections. At the Final Approval Hearing, the Parties
8 shall ask the Court to give final approval to this Settlement and Agreement and shall submit to the
9 Court a proposed Final Order, which the Parties shall jointly agree upon in advance.

10 After entry of the Final Order, the Court shall have continuing jurisdiction with respect to the
11 interpretation, implementation, and enforcement of the terms of this Agreement and all orders and
12 judgments entered in connection with this Agreement, and the Parties and their counsel submit to the
13 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement
14 embodied in this Agreement, and all orders and judgments entered in connection with this
15 Agreement.

16 **a. Waiver of Right to Appeal**

17 Provided that the Final Order is consistent with the terms and conditions of this Agreement,
18 Lead Plaintiffs, Defendants, as well as any Verified Settlement Class Members who did not timely
19 object to the Settlement and appear at the Final Approval Hearing, hereby waive any and all rights
20 to appeal from the Final Order, including all rights to any post-judgment proceeding and appellate
21 proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and any
22 extraordinary writ, and the Final Order therefore will become final and non-appealable at the time it
23 is entered. This waiver does not include any waiver of the right to oppose any appeal, appellate
24 proceedings, or post-judgment proceedings, nor does this waiver preclude Plaintiffs and/or Class
25 Counsel from appealing any award of an Enhancement Award or Class Counsels' attorneys' fees and
26 costs of suit.

27 **b. Vacating, Reversal, or Material Modification on Appeal or Review**

28 If, after a notice of appeal or a petition for a writ of certiorari or any other motion, petition,

1 or application, the reviewing court vacates, reverses, or modifies the Final Order such that there is a
2 material modification to the Settlement and Agreement, and that court's decision is not completely
3 reversed and the Final Order is not fully affirmed on review by a higher court, then Lead Plaintiffs
4 and Defendants will each have the right to void the Settlement and Agreement, which the Parties
5 must do by giving written notice to the other Parties, the reviewing court, and the Court not later than
6 fourteen (14) days after the reviewing court's decision vacating, reversing, or materially modifying
7 the Final Order becomes final. A vacation, reversal, or modification of the Court's award of an
8 Enhancement or Class Counsel's fees or costs will not constitute a vacation, reversal, or material
9 modification of the Final Order within the meaning of this paragraph, provided that Defendants'
10 obligation to make payments remains limited as set forth in this Agreement.

11 **c. Rendering the Settlement Null and Void**

12 In the event: (i) Plaintiffs or Defendants elect to void this Agreement, for a basis provided
13 in this Agreement; (ii) the Court does not enter any order specified in this Agreement; (iii) the Court
14 does not finally approve the Settlement as provided in this Agreement; (iv) the Court does not enter
15 a Final Order as provided in this Agreement which becomes final as a result of the occurrence of the
16 Effective Date; or (v) the Settlement does not become final for any other reason, this Settlement
17 Agreement shall be null and void and any order or judgment entered by the Court in furtherance of
18 this Settlement shall be treated as void, the Parties and any funds to be paid under this Settlement
19 shall be returned to their respective positions at the time of the execution of this Settlement
20 Agreement, and the Parties and their respective counsel shall proceed in all respects as if this
21 Settlement Agreement had not been executed, except that any fees already incurred by the Settlement
22 Administrator shall be split between the Parties.

23 **d. Administration of the Settlement with Appeal Pending**

24 In the event an appeal is filed from the Court's Final Order, or any other appellate review is
25 sought prior to the Effective Date, administration of the Settlement shall be stayed pending final
26 resolution of the appeal or other appellate review.

27 **Section 3.06 Settlement Payment Procedures**

28 **a. Gross Settlement Fund**

1 The Gross Settlement Fund includes the following: (i) the Individual Settlement Payments to
2 the Verified Class Members; (ii) the fees awarded to Class Counsel; (iii) reimbursement of actual
3 documented costs incurred by Class Counsel; (iv) Enhancement Awards; (v) Settlement
4 Administration expenses; and (vi) PAGA Penalties. The Parties stipulate for settlement purposes
5 that Defendants' classification of the Class as "direct sellers" for payroll tax purposes was not
6 improper, and thus, Defendants will have no additional payroll tax contribution obligations to federal
7 or state taxing authorities under this Settlement.

8 **b. Attorneys' Fees and Costs**

9 Class Counsel may request that the Court approve, and Defendants will not oppose, an award
10 of up to thirty-three and 33/100ths percent (33.33%) of the combined amount of the Gross Settlement
11 Fund and total advances released by Defendants against Class Members in attorneys' fees and up to
12 Twenty-Five Thousand Dollars (\$25,000.00) in documented litigation costs ("**Fees and Costs**
13 **Award**"). The Fees and Costs Award will cover: all work performed and all fees and costs incurred
14 to date and all work to be performed and all fees and costs to be incurred in connection with the
15 approval by the Court of this Settlement, the administration of the Settlement, and obtaining final
16 approval of this Settlement and entry of judgment. The Settlement shall not be contingent upon the
17 Court awarding Class Counsel any particular amount for attorneys' fees and costs.

18 **c. Enhancement Awards**

19 Class Counsel may request that the Court approve an Enhancement Award to each Lead
20 Plaintiff, the PAGA Plaintiff and the Cooperating Class Members provided they do not submit an
21 Opt-Out Request to the Settlement. Each Lead Plaintiff, the PAGA Plaintiff and the Cooperating
22 Class Members will also be entitled to receive an Individual Settlement Payment pursuant to this
23 Agreement in addition to this Enhancement Award. The Settlement shall not be contingent upon the
24 Court awarding any particular amount for the Enhancement Awards.

25 **d. Settlement Administration Costs**

26 The Settlement Administration costs shall be paid out of the Gross Settlement Fund and shall
27 not constitute payment to any Verified Settlement Class Members. The amount of the Settlement
28 Administration costs shall be disclosed to the Court, Class Counsel, and Defense Counsel prior to

1 the Final Approval Hearing.

2 **e. PAGA Penalties**

3 The Parties agree that PAGA Penalties of two percent (2%) of the Gross Settlement Amount
4 is a fair and reasonable apportionment, but subject to whatever allocation is approved by the Court.
5 The portion of PAGA Penalties payable to the PAGA Represented Employees shall be distributed to
6 the PAGA Represented Employees employed during the PAGA Period on a pro-rata basis. The
7 Settlement Administrator may pay the PAGA Represented Employees their share of the PAGA
8 Penalties with the Individual Settlement Payment, noted separately.

9 **f. Net Settlement Amount**

10 The Net Settlement Amount shall be used to fund Individual Settlement Payments. If the
11 maximum amount allocated to (i) the fees awarded to Class Counsel; (ii) actual documented costs
12 incurred by Class Counsel; (iii) the Enhancement Awards; (iv) Settlement Administration expenses;
13 and/or (v) the PAGA Penalties, is reduced by the Court at the Final Approval Hearing, such amounts
14 shall be added to the Net Settlement Amount.

15 **g. Payment of Individual Settlement Payments to Verified Settlement Class
16 Members**

17 The Parties agree that the Net Settlement Amount shall be divided between all Verified
18 Settlement Class Members based on a weighted points system with points earned during the Class
19 Period for the following activity occurring in California as follows:

<u>Points Category</u>	<u>Points Awarded</u>
Work Weeks in a door-to-door sales position (including managers); plus	1 point per
Completed alarm installations during the Class Period recorded under each Class Member's unique badge ID (excluding team overrides); plus	2 points per
Completed solar installations recorded under each Class Member's unique badge ID (excluding team overrides) during the Class Period	3 points per

27
28 For the avoidance of doubt, points are not awarded for production with third-party dealers,

1 non-California activity or activity not recorded within Defendants’ records or systems under a Class
2 Member’s unique ID.

3 The maximum amount that each Verified Settlement Class Member is entitled to receive from
4 the Net Settlement Amount is determined by multiplying the Net Settlement Amount by a ratio that
5 is determined by dividing a Verified Settlement Class Member’s total points earned during the Class
6 Period in California by the total number of points earned by all Verified Settlement Class Members
7 during the Class Period in California as expressed in the following formula:

$$\begin{array}{rcccl}
 \text{Individual} & & \text{Net} & & \text{Verified Settlement Class Member’s} \\
 \text{Settlement} & = & \text{Settlement} & \times & \text{Total Points} \\
 \text{Payment} & & \text{Amount} & & \text{Total Number of Points of} \\
 & & & & \text{Verified Settlement Class Members}
 \end{array}$$

11 **h. Tax Treatment of Individual Settlement Payments**

12 The Parties agree that 25% of each Individual Settlement Payment will be considered
13 unreimbursed business expenses and 25% will be considered penalties, all of which will be reported
14 to each Settlement Class Member via an IRS Form 1099 by the Settlement Administrator. The
15 Parties agree that the remaining 50% of each Individual Settlement Payment will be considered
16 compensation and also will be reported to each Settlement Class Member and reported on IRS Form
17 1099. Because the Parties stipulate for settlement purposes that Defendants’ classification of the
18 Class as “direct sellers” for payroll tax purposes was not improper, there will be no payroll tax
19 withholdings or remittance to federal or state taxing authorities under the Settlement.

20 **i. Funding Deadlines**

21 Defendants shall pay the Gross Settlement Fund into a Qualified Settlement Fund (“QSF”)
22 to be established by the Settlement Administrator in installments as follows:

- 23 (i) 33.34% within ten (10) days after the Effective Date, but no later than November 30, 2022;
- 24 (ii) 33.33% within ten (10) days after the Effective Date, but no earlier than January 6, 2023;
- 25 and
- 26 (iii) 33.33% within ten (10) days after the Effective Date, but no earlier than January 5, 2024.

27 **j. Payment Terms**

28 Each installment of the Gross Settlement Fund shall be made by Defendants to the QSF

1 established by the Settlement Administrator. If any installment payment is not timely made,
2 Plaintiffs' Counsel or the Settlement Administrator shall provide written notice to Defendants with
3 five (5) days' notice to cure the missed installment payment. No interest will accrue on the unpaid
4 installments of the Gross Settlement Fund; *provided, however*, upon an uncured monetary default
5 under the Settlement Agreement by Defendants, all unpaid installments of the Gross Settlement Fund
6 shall become due and payable by acceleration within ten (10) days and interest shall thereafter accrue
7 on the unpaid portion of the Gross Settlement Fund at the rate of 7% per annum.

8 **k. Proportional Payments from the Gross Settlement Fund**

9 As soon as reasonably practical after the Effective Date, the Settlement Administrator shall
10 pay (i) the Individual Settlement Payments to the Verified Class Members; (ii) the fees awarded to
11 Class Counsel; (iii) reimbursement of actual documented costs incurred by Class Counsel; (iv) the
12 Enhancement Awards; (v) Settlement Administration expenses; and (vi) payment of the PAGA
13 Penalties, proportionally as installments of the Gross Settlement Fund are received. If any
14 installment is projected to be paid within thirty (30) days of a prior installment, the Settlement
15 Administrator may defer distributions until both installments are received.

16 **l. Payment Methods**

17 The Settlement Administrator shall establish an option for Verified Settlement Class
18 Members to receive Individual Settlement Payments via ACH, direct deposit, or digital payment.
19 Unless a Class Member elects an alternative method of payment, payments from the Gross Settlement
20 Fund shall be by check.

21 Any payments made by check shall be good for no less than 120 days. Within seventy-five
22 (75) days after issuance of a check, the Settlement Administrator shall mail a postcard reminder or
23 for those with valid email addresses, an email reminder, to all Verified Class Members who have not
24 cashed their Individual Settlement checks and provide a report to Class Counsel and Defense Counsel
25 of the names, contact information, check amounts and expiration dates of all such uncashed checks.
26 The Settlement Administrator shall promptly attempt to determine a correct mailing address and
27 email address by use of skip-tracing or reverse phone look-up for any Verified Class Member with
28 an uncashed check and reissue expired checks upon request prior the Check Cashing Deadline in

1 subsection (m) below.

2 **m. Uncashed Checks**

3 To the extent that any checks from the Gross Settlement Fund are uncashed 130 days after
4 the last installment of the Individual Settlement Payments are issued from the QSF (the “**Check**
5 **Cashing Deadline**”), the unclaimed funds shall be distributed to the Controller of the State of
6 California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.*
7 for the benefit of those Verified Settlement Class Members who did not cash their checks until such
8 time that they claim their property. The Parties agree that this disposition results in no “unpaid
9 residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be
10 paid out to Verified Settlement Class Members, whether or not they all cash their Settlement checks.

11 **n. No Claims Resulting from Payments**

12 No person shall have any claim of any kind whatsoever against any of the Parties, Defense
13 Counsel, Class Counsel, any Class Member, or the Settlement Administrator, based on the
14 distribution of Individual Settlement Payments made in accordance with this Agreement.

15 **o. No Effect on Employee Benefit Plans**

16 The payment to any Class Member as provided for in this Agreement (including, without
17 limitation, any Individual Settlement Payment and any Enhancement Award paid to Lead Plaintiffs)
18 and the releases given by Verified Settlement Class Members, is not and shall not be deemed to
19 constitute an addition to, a modification of, a deduction of or a change in any previously credited
20 hours of service, compensation and/or wages under any collective bargaining agreement, employee
21 benefit plan, employment policy, or stock option plan of or sponsored by Defendants or any of their
22 present or former parent corporations or affiliates or any jointly trusteed benefit plans.

23 **p. Notice of the Order and Judgment Granting Final Approval**

24 The Parties shall request that pursuant to California Rule of Court 3.771(b), the Court approve
25 that Notice of Entry of Judgment and the Final Order will be posted by the Settlement Administrator
26 on its website within three (3) days of Entry of the Final Order and that Notice of Entry of the Final
27 Order need not be additionally mailed to the Settlement Class.

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ARTICLE IV

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 4.01: No Admission

Defendants vigorously dispute the allegations in the Action. This Agreement is entered into solely for the purpose of compromising claims that are highly disputed by the Parties. Nothing in this Agreement is intended to be or will be construed as an admission of liability or wrongdoing by Defendants.

Section 4.02: Non-Evidentiary Use

Whether or not the Effective Date occurs, neither this Agreement nor any of its terms will be:
(a) construed as, offered as, admitted as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties (defined below), including, but not limited to, evidence of a presumption, concession, indication, or admission by the Defendants or Released Parties (defined below) of any liability, fault, wrongdoing, omission, concession, or damage;
(b) disclosed, referred to, or offered in evidence against the Defendants or Released Parties (defined below) in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendants to establish that a Class Member has resolved any of his/her claims released through this Agreement; (c) but may be used as evidence in any subsequent action for breach or enforcement of this Agreement.

ARTICLE V

RELEASES

Section 5.01: Class Release By Class Members.

Any Verified Settlement Class Member, including each Lead Plaintiff, shall be bound by this Agreement and shall be deemed to have fully and finally released all claims that were set forth, or could have been set forth based on the facts alleged, in the Operative Complaint. If a Non-Verified Class Member receives an Individual Settlement Payment check (other than PAGA Penalties paid to a Class Member who elects to Opt-Out of the Settlement) notwithstanding his or her submission of an Opt-Out Request, such person shall be deemed a Verified Class Member and shall be bound by

1 the terms of this Agreement if such person cashes the Individual Settlement Payment check.

2 Upon the Court's Final Order approving this Settlement, and except as to such rights or claims
3 as may be created by this Agreement, the Verified Settlement Class Members fully and finally release
4 and discharge each Defendant and each Defendant's past, present, and future parent companies,
5 subsidiaries, divisions, related or affiliated companies, members, managers, shareholders, officers,
6 directors, employees, agents, attorneys, insurers, successors and assigns, owners, and each of them
7 (collectively, the "**Released Parties**"), from any and all charges, complaints, claims, demands, suits,
8 liabilities, causes of action of whatever kind or nature, debts, obligations, wages, penalties (including
9 penalties under the California Labor Code's Private Attorneys General Act of 2004, as amended in
10 August 2004, California Labor Code sections 2698, 2699.3, and 2699.5), damages, interest,
11 expenses, attorneys' fees, costs, restitution and equitable relief, reasonably arising out of the same
12 set of operative facts and theories alleged in the Operative Complaint, or which could have been
13 alleged or asserted based on the facts alleged in the Operative Complaint, including any and all claims
14 for: (i) "independent contractor" misclassification; (ii) "direct seller" misclassification; (iii) failure
15 to pay training time and/or non-sales activity (including meetings); (iv) failure to pay overtime;
16 (v) failure to provide meal and rest breaks; (vi) failure to reimburse business expenses; (vii) failure
17 to pay all commissions due; (viii) failure to pay wages and unlawful wage forfeitures; (ix) failure to
18 provide accurate or complete itemized wage statements; (x) failure to timely pay final wages; (xi)
19 claims based on advances (including retention and/or relocation advances); (xii) claims based on
20 unlawful contractual provisions, including mutual attorneys' fees clauses and post-termination
21 employee non-solicitation clauses; (xiii) failure to provide a written contract outlining the current
22 method of calculating and/or paying commissions and/or a signed copy thereof; (xiv) failure to
23 properly maintain accurate employment records; (xv) failure to maintain a copy of all documents
24 signed by sales representatives and/or to provide a copy of such documents upon request;
25 (xvi) misleading advertisements, solicitations (*see* Labor Code §§ 970 and 976), and/or
26 communications designed to mislead prospective sales representatives; (xvii) violation of Business
27 and Professions Code § 17200; and (xviii) recovery of penalties under the California Labor Code
28 Private Attorneys General Act of 2004 (collectively, the "**Released Claims**"). The Released Claims

1 include claims meeting the above definition under any and all applicable California or federal laws,
2 statutes, regulations, and Wage Orders arising out of the same set of operative facts and theories in
3 the Operative Complaint. It is agreed that because the Class Members are so numerous, it is
4 impossible or impractical to have each Class Member execute this Agreement. The Notice will
5 advise all Class Members of the binding nature of the releases.

6 **Section 5.02: General Release by PAGA Plaintiff and Lead Plaintiffs.**

7 Upon the Court's Final Order approving this Settlement, and except as to such rights or claims
8 as may be created by this Agreement, the PAGA Plaintiff and each Lead Plaintiff agree to fully
9 release and forever discharge the Released Parties from any and all actions, causes of action, claims,
10 charges, complaints, obligations, promises, agreements, controversies, damages, suits, rights,
11 demands, liens, costs, losses, debts, penalties, fines, wages, liquidated damages, restitutionary
12 amounts, attorneys' fees and costs, interest, punitive damages and expenses (including, without
13 limitation, back wages, penalties, liquidated damages, and attorneys' fees and costs actually incurred)
14 or liabilities of whatever kind or nature, whether known or unknown, which Plaintiffs have ever had,
15 or hereafter may claim to have, arising on or before the date that they sign this Settlement Agreement,
16 including, without limitation, any claims for alleged violations of any contracts, express or implied
17 (including but not limited to any contract of employment); any contract or covenant of good faith or
18 fair dealing (express or implied); any tort, including, without limitation, negligence, fraud,
19 misrepresentation under California Labor Code § 970, negligent infliction of emotional distress,
20 intentional infliction of emotional distress, slander and defamation; wrongful or constructive
21 termination; any "retaliation" claims; any claims relating to any breach of public policy; any legal
22 restrictions on Defendants' right to discharge employees or refuse to hire applicants; and any federal,
23 state, or other governmental statute, regulation, order or ordinance, including, without limitation: (1)
24 Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination
25 or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981
26 (discrimination); (3) sections 503 and 504 of the Rehabilitation Act of 1973 (handicap
27 discrimination); (4) Equal Pay Act, 29 U.S.C. § 206(d) (equal pay); (5) Americans with Disabilities
28 Act, 42 U.S.C. § 12100 et seq. (disability discrimination); (6) Family and Medical Leave Act, 29

1 U.S.C. § 2601 et seq. (family/medical leave); (7) California Fair Employment and Housing Act, Cal.
2 Gov't Code § 12900 et seq. (discrimination or harassment in employment and/or housing, including
3 discrimination or harassment based on race, religious creed, color, national origin, ancestry,
4 disability, marital status, sex (including pregnancy), sexual orientation, or age, including, without
5 limitation, retaliation for reporting discrimination or harassment); (8) California Family Rights Act,
6 Cal. Gov't Code § 12945.1 et seq. (family/medical leave); (9) California Labor Code, including but
7 not limited to California Labor Code § 2698 et seq. (PAGA), or any Industrial Welfare Commission
8 Wage Order; (10) the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; (11) Executive Order 11246
9 (race, color, religion, sex, and national origin discrimination or harassment); (12) Executive Order
10 11141 (age discrimination); (13) California Business and Professions Code Section 17200, et. seq.,
11 and (14) Employee Retirement Income Security Act, 29 U.S.C. § 1000 et seq. (employee benefits).

12 Each Lead Plaintiff and the PAGA Plaintiff irrevocably and unconditionally waives, releases,
13 and discharges the Released Parties from any and all claims, whether known or unknown, from the
14 beginning of time through the date of Employee's execution of this Agreement arising under the Age
15 Discrimination in Employment Act ("ADEA"), as amended, and its implementing regulations. By
16 signing this Agreement, each Lead Plaintiff and the PAGA Plaintiff acknowledge and confirm that:

- 17 (a) each has read this Agreement in its entirety and understands all of its terms;
- 18 (b) each has been advised in writing of the right to consult with an attorney of his choosing
19 and has consulted with such counsel as he believed was necessary before signing this Agreement;
- 20 (c) each knowingly, freely, and voluntarily agrees to all of the terms and conditions in this
21 Agreement including, without limitation, the waiver, release, and covenants;
- 22 (d) each is executing this Agreement, including the waiver and release, in exchange for good
23 and valuable consideration in addition to anything of value to which he is otherwise entitled;
- 24 (e) each was given at least twenty-one (21) days to consider the terms of this Agreement and
25 consult with his attorney, although he may sign it at any time;
- 26 (f) each understands that he has seven (7) days after signing this Agreement to revoke this
27 Agreement (the "Revocation Period"); and
- 28 (g) if he revokes the Agreement, no payment shall be made.

1 **Section 5.03: PAGA Plaintiff and Lead Plaintiffs' 1542 Waiver**

2 The PAGA Plaintiff and each Lead Plaintiff expressly waive any right or claim of right to
3 assert hereafter that any claim, demand, obligation, and/or cause of action, existing at the time of the
4 execution of this Agreement, has, through ignorance, oversight, or error, been omitted from the terms
5 of this Agreement. The PAGA Plaintiff and each Lead Plaintiff agree there is a risk that each and
6 every injury he may have suffered by reason of the Released Parties' relationship with him might not
7 now be known, and there is further risk that said injuries, whether known or unknown at the date of
8 this Agreement, might possibly become progressively worse, and that as a result thereof further
9 damages may be sustained by each of them. Nevertheless, the PAGA Plaintiff and each Lead
10 Plaintiff desires to forever and fully release and discharge the Released Parties, and each of them,
11 and understands that by the execution of this Agreement no further claims for any such injuries that
12 existed at the time of the execution of this Agreement may ever be asserted by each of them. The
13 PAGA Plaintiff and each Lead Plaintiff expressly waive and relinquish all rights and benefits
14 afforded by section 1542 of the Civil Code of the State of California and does so understanding and
15 acknowledging the significance of such specific waiver of section 1542. Specifically, the PAGA
16 Plaintiff and each Lead Plaintiff waive their respective rights under Section 1542 of the Civil Code,
17 which states:

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

22 **Section 5.04: Release by Defendants for the PAGA Plaintiff, Lead Plaintiffs,**
23 **Cooperating Class Members and Verified Settlement Class Members**

24 Upon Final Approval of the Settlement, each Defendant fully release and forever discharges
25 the PAGA Plaintiff and Lead Plaintiffs, Cooperating Class Members and all Verified Settlement
26 Class Members who separated from employment during the Class Period from any and all actions,
27 causes of action, claims, charges, complaints, obligations, promises, agreements, controversies,
28 damages, suits, rights, demands, liens, costs, losses, debts, penalties, fines, wages, liquidated
damages, restitutionary amounts, attorneys' fees and costs, interest, punitive damages and expenses

1 or liabilities of whatever kind or nature which each Defendant have ever had, or hereafter may claim
2 to have, arising out of or related to (a) the repayment of claimed outstanding or unearned wage
3 advances given by Defendants; and (b) violation of any post-termination employee non-solicitation
4 restrictions which occurred on or before Preliminary Approval of the Settlement. Excluded from the
5 release of claims for unpaid advances from Defendants are those Class Members currently engaged
6 in litigation or arbitration with any of the Defendants over the repayment of such advances.¹

7 Additionally, each Defendant fully releases and forever discharges the PAGA Plaintiff, the
8 Lead Plaintiffs and Cooperating Class Members who do not Opt-Out, from any and all actions, causes
9 of action, claims, charges, complaints, obligations, promises, agreements, controversies, damages,
10 suits, rights, demands, liens, costs, losses, debts, penalties, fines, wages, liquidated damages,
11 restitutionary amounts, attorneys' fees and costs, interest, punitive damages and expenses or
12 liabilities of whatever kind or nature, whether known or unknown, which each Defendant have ever
13 had, or hereafter may claim to have, arising on or before the date that they sign this Agreement,
14 arising out of the Action or their employment with Defendants.

15 **Section 5.05: PAGA Release**

16 Upon the Court's Final Order approving this Settlement, the PAGA Plaintiff and all PAGA
17 Represented Employees, for themselves and the LWDA, release the Released Parties from any and
18 all claims under PAGA which arose during the PAGA Period and were asserted in the Operative
19 Complaint and/or reasonably could have been asserted in the Action based upon the facts and theories
20 alleged in the Operative Complaint.

21 **Section 5.06: Inapplicability of California Labor Code Section 206.5**

22 The Verified Settlement Class Members, including, without limitation, the Lead Plaintiffs,
23 shall be deemed to have acknowledged and agreed that their claims for wages and/or penalties and/or
24 any other recovery solely in connection with this Action are disputed, and that the payments to them
25 set forth in this Agreement constitute payment of all sums allegedly due to them solely from the
26

27 ¹ Currently known to be Bega, Jeremy; Celestine, Terence; Clogher, Tyler; Deaunovich, Michael;
28 Griffin, Matthew; Holt, Justin; Jesclard, Terrance; Katilus, Briant; Neil, Ian; Proebstle, Jeffrey;
Schoendorf, Joseph; Tripp, Jared; Winton, JonPaul; Barsoumian, John; and Kane, KeKoa.

1 claims alleged in the Action. The Verified Settlement Class Members, including, without limitation,
2 the Lead Plaintiffs, shall be deemed to have acknowledged and agreed that California Labor Code
3 section 206.5 does not apply to any such payments.

4 **Section 5.07: No Third-Party Beneficiaries of the Release**

5 The releases given by Plaintiffs and the Class are intended for the sole benefit of Defendants
6 and the Released Parties and shall not be construed as conferring any rights to any third parties,
7 including any other third-party dealers of Defendants.

8 **Section 5.08: Attorneys' Fees or Costs**

9 Except for the attorneys' fees and costs set forth in this Agreement, the Parties agree to bear
10 their own attorneys' fees and costs related to this Action in instituting this Settlement; *provided*,
11 *however*, if action at law or in equity is necessary to enforce or interpret the terms of this Agreement,
12 the Court shall have discretion to award the prevailing party reasonable attorneys' fees, costs and
13 necessary disbursements in addition to any other relief to which such party may be entitled, in
14 interpreting or enforcing the Agreement.

15 **ARTICLE VI**

16 **MISCELLANEOUS**

17 **Section 6.01: Amendments, Modification or Rescission**

18 The terms and provisions of this Agreement may be amended or modified only by an express
19 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.
20 In the event that the Court requires that certain changes be made to this Agreement or to the Class
21 Notice as a condition of preliminary approval, then a signed stipulation by counsel for the Parties
22 shall be sufficient to amend or modify this Agreement or the Class Notice without additional
23 signatures from the Parties. In the event any party is entitled to and elects to revoke or rescind this
24 Agreement, such revocation or rescission must be in writing.

25 **Section 6.02: Assignment**

26 None of the rights, commitments, or obligations recognized under this Agreement may be
27 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
28 consent of each other Party and its or their respective counsel. The representations, warranties,

1 covenants, and agreements contained in this Agreement are for the sole benefit of the Parties, the
2 Class Members, and the Released Parties, and shall not be construed to confer any right or to avail
3 any remedy to any other person or entity. This Agreement shall be binding upon the Parties and their
4 respective successors and assigns.

5 **Section 6.03: Entire Agreement**

6 This Agreement, including, without limitation, the Exhibits referred to herein, which form an
7 integral part hereof, contains the entire understanding of the Parties hereto with respect to the subject
8 matter contained herein. There are no restrictions, promises, representations, warranties, covenants,
9 or undertakings governing the subject matter of this Agreement other than those expressly set forth
10 or referred to herein. Upon its full execution, this Agreement supersedes all prior agreements and
11 understandings among the Parties hereto with respect to the Settlement, including, without limitation,
12 correspondence between Class Counsel and Defense Counsel, the Memorandum of Settlement and
13 drafts of prior agreements or proposals.

14 **Section 6.04: Waiver of Compliance**

15 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
16 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the
17 extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
18 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
19 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
20 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

21 **Section 6.05: Counterparts and Fax/PDF Signatures**

22 This Agreement, and any amendments hereto, may be executed in any number of counterparts
23 and any Party and/or their respective counsel hereto may execute any such counterpart, each of which
24 when executed and delivered shall be deemed to be an original and all of which counterparts taken
25 together shall constitute one instrument. A fax, electronic, DocuSign or PDF signature on this
26 Agreement shall be as valid as an original signature.

27 **Section 6.06: Meet and Confer Regarding Disputes**

28 If any dispute arises among the Parties or their respective counsel regarding the

1 implementation or interpretation of this Agreement, Class Counsel, and Defense Counsel shall meet
2 and confer in an attempt to resolve such dispute prior to submitting it to the Court.

3 **Section 6.07: Administration Costs**

4 The Parties agree to cooperate in the Settlement administration process and to make all
5 reasonable efforts to control and minimize the costs and expenses incurred in administration of the
6 Settlement.

7 **Section 6.08: Circular 230 Disclaimer**

8 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
9 “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER
10 THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES
11 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
12 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
13 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
14 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
15 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
16 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 C.F.R. PART 10,
17 AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
18 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
19 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
20 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
21 THE RECOMMENDATION OF ANY OTHER PARTY, OR ANY ATTORNEY OR
22 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON
23 ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
24 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON
25 THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY
26 OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
27 CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
28 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.

22 **Section 6.09: Privacy of Documents and Information**

23 The Lead Plaintiffs and their counsel agree that none of the documents and information
24 provided to them by Defendants shall be used for any purpose other than prosecution of this Action.

25 **Section 6.10: Exhibit and Headings**

26 The terms of this Agreement include the terms set forth in any attached Exhibit, which are
27 incorporated by this reference as though fully set forth in this Agreement. Any Exhibit to this
28 Agreement is an integral part of the Settlement. The descriptive headings of any paragraphs or

1 sections of this Agreement are inserted for convenience of reference only and do not constitute a part
2 of this Agreement.

3 **Section 6.11: Interim Stay of Proceedings**

4 The Parties agree that all orders and deadlines in the litigation are stayed except such
5 proceedings necessary to implement and complete the Settlement. In the event the Settlement is not
6 approved by the Court, the Parties shall return to the current status of the litigation.

7 **Section 6.12: Authorization to Enter Into Settlement Agreement**

8 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
9 whom they represent to negotiate this Agreement and to take all appropriate action required or
10 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
11 execute any other documents required to effectuate the terms of this Agreement. The Parties and
12 their counsel will cooperate with each other and use their best efforts to effect the implementation of
13 the Settlement. The person signing this Agreement on behalf of each Defendant represents and
14 warrants that he/she is authorized to sign this Agreement on behalf of such Defendant.

15 **Section 6.13: Cooperation and Drafting**

16 Each of the parties has cooperated in the drafting and preparation of this Agreement. Hence,
17 in any construction made to this Agreement, the same shall not be construed against any of the
18 Parties.

19 **Section 6.14: Invalidity of Any Provision**

20 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
21 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
22 as to define all provisions of this Agreement valid and enforceable.

23 **Section 6.15: Defense**

24 To the extent permitted by law, this Agreement may be pleaded as a full and complete defense
25 to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that
26 may be instituted, prosecuted, or attempted with respect to the Released Claims in any court,
27 arbitration, administrative proceeding, or other proceeding or forum.

28

1 **Section 6.16: Enforcement**

2 The Parties agree this Agreement shall be enforceable by the Court and the Court shall retain
3 exclusive and continuing jurisdiction of this Action over all Parties and Class Members to interpret
4 and enforce the terms, conditions, and obligations of the Settlement.

5 The Lead Plaintiffs, Verified Class Members, and each Defendant hereby submit to the
6 personal and exclusive jurisdiction of the Court for purposes of interpreting, implementing and
7 enforcing the Settlement embodied in this Agreement and all orders and judgments entered in
8 connection therewith.

9 IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this
10 Amended and Restated Joint Stipulation of Class Action Settlement between Plaintiffs and
11 Defendants as of the date(s) set forth below:

12
13 Plaintiffs' co-counsel:

14 Eric D. Norvell, Esq. (SBN: 309688)
15 enorvell@norvellfirm.com
16 **ERIC D. NORVELL, ATTORNEY, P.A.**
17 445 Marine View Avenue, Suite 300
18 Del Mar, California 92014
19 Telephone: (760) 452-0808
20 Facsimile: (760) 454-3802

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[signatures follow by electronic signature]

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Dated: 6/15/2022

KEEGAN & BAKER, LLP

By: DocuSigned by:
Jason Baker
DE7B2D4F96AD4EE...
Jason E. Baker, Esq.
Class Counsel

Dated: 6/15/2022

By: DocuSigned by:
Eric D. Norvell
CC9D8587559D470...
Eric D. Norvell
Class Counsel

Dated: 6/16/2022

By: DocuSigned by:
[Signature]
998D0F151E70423...
Brayden Hunter, Plaintiff

Dated: 6/15/2022

By: DocuSigned by:
Jeremy Hatch
896A47BA2494404...
Jeremy Hatch, Plaintiff

Dated: 6/16/2022

By: DocuSigned by:
Logan Shane Crabtree
C0D8BD90A542419...
Logan Shane Crabtree, Plaintiff

Dated: June 15, 2022

SIMPSON THACHER & BARTLETT LLP

By: [Signature]
Chet A. Kronenberg, Esq.
Defense Counsel

Dated: June 15, 2022

**VIVINT SMART HOMES, INC.,
SMART HOMES PROS, INC.,
VIVINT, INC., ARM SECURITY, INC.**

By: [Signature]
Name: Kent Hansen
Title: Vice President, Legal