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12 Attorneys for Defendant
 13 UPS SUPPLY CHAIN SOLUTIONS, INC.

14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA

16 ERIC AYALA and ADRIAN AVILES,
 17 on behalf of themselves and all others
 18 similarly situated.

19 Plaintiff,

20 vs.

21 UPS SUPPLY CHAIN SOLUTIONS,
 22 INC., a Delaware corporation; UPS
 23 SUPPLY CHAIN SOLUTIONS
 24 GENERAL SERVICES, INC., a
 25 Delaware corporation; and DOES 1-50,
 26 inclusive

27 Defendants.

Case No. 5:20-cv-00117 PSG (AFMx)

**JOINT STIPULATION OF CLASS
 ACTION SETTLEMENT**

Courtroom: 6A

Judge: Hon. Philip S. Gutierrez

1 This Stipulation of Class Action Settlement (“Settlement” or “Settlement
2 Agreement”) is reached by and between Plaintiffs Eric Ayala (“Ayala”) and Adrian
3 Aviles (“Aviles”) (collectively “Plaintiffs”), individually and on behalf of all
4 members of the Settlement Class (defined below), on one hand, and Defendant UPS
5 Supply Chain Solutions, Inc. (hereinafter “Defendant”), on the other hand, and is
6 memorialized in this Settlement Agreement. Plaintiffs and Defendant are referred
7 to herein collectively as the “Parties.” Ayala and the Settlement Class are
8 represented by David G. Spivak of The Spivak Law Firm (“Ayala Class Counsel”).
9 Aviles and the Settlement Class are represented by Norman B. Blumenthal, Kyle R.
10 Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De
11 Blouw LLP (“Aviles Class Counsel” and together with Ayala Class Counsel, “Class
12 Counsel”). Defendant is represented by Elizabeth (Lisa) A. Brown and Jennifer
13 Svanfeldt, of GBG LLP.

14 **FACTUAL BACKGROUND**

15 On December 12, 2019, Ayala filed a Complaint against Defendant in the
16 San Bernardino County Superior Court, in the matter entitled *Eric Ayala, on behalf*
17 *of himself and all others similarly situated v. UPS Supply Chain Solutions, Inc., et*
18 *al.*, Case No. CIVDS1937490 (the “Ayala Lawsuit”). On January 15, 2020,
19 Defendants removed the Ayala Lawsuit to the United States District Court for the
20 Central District of California (the “Court”), Case No. 5:20-cv-00117-JFW(KKx).
21 On March 23, 2020, the parties stipulated to a Revised First Amended Class Action
22 Complaint and on April 13, 2020, Ayala filed a First Amended Class Action
23 Complaint, adding a seventh cause of action for civil penalties pursuant to the
24 California Private Attorneys General Act (“PAGA”).

25 On February 18, 2020, Aviles filed a Complaint against Defendant in the
26 Riverside County Superior Court, in the matter entitled *Adrian Aviles on behalf of*
27 *himself and others similarly situated v. UPS Supply Chain Solutions, Inc., et al.*,
28 Case No. RIC2000727 (the “Aviles Lawsuit”). On April 4, 2020, Defendant

1 removed the Aviles Lawsuit to the United States District Court for the Central
2 District of California, Case No. 5:20-cv-00669-JGB-KK.

3 On April 30, 2020, the Parties stipulated for leave to file a consolidated class
4 action complaint adding Adrian Aviles as a plaintiff. The Court granted the
5 stipulation, and on May 1, 2020 Plaintiffs Eric Ayala and Adrian Aviles filed a
6 Consolidated Class Action Complaint now pending in the United States District
7 Court for the Central District of California, Case No. 5:20-cv-00117 (PSG)(AFM).
8 The Consolidated Class Action Complaint alleges seven causes of action for:
9 (1) failure to provide meal and rest periods in violation of California Labor Code
10 §§ 226.7, 512, and 1198; (2) failure to indemnify in violation of California Labor
11 Code §§ 1198 and 2802; (3) failure to pay all wages for all hours worked at the
12 correct rates of pay in violation of California Labor Code §§ 510, 1194, 1197, and
13 1198; (4) failure to provide proper wage statements in violation of California Labor
14 Code §226; (5) waiting time penalties in violation of California Labor Code
15 §§ 201-203; (6) unfair business practices in violation of California’s Unfair
16 Competition Act, Bus. & Prof. Code §17200 et seq., and (7) civil penalties pursuant
17 to PAGA (collectively “The Lawsuit”).

18 **SETTLEMENT AGREEMENT**

19 1. Given the uncertainty of litigation, Plaintiffs and Defendant wish to
20 settle the Lawsuit individually and on behalf of the Settlement Class (defined
21 below). Accordingly, Plaintiffs and Defendant agree as follows:

22 **A. Settlement Class.** For the purposes of this Settlement
23 Agreement only, Plaintiffs and Defendant stipulate to the
24 certification of the following Settlement Class:

- 25 (1) All individuals who are or previously were employed by
26 Defendant in California as non-exempt employees during
27 the Class Period.

28 Any member of the Settlement Class is referred to as the “Settlement Class

1 Member.”

2 B. “Class Period” is defined as the time period of December 12,
3 2015 through the earlier of (a) date of preliminary approval of
4 this Settlement or (b) August 1, 2021.

5 C. “PAGA Settlement Period” is defined as the time period of
6 December 12, 2018 through the earlier of (a) date of preliminary
7 approval of this Settlement or (b) August 1, 2021. Members of
8 the Settlement Class who were employed during the PAGA
9 Settlement Period are defined as “PAGA Settlement Class
10 Members.”

11 The Parties agree that certification for purposes of this Settlement Agreement is not
12 an admission that class certification is proper under Section 382 of the California
13 Code of Civil Procedure or under Rule 23 of the Federal Rules of Civil Procedure.
14 If for any reason this Settlement Agreement is not approved or is terminated, in
15 whole or in part, this conditional agreement to class certification will be
16 inadmissible and will have no effect in this matter or in any claims brought on the
17 same or similar allegations, and the Parties shall revert to the respective positions
18 they held prior to entering into the Settlement Agreement.

19 **2. Change in Practices.** As part of the Settlement, Defendant agrees that
20 it will begin to compensate its non-exempt hourly employees for time spent
21 undergoing the security checks at its California facilities. To that end, Defendant
22 will install time capturing systems in the locations where its non-exempt employees
23 undergo the security checks to capture the time spent therein. As part of this
24 Settlement, Defendant intends to complete this implementation around August 1,
25 2021. Plaintiffs agree that the measures intended to be implemented by Defendant
26 reasonably, fairly and adequately address the primary concerns that caused them to
27 bring the Lawsuit and agree, on behalf of themselves, the Settlement Class
28 Members, and the State of California that the change in practices satisfied the

1 Defendant's obligations under the Labor Code and IWC Wage Order 9 ("Wage
2 Order") provisions at issue in these Lawsuits. The Plaintiffs further agree, on
3 behalf of themselves, the Settlement Class Members, the PAGA Settlement Class
4 Members, and the State of California not to sue for the provisions of the Labor
5 Code and Wage Order at issue in the Lawsuit so long as the change in practice
6 remains in place.

7 **3. Release by Settlement Class Members, PAGA Settlement Class**
8 **Members, and Plaintiffs.** Plaintiffs and every member of the Settlement Class
9 will fully release and discharge Defendant, and all of its past and present officers,
10 directors, shareholders, employees, agents, principals, heirs, representatives,
11 accountants, auditors, consultants, and their respective successors and predecessors
12 in interest, subsidiaries, affiliates, parents and attorneys, (collectively the "Released
13 Parties"), as follows:

14 **A. Release of Class Claims:** All Participating Settlement Class
15 Members (as defined in Paragraph 5(B) below) will release all
16 claims, demands, rights, liabilities and causes of action pled in
17 the operative Consolidated Class Action Complaint, or which
18 could have been pled or could arise out of the facts pled in the
19 operative Consolidated Class Action Complaint arising between
20 December 12, 2015 and September 1, 2021 (the "Released Class
21 Claims"). The Released Class Claims include claims for:
22 (a) failure to provide meal and rest periods; (b) failure to
23 indemnify expenses; (c) failure to pay all wages at the correct
24 rates of pay; (d) failure to provide proper wage statements; (e)
25 waiting time penalties; and (f) all claims for unfair business
26 practices that could have been premised on the facts, claims,
27 causes of action or legal theories described above.
28

- 1 **B. Release of PAGA Claims:** Separate and apart from the
2 Released Class Claims specified in Paragraph 3(A) above, all
3 PAGA Settlement Class Members will release all claims under
4 PAGA as alleged in the Consolidated Class Action Complaint
5 and/or any notices submitted by the Plaintiffs to the LWDA, to
6 the extent that such claims were or could have been pled or
7 could arise out of the facts pled in the Consolidated Class Action
8 Complaint that arose between December 12, 2018 and
9 September 1, 2021 (“PAGA Released Claims”). PAGA
10 Released Claims include claims for civil penalties for alleged
11 (a) failure to provide meal and rest periods; (b) failure to
12 indemnify expenses; (c) failure to pay all wages at the correct
13 rates of pay; (d) failure to provide proper wage statements; and
14 (e) waiting time penalties. PAGA Settlement Class Members
15 will receive their respective share of the PAGA Payments and
16 will release all PAGA Released Claims regardless of whether or
17 not they submit a valid and timely Request for Exclusion.
- 18 **C.** In light of their Class Representative Service Awards and other
19 consideration given, Plaintiffs Ayala and Aviles each agree to
20 release, in addition to the Released Class Claims and PAGA
21 Released Claims described above, all claims, whether known or
22 unknown, under federal, state or local law against the Released
23 Parties, including but not limited to all claims related to or
24 arising out of their employment with Defendant and the
25 termination thereof. The Parties understand and agree that
26 Plaintiffs Ayala and Aviles are not, by way of this release,
27 releasing any workers’ compensation claims nor any other
28 claims which cannot be released as a matter of law.

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Notwithstanding the foregoing, Plaintiffs Ayala and Aviles each understand that this release includes unknown claims and that they are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

4. Gross Settlement Amount. As consideration, Defendant agrees to pay a “Gross Settlement Amount” of One Million Eight Hundred Thousand Dollars and Zero Cents (\$1,800,000.00) in full and complete settlement of the Lawsuit, as follows:

- A.** The Parties have agreed to engage Phoenix as the “Settlement Administrator” to administer this Settlement.
- B.** The Gross Settlement Amount shall be deposited with the Settlement Administrator within thirty (30) calendar days of the Effective Date (which, for this purpose, shall be defined as the later of (1) the date on which the Court enters an Order granting Final Approval of the Settlement Agreement or, (2) if there are objections to the Settlement, the later of: (i) the last date on which any appeal might be filed (i.e., no later than sixty (60) calendar days following entry of judgment), or (ii) the successful resolution of any appeal(s), including expiration of any time to seek reconsideration or further review.
- C.** The Gross Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than

1 § 2699(i), seventy-five percent (75%) of such penalties, or
2 Thirty Thousand Dollars and Zero Cents (\$30,000.00)
3 will be payable to the Labor & Workforce Development
4 Agency (“LWDA”), and the remaining twenty-five
5 percent (25%), or Ten Thousand Dollars and Zero Cents
6 (\$10,000.00), will be payable to PAGA Settlement Class
7 Members as the “PAGA Amount,” which PAGA Amount
8 will be distributed as described below.

9 **D. Escalator Clause.** It is estimated that as of March 31, 2021,
10 there are approximately 2,392 Class Members who worked
11 187,952 workweeks during the period of December 12, 2015
12 through March 31, 2021. On or before the date that is five (5)
13 court days before the hearing on the motion for preliminary
14 approval, Defendant will provide a declaration under penalty of
15 perjury confirming the number of Class members and
16 workweeks between December 12, 2015 and March 31, 2021.
17 The Gross Settlement Amount will increase proportionally with
18 added workweeks if the number of workweeks confirmed by
19 Defendant is more than 6% greater than the estimate stated
20 herein.

21 **E. Blow Up Clause.** The Parties and their counsel agree that they
22 will not solicit or encourage individuals to opt out of the
23 Settlement or to assert or pursue objections to the Settlement.
24 However, if more than five percent (5%) of the Settlement Class
25 Members submit timely Requests for Exclusion, Defendant shall
26 have the exclusive right to void this Settlement at its option.
27 Defendant shall make its election within fourteen (14) calendar
28 days after the Settlement Administrator notifies the Parties of

1 the number of Requests for Exclusion received, which the
2 Settlement Administrator shall do within ten (10) calendar days
3 after the Response Deadline. If Defendant exercises this right to
4 rescind the Settlement, it shall pay all reasonable settlement
5 administration costs incurred by the Settlement Administrator to
6 that date.

7 **5. Payments to the Settlement Class.** Settlement Class Members are
8 not required to submit a claim form to receive a payment (“Individual Settlement
9 Award”) from the Settlement. Individual Settlement Awards will be determined
10 and paid as follows:

11 **A.** The Settlement Administrator shall first deduct from the Gross
12 Settlement Amount the amounts approved by the Court for Class
13 Counsel’s attorneys’ fees, Class Counsel’s costs and expenses,
14 Plaintiffs’ Class Representative Service Awards, Defendant’s
15 employer share of the payroll taxes, the Settlement
16 Administrator’s fees and expenses for administration, and the
17 total amount designated as PAGA civil penalties. The
18 remaining amount shall be known as the “Net Settlement
19 Amount.”

20 **B.** From the Net Settlement Amount, the Settlement Administrator
21 will calculate each Settlement Class Member’s Individual
22 Settlement Award based on the following formula: each
23 Settlement Class Member who does not submit a valid and
24 timely Request for Exclusion as set forth in Paragraph 10(C)
25 below (“Participating Settlement Class Members”) shall receive
26 a proportionate settlement share based upon the workweeks
27 employed by Defendant during the Class Period, the numerator
28 of which is the Settlement Class Member’s workweeks during

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the Class Period and the denominator of which is the total workweeks worked by all Participating Settlement Class Members who worked during the Class Period.

C. The Settlement Administrator shall distribute to the LWDA the 75% of the amount allocated to PAGA civil penalties pursuant to Paragraph 4(C)(6) above. In addition, the Settlement Administrator shall allocate the PAGA Amount as follows. Each PAGA Settlement Class Member shall receive a portion of the PAGA Amount proportionate to the number of workweeks worked during the PAGA Settlement Period, the numerator of which is the PAGA Settlement Class Member’s gross number of workweeks worked during PAGA Settlement Period and the denominator of which is the total number of workweeks worked by all PAGA Settlement Class Members during the PAGA Settlement Period.

D. Within ten (10) business days following Defendant’s deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Award amounts and provide the same to the Parties’ counsel for review and approval. Within five (5) business days of approval by the Parties’ counsel, the Settlement Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to Participating Settlement Class Members and PAGA Settlement Class Members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant’s counsel.

1 **E.** For purposes of calculating applicable taxes and withholdings,
2 each Settlement Award shall be allocated as follows: Eighty
3 Percent (80%) as penalties and interest; and Twenty Percent
4 (20%) as wages. The Settlement Administrator will be
5 responsible for issuing to participating Settlement Class
6 Members IRS Forms W-2 for amounts deemed “wages” and IRS
7 Forms 1099 for the amounts allocated as penalties and interest.
8 Notwithstanding the treatment of the payments to each
9 Settlement Class Member above, none of the payments called
10 for by this Settlement Agreement, including the wage portion,
11 are to be treated as earnings, wages, pay or compensation for
12 any purpose of any applicable benefit or retirement plan, unless
13 required by such plans.

14 **F.** Defendant shall fully discharge its obligations under this
15 Settlement Agreement through the remittance of the Gross
16 Settlement Amount to the Settlement Administrator as set forth
17 in Paragraph 4(B), regardless of whether checks representing
18 Individual Settlement Awards are actually received and/or
19 negotiated by Settlement Class Members. Once Defendant has
20 complied with its obligations set forth in Paragraph 4(B), it will
21 be deemed to have satisfied all terms and conditions under this
22 Settlement Agreement, shall be entitled to all protections
23 afforded to it under this Settlement Agreement, and shall have
24 no further obligations under the terms of the Settlement
25 Agreement, regardless of what occurs with respect to the further
26 administration of the Settlement. Without prejudice to any other
27 remedies, the Settlement Administrator shall hold Defendant
28 harmless from and against all liabilities, claims, causes of

1 action, costs, and expenses (including legal fees and expenses)
2 arising out of any failure to timely or properly compensate
3 Settlement Class Members as provided for in this Settlement
4 Agreement.

5 **G.** Each Participating Settlement Class Member who receives an
6 Individual Settlement Award must cash the check(s) within one
7 hundred eighty (180) calendar days from the date the Settlement
8 Administrator mails it/them. One hundred twenty (120)
9 calendar days after the mailing of the settlement checks, the
10 Settlement Administrator shall mail a reminder notice to those
11 Participating Settlement Class Members who have not yet
12 negotiated their check. Any check that is not negotiated within
13 one hundred eighty (180) calendar days of mailing to a
14 Settlement Class Member shall be paid to the State Controller
15 Unclaimed Property Fund in the name of the Class Member who
16 does not timely negotiate his/her Individual Settlement Award
17 check. Checks to PAGA Settlement Class Members shall be
18 treated in the same manner.

19 **H.** Neither Plaintiffs nor Defendant shall bear any liability for lost
20 or stolen checks, forged signatures on checks, or unauthorized
21 negotiation of checks. Unless responsible by its own acts of
22 omission or commission, the same is true for the Settlement
23 Administrator.

24 **6. Attorneys' Fees and Costs.** Defendant will not object to Class
25 Counsel's request for a total award of attorneys' fees of one-third of the Gross
26 Settlement Amount, which is currently estimated to be Six Hundred Thousand
27 Dollars and Zero Cents (\$600,000.00). Additionally, Class Counsel will request an
28 award of actual costs and expenses as supported by declaration, in an amount not to

1 exceed One Hundred Forty-Five Thousand Dollars and Zero Cents (\$145,000.00)
2 from the Gross Settlement Amount. These amounts will cover any and all work
3 performed and any and all costs incurred in connection with this litigation,
4 including without limitation: all work performed and all costs incurred to date; and
5 all work to be performed and costs to be incurred in connection with obtaining the
6 Court's approval of this Settlement Agreement, including any objections raised and
7 any appeals necessitated by those objections. Class Counsel will be issued an IRS
8 Form 1099 by the Settlement Administrator when the Settlement Administrator
9 pays the fee award allowed by the Court. The payment of the Attorneys' Fees shall
10 be distributed by the Settlement Administrator as follows: 50% to the Aviles Class
11 Counsel and 50% to the Ayala Class Counsel. Payment of Attorneys' Costs shall
12 be made by the Settlement Administrator to each firm in the amount incurred by
13 each firm as set forth in their declaration and approved by the Court. Even in the
14 event that the Court reduces or does not approve the requested Attorneys' Fees or
15 Costs, Plaintiffs and Class Counsel shall not have the right to revoke this
16 Settlement, and it will remain binding, but Class Counsel retain the right to appeal a
17 reduction.

18 **7. Class Representative Service Award.** Defendant will not object to a
19 request for Class Representative Service Awards of up to Twenty Thousand Dollars
20 and Zero Cents (\$20,000.00) for each Plaintiff for a total of Forty Thousand Dollars
21 and Zero Cents (\$40,000.00) for their time and risk in prosecuting this case, and
22 their service to the Settlement Class. This award will be in addition to Plaintiffs'
23 respective Individual Settlement Award as a Settlement Class Member, if any, and
24 shall be reported on an IRS Form 1099 issued by the Settlement Administrator.
25 Even in the event that the Court reduces or does not approve the requested Class
26 Representative Service Award, Plaintiffs shall not have the right to revoke this
27 Settlement, and it will remain binding.

28 **8. Settlement Administrator.** Defendant will not object the

1 appointment of Phoenix as Settlement Administrator. Defendant will not object to
2 Plaintiffs' request to the Court to pay up to Thirty Thousand Dollars and Zero Cents
3 (\$30,000.00) for its services from the Gross Settlement Amount. The Settlement
4 Administrator shall be responsible for sending notices and for calculating
5 Individual Settlement Awards and preparing all checks and mailings, calculating
6 and remitting Defendant's share of taxes payable on the wages, and other duties as
7 described in this Settlement Agreement. The Settlement Administrator shall be
8 authorized to pay itself from the Gross Settlement Amount by Class Counsel only
9 after Individual Settlement Awards have been mailed to all participating Settlement
10 Class Members.

11 **9.** Within a reasonable time after execution of this Settlement Agreement
12 by the Parties and after providing Defendant the opportunity to review the draft
13 Preliminary Approval papers for at least five (5) business days prior to filing,
14 Plaintiffs shall apply to the Court for the entry of an Order:

- 15 **A.** Conditionally certifying the Settlement Class for purposes of
16 this Settlement Agreement;
- 17 **B.** Appointing David G. Spivak of The Spivak Law Firm and
18 Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit
19 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP
20 as Class Counsel for settlement purposes only;
- 21 **C.** Appointing Plaintiffs Ayala and Aviles as Class Representatives
22 for the Settlement Class Members for settlement purposes only;
- 23 **D.** Approving Phoenix as Settlement Administrator;
- 24 **E.** Preliminarily approving this Settlement Agreement and its terms
25 as fair, reasonable, and adequate;
- 26 **F.** Preliminarily approving Defendant's revisions to its practices as
27 conforming to the law;
- 28 **G.** Approving the form and content of the Notice Packet, which is

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substantively in the form attached hereto as Exhibit A, and directing the mailing of same;

H. Approving distribution of the uncashed settlement checks paid to the State Controller Unclaimed Property Fund in the name of the absent Class Members;

I. Setting deadlines for the Settlement Administrator to provide the Class Notice, and for Settlement Class Members to opt out or object to the Settlement; and

J. Scheduling a Final Approval hearing.

At the same time that Class Counsel submits this Settlement Agreement to the Court for preliminary approval, Class Counsel shall also submit a copy of the Agreement to the LWDA. Within ten (10) calendar days of the filing the Motion for Preliminary Approval, Defendant will, pursuant to CAFA, mail the notice(s) of the Settlement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1711 et seq.

10. Notice to Settlement Class. Following preliminary approval, the Settlement Class shall be notified as follows:

A. Class Data transfer. Within thirty (30) calendar days after entry of an order preliminarily approving this Settlement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of termination of employment (if any), and the number of workweeks worked by each Settlement Class Member while employed during the Class Period and PAGA Settlement Period (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator. The Class Data

1 Defendant provides to the Settlement Administrator, along with
2 any updated contact information identified by the Settlement
3 Administrator, as explained below, shall be used solely to
4 administer the Notice Packet and Settlement Award process
5 described herein, shall remain confidential, and shall not be
6 disclosed to anyone (including Class Counsel), except pursuant
7 to the express written authorization of Defendant or the
8 individual in question, by order of the Court, or to the extent
9 necessary to fulfill the Settlement Administrator's reporting
10 obligations hereunder.

11 **B.** Within ten (10) business days from receipt of this information,
12 the Settlement Administrator shall: (i) run the names of all
13 Settlement Class Members through the National Change of
14 Address ("NCOA") database to determine any updated
15 addresses for Settlement Class Members; (ii) update the address
16 of any Settlement Class Member for whom an updated address
17 was found through the NCOA search; (iii) calculate the
18 estimated Individual Settlement Award for each Settlement
19 Class Member; and (iv) mail a Notice Packet to each Settlement
20 Class Member at his or her last known address or at the updated
21 address found through the NCOA search, and retain proof of
22 mailing.

23 **C. Requests for Exclusion.** Any Settlement Class Member who
24 wishes to opt-out of the Settlement must complete and mail a
25 Request for Exclusion (defined below) to the Settlement
26 Administrator within forty-five (45) calendar days of the date of
27 the initial mailing of the Notice Packets (the "Response
28 Deadline"). The Notice Packet shall state that Settlement Class

1 Members who wish to exclude themselves from the Settlement
2 must submit a Request for Exclusion by the Response Deadline.
3 The Request for Exclusion must: (1) contain the name, address,
4 telephone number and the last four digits of the Social Security
5 number of the Settlement Class Member; (2) contain a statement
6 that the Settlement Class Member wishes to be excluded from
7 the Settlement; (3) be signed by the Settlement Class Member;
8 and (4) be postmarked by the Response Deadline and mailed to
9 the Settlement Administrator at the address specified in the
10 Class Notice. If the Request for Exclusion does not contain the
11 information listed in (1)-(3), it will not be deemed valid for
12 exclusion from the Settlement, except a Request for Exclusion
13 not containing a Class Member's telephone number and/or last
14 four digits of the Social Security number will be deemed valid.
15 The date of the postmark on the Request for Exclusion shall be
16 the exclusive means used to determine whether a Request for
17 Exclusion has been timely submitted. Any Settlement Class
18 Member who requests to be excluded from the Settlement Class
19 will not be entitled to any recovery from the Net Settlement
20 Amount and will not be bound by the terms of the Settlement or
21 have any right to object, appeal or comment thereon.
22 Notwithstanding the foregoing, the PAGA settlement and
23 release of the PAGA Released Claims will apply to all PAGA
24 Settlement Class Members whether or not they exclude
25 themselves from the class action settlement. PAGA Settlement
26 Class Members who submit a valid and timely Request for
27 Exclusion shall still be entitled to their portion of the PAGA
28 Amount described above, and will release all PAGA Released

1 Claims, whether they submit a valid and timely Request for
2 Exclusion or not.

3 **D. Objections.** Members of the Settlement Class who do not
4 request exclusion may object to this Settlement Agreement as
5 explained in the Class Notice by filing a written objection with
6 the Settlement Administrator (who shall serve all objections as
7 received on Class Counsel and Defendant's counsel, and Class
8 Counsel will then be responsible to file all such objections with
9 the Court). Defendant's counsel and Class Counsel shall file
10 any responses to objections no later than the deadline to file the
11 Motion for Final Approval. To be valid, any written objection
12 must: (1) contain the objecting Settlement Class Member's full
13 name and current address, as well as contact information for any
14 attorney representing the objecting Settlement Class Member for
15 purposes of the objection; (2) include all objections and the
16 factual and legal bases for same; (3) include any and all
17 supporting papers, briefs, written evidence, declarations, and/or
18 other evidence; and (4) be postmarked no later than the
19 Response Deadline. Alternatively, members of the Settlement
20 Class who do not request exclusion may also object to the
21 Settlement by appearing at the Final Approval Hearing.
22 Members of the Settlement class who request exclusion may not
23 object to the Settlement.

24 **E. Notice of Settlement Award / Disputes.** Each Notice Packet
25 mailed to a Settlement Class Member shall disclose the amount
26 of the Settlement Class Member's estimated Individual
27 Settlement Award as well the Settlement Class Member's
28 number of Workweeks worked during the Class Period.

1 Settlement Class Members will have the opportunity, should
2 they disagree with Defendant's records regarding the
3 information stated in the Notice Packet, to provide
4 documentation and/or an explanation to show contrary
5 information. Any such dispute, including any supporting
6 documentation, must be mailed to the Settlement Administrator
7 and postmarked by the Response Deadline. If there is a dispute,
8 the Settlement Administrator will consult with the Parties to
9 determine whether an adjustment is warranted. The Settlement
10 Administrator shall determine the eligibility for, and the
11 amounts of, any Individual Settlement Awards under the terms
12 of this Settlement Agreement. The Settlement Administrator's
13 determination of the eligibility for and amount of any Individual
14 Settlement Award shall be binding upon the Settlement Class
15 Member and the Parties.

16 **F.** Any Notice Packets returned to the Settlement Administrator as
17 non-delivered on or before the Response Deadline shall be re-
18 mailed to the forwarding address affixed thereto. If no
19 forwarding address is provided, the Settlement Administrator
20 shall make reasonable efforts, including utilizing a "skip trace,"
21 to obtain an updated mailing address within five (5) business
22 days of receiving the returned Notice Packet. If an updated
23 mailing address is identified, the Settlement Administrator shall
24 resend the Notice Packet to the Settlement Class Member
25 immediately, and in any event within three (3) business days of
26 obtaining the updated address. The address identified by the
27 Settlement Administrator as the current mailing address shall be
28 presumed to be the best mailing address for each Settlement

1 Class Member. It will be conclusively presumed that, if an
2 envelope so mailed has not been returned within thirty (30)
3 calendar days of the mailing, the Settlement Class Member
4 received the Notice Packet. Settlement Class Members to whom
5 Notice Packets are re-mailed after having been returned as
6 undeliverable to the Settlement Administrator shall have
7 fourteen (14) calendar days from the date of re-mailing, or until
8 the Response Deadline has expired, whichever is later (but in no
9 event more than fourteen (14) calendar days after the Response
10 Deadline), to submit a Request for Exclusion, Objection, or
11 dispute. Notice Packets that are re-mailed shall inform the
12 recipient of this adjusted deadline. If a Settlement Class
13 Member's Notice Packet is returned to the Settlement
14 Administrator more than once as non-deliverable, then an
15 additional Notice Packet shall not be mailed. Nothing else shall
16 be required of, or done by, the Parties, Class Counsel, or
17 Defendant's Counsel to provide notice of the proposed
18 settlement.

19 **11. Final Approval.** Following preliminary approval and the close of the
20 period for filing requests for exclusion, objections, or disputes under this Settlement
21 Agreement and after providing Defendant the opportunity to review the draft Final
22 Approval papers for at least five (5) business days prior to filing, Plaintiffs shall
23 apply to the Court for entry of an Order:

- 24 **A.** Granting final approval to the Settlement Agreement and
25 adjudging its terms to be fair, reasonable, and adequate;
26 **B.** Approving Plaintiff's and Class Counsel's application for
27 attorneys' fees and costs, Class Representative Service Awards,
28 and settlement administration costs; and

1 C. Entering judgment pursuant to California Rule of Court 3.769.
2 **12. Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT
3 (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
4 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE
5 ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES
6 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO
7 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG
8 THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
9 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
10 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
11 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
12 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
13 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
14 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND
15 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
16 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
17 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
18 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER
19 PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
20 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER
21 TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
22 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY
23 OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
24 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S
25 OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
26 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
27 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
28 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION

1 CONTEMPLATED BY THIS AGREEMENT

2 **13. Non-Admission of Liability.** Nothing in this Settlement Agreement
3 shall operate or be construed as an admission of any liability or that class
4 certification is appropriate in any context other than this Settlement. Each of the
5 Parties has entered into this Settlement Agreement to avoid the burden and expense
6 of further litigation. Pursuant to Federal Evidence Code Section 408 and California
7 Evidence Code Section 1152, this Settlement Agreement is inadmissible in any
8 proceeding, except a proceeding to approve, interpret, or enforce this Settlement
9 Agreement. If Preliminary Approval or Final Approval does not occur, the Parties
10 agree that this Settlement Agreement is void, but remains protected by Federal
11 Evidence Code Section 408 and the California Evidence Code Section 1152.

12 **14. Stay of Lawsuit.** The Parties agree that upon the signing of this
13 Agreement that the Lawsuit is stayed for all purposes except for matters related to
14 the approval of the Settlement.

15 **15. Return to Status Quo Ante.** In the event the Court does not grant
16 Preliminary or Final Approval of the Settlement, or if the Settlement approval is
17 reversed on appeal, the Parties shall return to their respective positions in which
18 they were on April 23, 2021, the Lawsuit will be reactivated, and the Parties will
19 cooperate in stipulating to hearing schedule for the motion for class certification.

20 **16. No Prior Assignments.** Plaintiffs and Class Counsel represent,
21 covenant, and warrant that they have not directly or indirectly encumbered,
22 assigned, transferred, or otherwise given away any of the claims, demands, causes
23 of actions, or rights that they are releasing by signing this Settlement Agreement,
24 nor has any of them purported to do so.

25 **17. Non-disclosure and Non-publication.** Plaintiffs and Class Counsel
26 agree not to disclose or publicize the Settlement Agreement contemplated herein,
27 the fact of the Settlement Agreement, its terms or contents, or the negotiations
28 underlying the Settlement Agreement, in any manner or form, directly or indirectly,

1 to any person or entity, except to Settlement Class Members and as shall be
2 contractually required to effectuate the terms of the Settlement Agreement as set
3 forth herein. However, for the limited purpose of allowing Class Counsel to prove
4 adequacy as class counsel/settlement in other Lawsuits, Class Counsel may disclose
5 the names of the Parties in these Lawsuits, the venue/case number of the Lawsuits,
6 and a general description of the Lawsuits and settlement (limited to the written
7 court record), to a court in a declaration by Class Counsel. The Settlement
8 Administrator shall be permitted to post court-filed documents, such as the motions
9 for approval, the motion for attorneys' fees and costs, and the Judgment on a
10 website which shall be removed after the check cashing period has expired.

11 **18. Waiver and Amendment.** The Parties may not waive, amend, or
12 modify any provision of this Settlement Agreement except by a written agreement
13 signed by all of the Parties or their representatives, and subject to any necessary
14 Court approval. A waiver or amendment of any provision of this Settlement
15 Agreement will not constitute a waiver of any other provision.

16 **19. Notices.** All notices, demands, and other communications to be
17 provided concerning this Settlement Agreement shall be in writing and delivered by
18 receipted delivery and by e-mail at the addresses set forth below, or such other
19 addresses as either Party may designate in writing from time to time:

20 if to Defendant: Elizabeth (Lisa) A. Brown
21 Jen Svanfeldt
22 GBG LLP
23 633 West 5th Street, Suite 3330
24 Los Angeles, California 90071
lisabrown@gbglp.com
jensvanfeldt@gbglp.com

25 if to Plaintiffs: David G. Spivak
26 The Spivak Law Firm
27 16530 Ventura Blvd., Suite 203
28 Encino, CA 91436
david@spivaklaw.com
and

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Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
norm@bamlawca.com
kyle@bamlawca.com
aj@bamlawca.com

20. Cooperation. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

21. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the Lawsuits contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. Further, all terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

22. Counterparts. This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts, whether by facsimile, electronically or email and delivered electronically, which for purposes of this Settlement Agreement shall be accepted as an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: 06 / 23 / 2021

PLAINTIFF ERIC AYALA



By: _____
Plaintiff and Settlement Class Representative

DATED: _____

PLAINTIFF ADRIAN AVILES

By: _____
Plaintiff and Settlement Class Representative

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DATED: 6/25/2021 | 8:58 AM PDT

DEFENDANT UPS SUPPLY CHAIN SOLUTIONS, INC.

BY:  _____

APPROVED AS TO FORM:

DATED: 06 / 23 / 2021

THE SPIVAK LAW FIRM

By:  _____
David G. Spivak
Attorneys For Plaintiff ERIC AYALA

DATED: _____

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys For Plaintiff ADRIAN AVILES

DATED: _____

GBG LLP

BY: _____
ELIZABETH (LISA) A. BROWN
Attorneys for Defendant
UPS SUPPLY CHAIN SOLUTIONS, INC.

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Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
norm@bamlawca.com
kyle@bamlawca.com
aj@bamlawca.com

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22. Counterparts. This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts, whether by facsimile, electronically or email and delivered electronically, which for purposes of this Settlement Agreement shall be accepted as an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: _____ PLAINTIFF ERIC AYALA

By: _____
Plaintiff and Settlement Class Representative

DATED: Jun 23, 2021 _____ PLAINTIFF ADRIAN AVILES

By:  _____
Adrian Aviles (Jun 23, 2021 17:20 PDT)
Plaintiff and Settlement Class Representative

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DATED: 6/25/2021 | 8:58 AM PDT

DEFENDANT UPS SUPPLY CHAIN SOLUTIONS, INC.

DocuSigned by:

BY _____
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APPROVED AS TO FORM:

DATED: _____

THE SPIVAK LAW FIRM

By: _____
David G. Spivak
Attorneys For Plaintiff ERIC AYALA

DATED: 6/24/21

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys For Plaintiff ADRIAN AVILES

DATED: 6/25/2021

GBG LLP

By: 
ELIZABETH (LISA) A. BROWN
Attorneys for Defendant
UPS SUPPLY CHAIN SOLUTIONS, INC.