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26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 27 **COUNTY OF SAN BERNARDINO**

28 JESUS H. ROBLES, on behalf of himself and all others similarly situated,

Plaintiff,

v.

WINSFORD II CORPORATION, a California Corporation; the WINSFORD COMPANY, LLC, a Delaware Limited Liability Company; and DOES 1 through 100, inclusive,

Defendants.

Case No. CIVDS1902903

[Honorable David S. Cohn, Dept. S26]

**JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE OF CLAIMS**

Date Action Filed: January 29, 2019  
 FAC Filed: May 26, 2020  
 Trial Date: None Set

**JOINT STIPULATION OF**

**CLASS ACTION AND PAGA SETTLEMENT AND RELEASE OF CLAIMS**

This Joint Stipulation of Class Action and PAGA Settlement and Release of Claims is entered into by and between Plaintiff, Jesus H. Robles Nahoul, represented by counsel as an individual on behalf of all Settlement Class Members and as a representative of the State of California Labor and Workforce Development Agency (“LWDA”), on the one hand, and Defendants Winsford II Corporation and Winsford Company, LLC, on the other hand.

**1. DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings:

**1.1. Action.** “Action” (or “Lawsuit”) means the civil lawsuit originally entitled *Jesus H. Robles v. Winsford II Corporation and Winsford Company, LLC*, filed on or about January 29, 2019, in the Superior Court of the State of California, County of San Bernardino, and designated as Case No. CIVDS1902903, and all claims alleged in the First Amended Complaint, filed on or Around April 5, 2020.

**1.2. Agreement.** “Agreement” means this Joint Stipulation of Class Action and PAGA Settlement and Release of Claims, including all attached Exhibits.

**1.3. Attorneys’ Fees and Costs Award.** “Attorneys’ Fees and Costs Award” means any attorneys’ fees and costs payment, subject to Court approval, from the Gross Settlement Amount for Class Counsel’s attorneys’ fees and costs associated with the litigation and resolution of the Action (excluding Settlement Administration Costs which are separately addressed and defined below).

**1.4. Class Counsel.** “Class Counsel” (or “Plaintiff’s Counsel”) means Mehrdad Bokhour of Bokhour Law Group, P.C. and Jonathan Melmed of Melmed Law Group P.C.

**1.5. Class Member.** “Class Member” means any individual who is or was employed as a non-exempt employee by Defendants or their predecessor or merged entities in the State of California at any time between January 29, 2015, through April 26, 2020.

**1.6. Settlement Notice.** “Settlement Notice” means the Notice of Class Action and PAGA Settlement, substantially in the form attached as **Exhibit A**.

1           **1.7. Class Representative Incentive Payment.** “Class Representative Incentive Payment”  
2 means any payment, subject to Court approval, to Plaintiff from the Gross Settlement Amount in  
3 recognition of his efforts and work in prosecuting the Action on behalf of Class Members.

4           **1.8. Court.** “Court” means the Superior Court of California, County of San Bernardino, the  
5 Honorable David S. Cohn presiding.

6           **1.9. Defendants.** “Defendants” means Winsford II Corporation and Winsford Company,  
7 LLC.

8           **1.10. Defendants’ Counsel.** “Defendants’ Counsel” means Seyfarth Shaw LLP. For purposes  
9 of providing any notices required under this Agreement, Defendants’ Counsel shall refer to Jeffrey A.  
10 Wortman and Simon L. Yang, Seyfarth Shaw LLP, 601 South Figueroa Street, Suite 3300, Los Angeles,  
11 California 90017.

12           **1.11. Effective Date.** “Effective Date” means the later of the day after (a) the expiration of the  
13 time for any notice of intention of a post-judgment motion to be filed following the final judgment  
14 entered in connection with a Final Approval Order, (b) if an objection has been made, the expiration of  
15 the time to appeal, or (c) if a post-judgment motion or appeal has been filed, the final judgment entered  
16 in connection with a Final Approval Order is no longer appealable and constitutes a “final judgment” for  
17 purposes of res judicata.

18           **1.12. Final Approval Order.** “Final Approval Order” means the order by the Court granting  
19 final approval of class action and PAGA settlement.

20           **1.13. Gross Settlement Amount.** “Gross Settlement Amount” means the maximum potential  
21 settlement amount—inclusive of any Attorneys’ Fees and Costs Award, Class Representative Incentive  
22 Payment, LWDA Payment, Settlement Administration Costs, Individual PAGA Payments, Individual  
23 Settlement Payments (including any employee shares of payroll taxes), or any other Court-required  
24 payments—that Defendants may be required to pay in connection with a Final Approval Order (with the  
25 sole exception of any employer’s shares of payroll taxes to be paid).

26           **1.14. Individual PAGA Payment.** “Individual PAGA Payment” means each PAGA Member’s  
27 potential payment from the PAGA Penalty Fund.  
28

1           **1.15. Individual Settlement Payment.** “Individual Settlement Payment” means each  
2 Settlement Class Member’s potential payment from the Net Settlement Amount.

3           **1.16. LWDA Payment.** “LWDA Payment” means any payment to the State of California  
4 Labor and Workforce Development Agency of 75% of the PAGA Penalty Fund.

5           **1.17. Net Settlement Amount.** “Net Settlement Amount” means the portion of the Gross  
6 Settlement Amount—a after deductions for any Court-approved Attorneys’ Fees and Costs Award,  
7 Class Representative Incentive Payment, PAGA Penalty Fund, Settlement Administration Costs, or any  
8 other Court-required payments—available for allocation to Settlement Class Members for employees’  
9 share of payroll taxes and Individual Settlement Payments.

10           **1.18. PAGA Member.** “PAGA Member” means any individual who is or was employed as a  
11 non-exempt employee by Defendants or their predecessor or merged entities in the State of California at  
12 any time between November 16, 2017, through April 26, 2020.

13           **1.19. PAGA Penalty Fund.** “PAGA Penalty Fund” means the portion of the Gross Settlement  
14 Amount allocated to PAGA penalties.

15           **1.20. Parties.** “Parties” means Plaintiff and Defendants.

16           **1.21. Plaintiff.** “Plaintiff” means Jesus H. Robles Nahoul.

17           **1.22. Preliminary Approval Order.** “Preliminary Approval Order” means the order by the  
18 Court granting preliminary approval of a class action and PAGA settlement pursuant to this Agreement.

19           **1.23. Released Party.** “Released Party” means any of Defendants’ present and former parents,  
20 subsidiaries, affiliates, and joint ventures, and all of Defendants’ shareholders, officers, directors,  
21 employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and  
22 any other persons acting by through, under or in concert with any of them (and including their respective  
23 pension, profit sharing, savings, health, and other employee benefit plans of any nature, the successors  
24 of such plans, and those plans’ respective current or former trustees and administrators, agents,  
25 employees, and fiduciaries).

26           **1.24. Settlement Administrator.** “Settlement Administrator” means the independent third-  
27 party mutually agreed on by the Parties, subject to Court approval, for settlement administration, which  
28 includes, but is not limited to, printing, distributing, or tracking Settlement Notices, processing any

1 required tax payments or reportings, providing any required tax forms, distributing the Attorneys' Fees  
2 and Costs Award, Individual PAGA Payments, Individual Settlement Payments, Class Representative  
3 Incentive Payment, and LWDA Payment, and providing necessary reports and declarations, as jointly  
4 requested by Class Counsel and Defendants' Counsel. The Parties agree that CPT Group, Inc. shall serve  
5 as the Settlement Administrator.

6 **1.25. Settlement Administration Costs.** "Settlement Administration Costs" means any  
7 payment, subject to Court approval, payable from the Gross Settlement Amount to the Settlement  
8 Administrator for administering the settlement.

9 **1.26. Settlement Class Member.** "Settlement Class Member" means any and all Class  
10 Members who do not exclude themselves from the settlement by complying with the procedures set  
11 forth in the Settlement Notice to opt out of the class action settlement and any and all PAGA Members.

## 12 **2. RECITALS**

13 **2.1. Initiation of Action.** On or about January 29, 2019, Plaintiff filed his original complaint  
14 initiating the Action on behalf of a putative class of "all individuals who are or were employed by  
15 Defendants and/or their predecessor or merged entities in the State of California [since January 29,  
16 2015] as hourly, non-exempt employees." The Action pursued class action claims for (i) failure to pay  
17 overtime, (ii) failure to provide rest breaks, (iii) failure to timely pay all wages owed, (iv) failure to  
18 timely pay wages upon termination, (iv) failure to provide accurate itemized wage statements, and (iv)  
19 unfair competition. The Action also pursued a seventh claim for penalties under the Labor Code Private  
20 Attorneys General Act of 2004 ("PAGA").

21 **2.2. Initial Stay and Investigation.** On or about January 31, 2019, the Court issued an initial  
22 order staying the matter. Plaintiff and Defendants met and conferred on numerous occasions, discussed  
23 Plaintiff's claims described above, discussed Defendants' defenses, and on or about March 29, 2019,  
24 submitted to the Court a Joint Initial Case Management Conference Statement. The Parties subsequently  
25 agreed to schedule a mediation for July 25, 2019, and on or about May 8, 2019, the Court continued the  
26 stay in light of the mediation.

27 **2.3. Plaintiff's Additional Allegations.** Shortly after filing the original complaint and in  
28 investigating the alleged claims, Plaintiff additionally contended that Defendants failed to provide meal

1 breaks and violated the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* (FCRA), Investigative  
2 Consumer Reporting Agencies Act, Civ. Code §§ 1786 *et seq.* (ICRAA), and Consumer Credit  
3 Reporting Agencies Act, Civ. Code §§ 1785 *et seq.* (CCRAA), based on allegedly non-compliant  
4 disclosures. The Parties cancelled the July 25, 2019 mediation and continued to meet and confer. In  
5 addition to the exchange of information and documentation pursuant to informal discovery methods,  
6 Class Counsel continued investigating the claims alleged and allegedly discovered against Defendants in  
7 the Action. Class Counsel also analyzed any and all applicable defenses and case law and authorities  
8 raised by Defendants.

9       **2.4. Mediation and Settlement.** On or about January 23, 2020, the Parties attended a  
10 mediation before Tripper A. Ortman, an experienced mediator knowledgeable of both the wage and hour  
11 laws and class and representative claims alleged in and allegedly discovered in investigating the Action.  
12 The Parties thereafter agreed to a settlement, which was negotiated in light of all known facts and  
13 circumstances—including the difficulty of proving Plaintiff’s claims, potential defenses asserted by  
14 Defendants, the uncertainty associated with litigation, the risks of significant delay, and numerous  
15 potential appellate issues—and was reached after extensive arm’s-length negotiations, with the  
16 assistance of the mediator.

17       **2.5. Amendment to Complaint.** As a material term to this Agreement, Plaintiff promptly  
18 sent to the LWDA an amended PAGA notice with the additional meal break facts and theories under  
19 Labor Code sections 226.7 and 512 and filed an amended complaint in the Action adding class action  
20 and PAGA causes of action for alleged meal break violations, which was filed with the Court on or  
21 about May 26, 2020. The first amended complaint included the additional mediated allegations and  
22 claims for violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* (FCRA), Investigative  
23 Consumer Reporting Agencies Act, Civ. Code §§ 1786 *et seq.* (ICRAA), and Consumer Credit  
24 Reporting Agencies Act, Civ. Code §§ 1785 *et seq.* (CCRAA), based on allegedly non-compliant  
25 disclosures.

26       **2.6. Defendants’ Denials.** Defendants denied and continue to deny (i) all of the allegations  
27 alleged by Plaintiff in the Action or during the course of investigation and discovery, (ii) that it violated  
28 any applicable laws, (iii) that it would be liable or owes damages, penalties, or any other type of

1 remedies to anyone with respect to the alleged facts or claims asserted in the Action or alleged during  
2 the course of investigation and discovery, and (iv) that class certification or representative treatment of  
3 the Action or any alleged claims would be proper.

4 **2.7. No Admission of Liability.** Although Defendants denied and continue to deny all of the  
5 allegations made by Plaintiff in the Action, Defendants—without admitting or conceding any liability or  
6 wrongdoing whatsoever and without admitting or conceding that class certification or representative  
7 treatment would be appropriate for any purpose other than settlement purposes alone—have agreed to  
8 settle the Action on the terms and conditions set forth in this Agreement for the sole purpose of avoiding  
9 the burden, expense, and uncertainty of continuing the Action.

10 **2.8. Class Counsel’s Evaluation.** Based on Class Counsel’s ongoing investigation and  
11 evaluation over the course of more than one year, Class Counsel is of the opinion that the terms set forth  
12 in this Agreement are fair, reasonable, adequate, and in the best interests of the putative class.

13 **2.9. Certification of Settlement Class Only and Intention of Parties.** This Agreement is  
14 contingent upon the approval and certification by the Court of a class for settlement purposes only.  
15 Absent a Final Approval Order, the Parties do not stipulate to class certification or representative  
16 treatment, no party will be estopped as a result of this Agreement or motion for settlement approval, and  
17 the Parties will revert to their positions they had before this Agreement. Defendants do not waive, and  
18 instead expressly reserve, any and all rights to challenge the propriety of class certification or  
19 representative treatment for any other purpose. It is the desire of the Parties to fully, finally, and forever  
20 settle, compromise, or discharge any and all claims, rights, demands, charges, complaints, causes of  
21 action, obligations or liability of any and every kind that were or could have been asserted in the Action  
22 as amended or that arise out of the alleged facts, circumstances, and occurrences underlying the  
23 allegations in the Action as amended.

24 **2.10. Agreement to Cooperate.** The Parties agree to cooperate and take all steps necessary  
25 and appropriate to effectuate all aspects of this Agreement, to obtain a Preliminary Approval Order and  
26 Final Approval Order.

1     **3.     NOTICE TO CLASS MEMBERS**

2             **3.1.     Settlement Administrator.** Plaintiff and Class Counsel shall request that the Court  
3 appoint CPT Group, Inc. as Settlement Administrator for purposes of sending the Settlement Notice to  
4 Class Members. The Parties agree that Settlement Administration Costs should not exceed \$14,000.00.  
5 All disputes relating to the Settlement Administrator's performance of its duties, after good-faith efforts  
6 by the Parties to first resolve such disputes, will be referred to the Court, if necessary, which will have  
7 continuing jurisdiction over this Agreement until all payments and obligations contemplated by this  
8 Agreement have been fully completed to Class Counsel and Defendants' Counsel's satisfaction. Except  
9 as otherwise provided herein, if the Court does not enter a Final Approval Order, Class Counsel and  
10 Defendants shall each pay one-half of any Settlement Administration Costs incurred.

11             **3.2.     Class Data.** Within 5 business days of the Preliminary Approval Order, Defendants'  
12 Counsel shall provide to the Settlement Administrator a confidentiality agreement for execution by the  
13 Settlement Administrator. Within 15 business days of the Preliminary Approval Order, the Settlement  
14 Administrator shall execute a confidentiality agreement, and Defendants shall provide to the Settlement  
15 Administrator each Class Member's most current, known mailing address, as well as data sufficient for  
16 the Settlement Administrator to determine each Class Member's number of workweeks both during the  
17 applicable Class Period and number of workweeks as PAGA Members and to determine which Class  
18 Members were hired on or after May 26, 2015. The Settlement Administrator shall keep data provided  
19 by Defendants strictly confidential, shall not share it with Class Counsel, shall use it only for the  
20 purposes described herein, and shall return it to Defendants or confirm its destruction upon completion  
21 of the Settlement Administrator's duties in administering the settlement.

22             **3.3.     Settlement Notice.** Within 15 business days of receipt of class data, the Settlement  
23 Administrator shall send the Settlement Notice to each Class Member via First Class U.S. Mail, using  
24 the most current, known mailing address for each Class Member, based on class data provided by  
25 Defendants. Any Settlement Notice returned to the Settlement Administrator as undeliverable shall be  
26 sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding  
27 address is provided, the Settlement Administrator shall promptly attempt to determine the correct  
28



1 address using a single skip-trace search and shall then promptly send a single re-mailing. The mailing of  
2 the Settlement Notice shall be the sole means of notice to Class Members.

3 **3.4. Proof of Mailing.** At least 5 calendar days prior to a hearing on a motion for a Final  
4 Approval Order, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel—  
5 and Class Counsel shall provide the Court—a declaration by the Settlement Administrator of due  
6 diligence and proof of mailing with regard to mailing of Settlement Notice.

#### 7 **4. CLASS MEMBERS' RESPONSE OPTIONS**

8 **4.1. Consideration Period.** Except as specifically provided herein, Class Members shall be  
9 provided 45 calendar days after the postmark date of the initial mailing of the Settlement Notice to opt  
10 out of or to object to the settlement (the "Response Deadline"), and no Class Member responses of any  
11 kind that are postmarked more than 45 calendar days after the initial mailing of the Settlement Notice  
12 shall be considered. The Parties shall do nothing to encourage or solicit Class Members to opt out or  
13 object to the settlement.

14 **4.2. Opt-Out and Objection Rights and Procedures.** Class Members shall not have any right  
15 to object to or opt out of the settlement of the PAGA cause of action. Class Members must comply with  
16 the procedures set forth herein and in the Settlement Notice to opt out of or object to the settlement of  
17 class action claims. Class Members who do not timely opt out of the settlement shall be Settlement Class  
18 Members without having to submit a claim form or take any other action.

19 **4.2.1. Objection Procedures.** Any Class Member who wishes to object to the  
20 settlement must submit a written objection to the Settlement Administrator no later than the Response  
21 Deadline. The objection must include the case name and number and must set forth, in clear and concise  
22 terms, a statement of the reasons why the objector believes that the Court should find that the proposed  
23 settlement is not in the best interest of Class Members and the reasons why the settlement should not be  
24 approved, including the legal and factual arguments supporting the objection. If an objector also wishes  
25 to appear at the final approval and fairness hearing, in person or through an attorney, he or she must file  
26 a notice of intention to appear at the same time as the objection is filed. The Settlement Administrator  
27 will promptly serve copies of any objection or notice of intention to appear on Class Counsel and  
28 Defense Counsel. Unless otherwise ordered by the Court, Class Members shall not be entitled to appear

1 and or object at the Final Approval Hearing unless they have submitted a timely written objection and  
2 notice of intention to appear pursuant to these procedures. Class Members who have properly and timely  
3 submitted objections may appear at the final approval and fairness hearing, either in person or through a  
4 lawyer retained at their own expense.

5 **4.2.2. Opt-Out Procedures.** In order to opt out of the settlement, a Class Member must  
6 submit a letter or postcard to the Settlement Administrator by the Response Deadline. The opt-out  
7 request must be signed, include the Class Member's name, address, and telephone number, and state (to  
8 the effect of): "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *ROBLES v.*  
9 *WINSFORD* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE  
10 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS ACTION  
11 SETTLEMENT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE." Any Opt-Out  
12 request that is not postmarked by the Response Deadline will be invalid.

13 **4.3. Opt-Out Effect.** Class Members who opt out of the settlement pursuant to the terms of this  
14 Agreement shall not be permitted to object to the settlement or appeal and shall not receive any Individual  
15 Settlement Payments from the Net Settlement Amount. Except with respect to the PAGA cause of action,  
16 Class Members who opt out also shall not be bound by the release provisions in this Agreement or the  
17 Final Approval Order. Each Class Member who does not opt out of the settlement shall remain qualified  
18 to receive an Individual Settlement Payment and shall be subject to being bound by the applicable release  
19 provisions in this Agreement or the Final Approval Order.

20 **4.4. Objection Effect.** Class Members who submit an objection shall remain subject to be  
21 bound by the release provisions in this Agreement or the Final Approval Order. Class Members who  
22 submit an objection pursuant to the procedures set forth in the Settlement Notice may appear at the hearing  
23 on a motion for a Final Approval Order, either in person or through counsel, but must state their intention  
24 to do so at the time they submit their written objection. Class Members may withdraw their objections at  
25 any time. If a Class Member submits both an objection and opt-out request, the Class Member's objection  
26 shall be valid and shall be deemed to invalidate the opt-out request.

27 **4.5. Proof of Class Members' Responses.** By not later than 50 calendar days after the initial  
28 mailing of the Settlement Notice, the Settlement Administrator will prepare and submit a declaration

1 attesting to (by number of relevant individuals), its mailing of the Settlement Notice, its inability to deliver  
2 the Settlement Notice due to invalid addresses, and its receipt of valid Requests for Exclusion or  
3 objections. Prior to the hearing on the motion for a Final Approval Order, the Settlement Administrator  
4 shall prepare any supplemental declarations regarding the administration of the settlement, as jointly  
5 requested by the Parties. Class Counsel shall file any valid objections with the Court. Upon completion of  
6 administration of the settlement, the Settlement Administrator shall provide written certification of such  
7 completion to Class Counsel and Defendants' Counsel.

8 **4.6. Defendants' Right to Withdraw.** Defendants shall have the right, at their sole option, to  
9 withdraw from this Agreement within 15 business days after expiration of the response period, if more  
10 than 5% or more of the Class Members opt out. If Defendants exercise the right to withdraw from this  
11 Agreement, then Defendants shall pay the Settlement Administrator's expenses up to the date this  
12 Agreement is nullified.

## 13 **5. SETTLEMENT PROCEEDS**

14 **5.1. Gross Settlement Amount.** Defendants agree to pay a maximum, non-reversionary  
15 settlement amount of \$350,000. The Gross Settlement Amount is inclusive of any Attorneys' Fees and  
16 Costs Award, Class Representative Incentive Payment, LWDA Payment, Settlement Administration  
17 Costs, Individual PAGA Payments, Individual Settlement Payments (including any employee shares of  
18 payroll taxes), or any other Court-required payments that Defendants may be required to pay in connection  
19 with the Final Approval Order (with the sole exception of any employer's shares of payroll taxes to be  
20 paid). To the extent that the number of workweeks worked by Class Members exceeds 35,200 workweeks  
21 through April 26, 2020, Defendants shall have the option to abridge the settlement and Released Clamis  
22 to cover 35,200 workweeks or, alternatively, increase the Gross Settlement Amount in proportion to the  
23 increase in workweeks in excess of 35,200.

24 **5.2. Timing of Funding and Payments.** Within 15 business days following the Effective Date,  
25 Defendants shall deposit with the Settlement Administrator the Gross Settlement Amount, which shall be  
26 deposited into an interest bearing escrow account, and the Settlement Administrator will calculate and  
27 distribute the amounts to be paid pursuant to the Final Approval Order.  
28

1           **5.3. Maximum Settlement Payment and Requested Allocations Not Material.** The Court's  
2 approval of an Attorneys' Fees and Costs Award and Class Representative Incentive Payment are not  
3 material terms of this Agreement. If the Court requires other allocations or different amounts than  
4 requested for an Attorneys' Fees and Costs Award, Class Representative Incentive Payment, Settlement  
5 Administration Costs, or PAGA Penalty Fund, the other terms of the Agreement shall apply. The Parties  
6 agree that the Court's approvals of the requested Attorneys' Fees and Costs Award, Class Representative  
7 Incentive Payment, Settlement Administration Costs, or PAGA Penalty Fund are not material terms of the  
8 Agreement and that an award of less or more than the amounts requested would not give rise to a basis to  
9 abrogate the Agreement. Any different amounts required or approved by the Court shall be allocated to  
10 the Net Settlement Amount or from the Gross Settlement Amount.

11           **5.3.1. Attorneys' Fees and Costs.** Class Counsel intends to request—and Defendants  
12 agree not to oppose—that the Court approve an Attorneys' Fees and Costs Award in the amount of up to  
13 33⅓% of the Gross Settlement Amount (or \$116,666.67), plus reasonable costs not to exceed \$15,000.  
14 Class Counsel agrees that Class Counsel is responsible for allocating this payment among themselves.  
15 Within 2 business days after the Effective Date, Class Counsel shall transmit instructions to the Settlement  
16 Administrator as to how the Attorneys' Fees and Costs Award shall be paid. Except as provided in this  
17 Agreement, Defendants shall have no liability for any attorneys' fees or costs in connection with the  
18 Action. Plaintiff, Class Counsel, and Class Members waive any additional claim for attorneys' fees and  
19 costs incurred in connection with the Action.

20           **5.3.2. Class Representative Incentive Payment.** Class Counsel intends to request—and  
21 Defendants agree not to oppose—that the Court approve a Class Representative Incentive Payment of up  
22 to \$7,500 to Plaintiff. Any Class Representative Incentive Payment is supplemental to Plaintiff's  
23 Individual Settlement Payment and Individual PAGA Payment.

24           **5.3.3. PAGA Penalty Fund.** Class Counsel intends to request—and Defendants agree not  
25 to oppose—that the Court approve allocation of \$10,000 to a PAGA Penalty Fund. Any Court-approved  
26 PAGA Penalty Fund is to be distributed pursuant to statute with 75% of the PAGA Penalty Fund payable  
27 as an LWDA Payment. The remaining 25% of the PAGA Penalty Fund is to be distributed to PAGA  
28

1 Members as Individual PAGA Payments, based on the pro rata number of workweeks individual PAGA  
2 Members worked during the PAGA Period.

3 **5.3.4. Settlement Administration Costs.** Class Counsel intends to request—and  
4 Defendants agree not to oppose—that the Court approve Settlement Administration Costs of up to  
5 \$14,000.00. The Parties agree to cooperate in the settlement administration process and to make all  
6 reasonable efforts to control and minimize Settlement Administration Costs.

7 **5.4. Individual Settlement Payments.** The Parties agree that Individual Settlement Payments  
8 will be characterized as 80% as Internal Revenue Service (“IRS”) Form 1099 income and 20% as W-2  
9 income. The Net Settlement Amount shall be distributed in separate checks to Settlement Class Members,  
10 without the need to submit a specific claim form. In accordance with applicable tax laws, required tax  
11 withholdings will be taken from each Individual Settlement Payment for the portion allocated to W-2  
12 income and remitted to the appropriate taxing authorities. Defendants shall separately provide the  
13 Settlement Administrator with the employer share of payroll taxes for administration and reporting.

14 **5.4.1. Total Settlement Class Member Shares.** The Net Settlement Amount shall be  
15 allocated among Settlement Class Members by calculating the total number of workweeks all Settlement  
16 Class Members worked (rounding up partial weeks) (i) during the period from January 29, 2015, through  
17 May 25, 2015, and (ii) during the period from May 26, 2015, through April 26, 2020. The number of  
18 workweeks through May 25, 2020, shall be added to twice the number of workweeks since May 26, 2015  
19 to determine the “Total Settlement Class Week Count.” (in other words, Workweeks worked between  
20 January 29, 2015 and May 25, 2015 shall be counted as half a workweek, and workweeks worked after  
21 May 25, 2015 shall be counted as 1 workweek).

22 **5.4.2. Individual Settlement Class Member Shares and Payments.** Individual  
23 Settlement Payments shall be allocated by calculating the number of workweeks a Settlement Class  
24 Member worked (rounding up partial weeks) (i) during the period from January 29, 2015, through May  
25 25, 2015, and (ii) during the period from May 26, 2015, through April 26, 2020. The number of workweeks  
26 through May 25, 2020, shall be added to twice the number of workweeks since May 26, 2015 to determine  
27 the “Individual Settlement Class Member Week Count.” The Individual Settlement Class Member Week  
28 Count shall be divided by the Total Settlement Class Member Week Count and multiplying the result by

1 the Net Settlement Amount available for allocation to Individual Settlement Payments. Such allocations  
2 shall be distributed to Settlement Class Members, subject to deductions for any applicable employee  
3 shares of payroll taxes.

4 **5.5. Undeliverable or Uncashed Checks.** All uncashed or undeliverable settlement checks  
5 will expire after 180 days. The sum value of all expired checks will be tallied by the Settlement  
6 Administrator. 180 days after the postmarked date of the initial mailing, the Settlement Administrator  
7 will direct the principal for any Individual Settlement Payments that remain undeliverable or otherwise  
8 uncashed to be distributed consistent with Code of Civil Procedure section 384 (*i.e.*, to a *cy pres* to be  
9 agreed upon by the parties and approved by the Court).

10 **5.6. No Tax Advice or Liability.** Except as otherwise stated herein, all payments will be  
11 subject to IRS Form 1099 reporting. The Settlement Administrator shall issue any necessary IRS Form  
12 1099 or W-2 reporting and administration. The Parties have had an opportunity to consult with  
13 independent tax counsel. The Parties are not giving any tax advice in connection with the settlement or  
14 any payments to be made pursuant to the Agreement. The Parties do not intend anything contained in this  
15 Agreement to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall  
16 anything in this Agreement be relied upon as such. The Settlement Notice shall advise that Class Members  
17 shall be solely and legally responsible for paying all other applicable taxes on their respective Individual  
18 Settlement Payments and Individual PAGA Payments and shall indemnify and hold harmless the Parties  
19 from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

20 **5.7. No ERISA Impact.** None of the payments made pursuant to this Agreement shall be  
21 considered for purposes of determining eligibility for, vesting or participation in, or contributions to any  
22 benefit plan, including, without limitation, all plans subject to the Employee Retirement and Income  
23 Security Act of 1974 (“ERISA”). Payments shall not be considered as a payment of wages or  
24 compensation under the terms of any applicable benefit plan and shall not affect participation in, eligibility  
25 for, vesting in, the amount of any past or future contribution to, or level of benefits under any applicable  
26 benefit plan. Any amounts paid will not impact or modify any previously credited hours of service or  
27 compensation taken into account under any benefit plan sponsored or contributed to by Defendant or any  
28 jointly-trusted benefit plan. For purposes of this Agreement, “benefit plan” means each and every

1 “employee benefit plan” as defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any bonus,  
2 pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability,  
3 vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar  
4 benefit plan, practice, program, or policy.

5 **6. RELEASES**

6 **6.1. Class Member Acknowledgment.** Class Members acknowledge that they may hereafter  
7 discover facts or law different from, or in addition to, the facts or law they know or believe to exist with  
8 respect to a released claim. Class Members nonetheless acknowledge that this Agreement and its releases  
9 shall be and shall remain effective in all respects notwithstanding such different or additional facts or law  
10 regarding such released claims. This Agreement is conditioned upon covenants by Class Members that  
11 they will not participate in any proceeding involving the released claims set forth below and that, beyond  
12 the Gross Settlement Amount, Defendants shall not owe any further monies to Settlement Class Members  
13 or to the State of California based upon the released claims set forth below.

14 **6.2. Release by Class Members.** By operation of the entry of the final judgment and Final  
15 Approval Order, and except as to such rights or claims as may be created by this Agreement, all Settlement  
16 Class Members hereby fully release Defendants, and each Released Party from any and all claims or  
17 causes of action that were alleged or that reasonably could have been alleged based on the facts alleged in  
18 the Action, as amended, including, but not limited to, any claims under federal law and state law for unpaid  
19 wages or overtime, meal or rest break violations, inaccurate wage statements, untimely payment of wages,  
20 or violation of the applicable Wage Order or Labor Code sections 201, 202, 203, 204, 210, 216, 226,  
21 226.3, 226.7, 510, 512, 558, and 1194, violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et*  
22 *seq.* (FCRA), Investigative Consumer Reporting Agencies Act, Civ. Code §§ 1786 *et seq.* (ICRAA), and  
23 Consumer Credit Reporting Agencies Act, Civ. Code §§ 1785 *et seq.* (CCRAA), based on allegedly non-  
24 compliant disclosures, and any claims under Business and Professions Code section 17200 *et seq.* or Labor  
25 Code section 2698 *et seq.* based on alleged violations of these provisions. These releases do not include  
26 any claims that cannot be waived as a matter of law. Plaintiff as a representative of the State of California  
27 acknowledges and agrees that collateral estoppel shall bar PAGA Members from any proceedings relating  
28 to released claims.

1           **6.3. Additional Release by Plaintiff.** In addition to the above release applicable to Plaintiff as  
2 a Settlement Class Member, Plaintiff as an individual also generally releases all claims, known or  
3 unknown, in favor of each Released Party, including a waiver of Civil Code section 1542. Plaintiff  
4 expressly waives all rights provided by Civil Code section 1542 or other similar statutes that Plaintiff may  
5 have against each Released Party. Civil Code section 1542 states:

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

10 Plaintiff acknowledges that he has read the entirety of the Agreement, including the above language from  
11 the Civil Code, and that he fully understands both the Agreement and the Civil Code section. By executing  
12 this Agreement, Plaintiff expressly waives any benefits and rights granted pursuant to Civil Code section  
13 1542 or any statute, rule, or principle of common law or equity, in any jurisdiction, that is similar,  
14 comparable, or equivalent, in whole or in part, to Civil Code section 1542. Plaintiff acknowledges and  
15 agrees that this knowing and voluntary waiver is an essential and material term of this Agreement, and  
16 this Agreement would not have been entered into without such a waiver.

17           **6.4. Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of the  
18 Action, except such proceedings necessary to implement and obtain a Final Approval Order. The Parties  
19 agree to request that the Preliminary Approval Order enjoin Class Members from initiating or prosecuting  
20 any proceeding on any claim to be released under the Agreement, unless and until the Class Member has  
21 opted out of the class in the manner described above. This settlement is conditioned upon the releases by  
22 Class Members as described herein, and upon covenants by Class Members that they will not participate  
23 in any actions, lawsuits, proceedings, complaints, or charges brought individually or by any other agency,  
24 persons, or entity in any court or before any administrative body related to the released claims, nor will  
25 Class Members contest or interfere with efforts by Defendants or a Released Party to oppose any attempt  
26 to bring such released claims against Defendants or a Released Party.

27           **6.5. Non-Admission of Liability.** By entering into this Agreement, Defendants in no way  
28 admit any violation of law or any liability whatsoever to Plaintiff or Class Members, individually or  
collectively, and expressly deny all such liability. Neither this Agreement nor any other settlement



1 document shall be offered in any case or proceeding as evidence of any admission by Defendants of any  
2 liability on any claim or allegation. Likewise, by entering into this Agreement, Defendants in no way  
3 admit to the suitability of this case for class action or representative litigation, other than for purposes of  
4 settlement. Rather, Defendants enter into this Agreement to avoid further protracted litigation and to  
5 resolve and settle all disputes with Plaintiff and Class Members. The Parties understand and agree that  
6 this Agreement and all exhibits thereto are settlement documents and shall be inadmissible for any purpose  
7 in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of this  
8 Agreement. The Parties agree that, to the extent permitted by law, this Agreement may be pleaded as a  
9 full and complete defense to, and may be used as the basis for an injunction against any action, suit, or  
10 other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement.

## 11 **7. COURT APPROVAL**

12 **7.1. Preliminary Approval.** Plaintiff shall submit to the Court a motion for a Preliminary  
13 Approval Order, which will, among other things: (i) preliminarily approve the proposed settlement  
14 according to the terms in this Agreement, (ii) provide for the Settlement Notice to be sent to Class  
15 Members, and (iii) schedule a final approval and fairness hearing. The motion shall be unopposed by  
16 Defendants, unless it seeks relief not specified by this Agreement. In such event, Defendants reserve their  
17 rights to address any assertions that are not contained in this Agreement.

18 **7.2. Final Approval.** Not later than 16 court days before the date set by the Court for a final  
19 approval and fairness hearing, or such other time as the Court may require, Class Counsel shall notice,  
20 file, and move the Court a Final Approval Order, which shall include findings and orders: (i) approving  
21 the settlement, (ii) adjudging the terms to be fair, reasonable, and adequate, (iii) reciting the release terms,  
22 (iv) directing that the settlement's terms and provisions be carried out; (v) entering judgment in accordance  
23 with this Agreement and without further fees or costs to any party except as expressly set forth in this  
24 Agreement, and (vi) retaining jurisdiction to oversee administration and enforcement of the terms of this  
25 Agreement and the Court's orders.

26 **7.3. Effect of Failure to Obtain Final Approval Order.** In the event the Court effects a  
27 material change or fails to enter final judgment in accordance with this Agreement, or such final judgment  
28 is reversed or otherwise does not become a "final judgment" for purposes of res judicata, then this entire

1 Agreement will be voidable and unenforceable, subject to the Parties' agreement to the contrary, and the  
2 costs of administration shall be split equally between the Parties. If the settlement is not finally approved,  
3 the Parties agree that they will revert to their positions in the Action prior to the time the settlement was  
4 reached. The Action shall proceed as if no settlement has been attempted, unless the Parties jointly agree  
5 to seek reconsideration or appellate review of the ruling or seek Court approval of a renegotiated  
6 settlement. Defendants retain the right to contest whether any aspect of the Action should be maintained  
7 as a class or representative action or to contest the merits of the claims being asserted by Plaintiff in the  
8 Action.

9 **7.4. Waiver of Appeal Rights.** By entering into this Agreement, Plaintiff and Class Counsel  
10 hereby waive any and all rights they may have to appeal any judgment, ruling, or order made by the Court  
11 in this Action, including, without limitation, any Final Approval Order.

## 12 **8. MISCELLANEOUS**

13 **8.1. Parties' Authority.** The signatories hereto represent that they are fully authorized to enter  
14 into this Agreement and are fully authorized to bind the Parties to all terms stated herein. It is agreed that  
15 Class Members are so numerous that it is impossible or impractical to have each Class Member execute  
16 this Agreement. It is agreed that this Agreement may be executed on behalf of Class Members by Plaintiff  
17 and Class Counsel, and shall have the same force and effect as if executed by each Class Member.

18 **8.2. Entire Agreement.** This Agreement, which includes the Definitions, Recitals, and all  
19 Exhibits attached hereto, constitute the entire agreement between the Parties with regard to the subject  
20 matter contained herein, and all prior and contemporaneous negotiations and understandings between the  
21 Parties shall be deemed merged into this Agreement.

22 **8.2.1. Materiality of Terms.** The Parties have arrived at this Agreement as a result of  
23 arm's-length negotiations. Except as otherwise stated herein, all terms and conditions of this Agreement  
24 are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.

25 **8.2.2. Execution and Counterparts.** This Agreement may be executed by signing on the  
26 designated signature block and transmitting that signature page via facsimile or as an attachment to an e-  
27 mail to counsel for the other party. Any signature made and transmitted by facsimile or as an attachment  
28 to an e-mail for the purpose of executing this Agreement shall be deemed an original signature for

1 purposes of this Agreement and shall be binding upon the party who transmits the signature page. This  
2 Agreement may be executed in counterparts, and when all signatories have executed at least one such  
3 counterpart, each counterpart shall be deemed an original, and when taken together with other signed  
4 counterparts, shall constitute one signed Agreement, which shall be binding upon and effective as to all  
5 Parties.

6 **8.2.3. Binding Effect.** This Agreement shall be binding upon the Parties and, with respect  
7 to Plaintiff and Class Members, their spouses, children, representatives, heirs, administrators, executors,  
8 beneficiaries, conservators, attorneys, and assigns.

9 **8.2.4. Waivers, Modifications, Etc. to Be in Writing.** No waiver, modification or  
10 amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval  
11 of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and  
12 then only to the extent set forth in such written waiver, modification or amendment, subject to any required  
13 Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of  
14 the provisions of this Agreement shall not be deemed a waiver of future performance of the same  
15 provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such  
16 failure, shall have the right thereafter to insist upon the specific performance of any and all of the  
17 provisions of this Agreement. The time periods and dates provided in this Agreement with respect to  
18 giving of notices and hearings are subject to Court approval and modification by the Court or by written  
19 stipulation of Class Counsel and Defendants' Counsel.

20 **8.3. Construction.** The determination of the terms and conditions of this Agreement has been  
21 by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and  
22 the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any  
23 party by virtue of draftsmanship.

24 **8.3.1. Exhibits Incorporated by Reference.** The terms of this Agreement include the  
25 terms set forth in any attached Exhibit, which are incorporated by this reference as though fully set forth  
26 herein. Any Exhibit to this Agreement is an integral part of the settlement.  
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1           **8.3.2. Captions.** The captions or headings of the sections and paragraphs of this  
2 Agreement have been inserted for convenience of reference only and shall have no effect upon the  
3 construction or interpretation of any part of this Agreement.

4           **8.3.3. Invalidity of Any Provision.** Before declaring any provision of this Agreement  
5 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent  
6 with applicable precedents so as to render all provisions of this Agreement valid and enforceable.

7           **8.4. Further Acts and Cooperation Between the Parties.** The Parties shall cooperate fully  
8 with each other and shall use their best efforts to obtain the Court's approval of this Agreement and all of  
9 its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and to  
10 execute and deliver such other documents as are reasonably necessary to carry out the provisions of this  
11 Agreement. All papers to be filed with the Court by Defendants or Plaintiff's Counsel in connection with  
12 this Agreement shall be submitted to the other Party at least two days prior to filing.

13           **8.5. Integration Clause.** This Agreement contains the entire agreement between the Parties  
14 relating to the settlement of the Action and the transactions contemplated thereby, and all prior or  
15 contemporaneous agreements, understandings, representations, and statements, whether oral or written,  
16 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this  
17 Agreement may be waived except in writing as provided above.

18           **8.6. No Prior Assignments or Undisclosed Liens.** Plaintiff and Class Counsel represent and  
19 warrant that they have not assigned, transferred, conveyed, or otherwise disposed of, or purported to  
20 assign, transfer, convey, or otherwise dispose of any Released Claims or the Attorneys' Fees and Costs  
21 Award to be paid pursuant to this Agreement. Plaintiff and Class Counsel further represent and warrant  
22 that there are not any liens or claims against any of the amounts to be paid by Defendants pursuant to this  
23 Agreement. Plaintiff and Class Counsel agree to defend, indemnify, and hold Defendants harmless from  
24 any liability, losses, claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting  
25 from a breach of these representations or from any lien or assignment.

26           **8.7. No Undue Publicity.** Neither Plaintiff nor Class Counsel shall cause to be publicized,  
27 directly or indirectly, any discussion resulting in or the existence of this Agreement or its terms in any  
28 type of mass media, including, but not limited to, speeches, press conferences, press releases, interviews,

1 television or radio broadcasts, newspapers, website postings, messages on the Internet, Facebook, Twitter  
2 or any other social media. Breach of this provision shall entitle Defendants, in the exercise of their sole  
3 discretion, to nullify this Agreement at any time before the Effective Date. Without limitation by the  
4 foregoing, Defendants also may enforce this provision through an action for injunctive relief. Plaintiff  
5 waives any obligation by Defendants to file a bond in connection with any such action. This provision  
6 does not apply to any publications ordered by the Court or approved by Defendants. Notwithstanding the  
7 foregoing, Class Counsel shall be permitted to reference this case in declarations submitted to courts in  
8 support of their competency as class counsel.

9 **8.8. Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of  
10 this Agreement as well as any and all matters arising out of, or related to, the implementation of this  
11 Agreement and of the settlement contemplated thereby. The Court shall not have jurisdiction to modify  
12 the material terms of this Agreement.

13 **8.9. Disputes.** If the Parties have a dispute with regard to the language of this Agreement, they  
14 agree to engage mediator Tripper Ortman to mediate any such dispute. The Parties will split the costs of  
15 the mediator, and all parties will bear their own fees and costs.

16 **8.10. Governing Law.** All terms of this Agreement shall be governed by and interpreted  
17 according to the laws of the State of California.

18 **8.11. Attorney Fees, Costs and Expenses.** Except as otherwise specifically provided for herein,  
19 each party shall bear his or its own attorney fees, costs and expenses, taxable or otherwise, incurred by  
20 them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this  
21 Agreement.

22 **8.12. Action to Enforce Agreement.** In any suit or court action to enforce the terms of this  
23 Agreement, the prevailing party shall be entitled to recover his or its attorney fees and costs.

24 **IN WITNESS WHEREOF,** the Parties and their counsel have executed this Agreement on the  
25 date below their signatures or the signature of their representatives. The date of the Agreement shall be  
26 the date of the latest signature.

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**PLAINTIFF**

Dated: June 10, 2020

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Jesus H. Robles-Nahoul

**COUNSEL FOR PLAINTIFF AND CLASS**

Dated: June 10, 2020



\_\_\_\_\_  
Mehrdad Bokhour, Esq.  
Bokhour Law Group, P.C.

**COUNSEL FOR PLAINTIFF AND CLASS**

Dated: June 10, 2020



\_\_\_\_\_  
Jonathan Melmed  
Melmed Law Group P.C.

**DEFENDANTS**

Dated: June \_\_\_\_, 2020

\_\_\_\_\_  
Colin Vigdal, CFO and Vice President of The Winsford  
Company, LLC, on behalf of Defendants

**COUNSEL FOR DEFENDANTS**

Dated: June \_\_\_\_, 2020

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Jeffrey A. Wortman  
Simon L. Yang  
Seyfarth Shaw LLP

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**PLAINTIFF**

Dated: June \_\_, 2020

\_\_\_\_\_  
Jesus H. Robles-Nahoul

**COUNSEL FOR PLAINTIFF AND CLASS**

Dated: June \_\_, 2020

\_\_\_\_\_  
Mehrdad Bokhour, Esq.  
Bokhour Law Group, P.C.


**COUNSEL FOR PLAINTIFF AND CLASS**

Dated: June \_\_, 2020

\_\_\_\_\_  
Jonathan Melmed  
Melmed Law Group P.C.

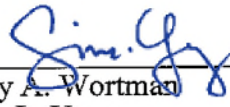
**DEFENDANTS**

Dated: June 12, 2020

  
\_\_\_\_\_  
Colin Vigdal, CFO and Vice President of The Winsford  
Company, LLC, on behalf of Defendants

**COUNSEL FOR DEFENDANTS**

Dated: June 12, 2020

  
\_\_\_\_\_  
Jeffrey A. Wortman  
Simon L. Yang  
Seyfarth Shaw LLP