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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

Noelle Nakagaki, an individual, on behalf of the
State of California, as a private attorney
general, and on behalf of all Aggrieved
Employees,

Plaintiff,

v.

Proven Staffing Consultants, LLC, a
California Corporation, and DOES 1 to 50,
inclusive

Defendant.

CASE NO.

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

1 **SETTLEMENT AGREEMENT**

2 This Settlement Agreement is entered into, and effective upon the date of full execution by
3 all Parties, by and between: (1) Noelle Nakagaki, the Settlement Class Representative in the above-
4 entitled proceeding, for herself and on behalf of the Settlement Class and Aggrieved Employees;
5 and (2) Defendant Proven Staffing Consultants, LLC. All capitalized terms used herein are as
6 defined in Section 2 below or elsewhere in this Agreement.

7 **1. RECITALS**

8 1.1 This Settlement Agreement is entered into with reference to the following facts:

9 1.2 The Settlement Class Representative believes that the Settled Claims have merit and
10 that the evidence developed to date supports her claims. However, the Settlement Class
11 Representative and Settlement Class Counsel recognize and acknowledge the expense and length of
12 continued proceedings necessary to prosecute the claims through trial, appeals, and ancillary
13 actions. The Settlement Class Representative and Settlement Class Counsel also have taken into
14 account the uncertain outcome and the risk of any litigation, as well as the difficulties,
15 complexities, and delays inherent in such litigation. The Settlement Class Representative and
16 Settlement Class Counsel also are mindful of the inherent problems of proof in establishing, and
17 possible defenses to, the claims asserted in this Action. The Settlement Class Representative and
18 Settlement Class Counsel believe that the Settlement set forth in this Agreement confers substantial
19 benefits upon the Settlement Class. Based upon their evaluation, the Settlement Class
20 Representative and Settlement Class Counsel have determined that the Settlement set forth in this
21 Agreement is in the best interest of the Settlement Class and is fair, adequate, and reasonable.

22 1.3 Defendant has denied and continues to deny all liability with respect to any and all
23 of the Settled Claims or the facts alleged in support thereof and has denied and continues to deny all
24 charges of wrongdoing or liability against it arising out of or relating to any conduct, acts, or
25 omissions alleged or that could have been alleged in the Action. Defendant’s willingness to resolve
26 the Settled Claims on the terms and conditions embodied in this Agreement is based on, among
27 other things: (i) the time and expense associated with litigating the Settled Claims through trial and
28 any appeals; (ii) the benefits of resolving the Settled Claims, including limiting further expense,

1 inconvenience and distraction, disposing of burdensome and protracted litigation, and permitting
2 Defendant to conduct its business unhampered by the distractions of continued litigation; and (iii)
3 the uncertainty and risks inherent in any litigation.

4 1.4 The Parties to this Agreement recognize that the claims against Defendant are
5 strongly disputed, and the Parties wish to resolve completely and totally all Settled Claims against
6 Defendant and the other Released Parties.

7 1.5 **NOW THEREFORE**, subject to Court approval, as hereinafter provided, it is
8 hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this
9 Agreement, and upon the entry by the Court of a final order approving the Settlement and directing
10 the implementation of the terms and conditions of the Settlement as set forth in this Agreement, this
11 Action shall be settled and compromised upon the terms and conditions contained herein.

12 **2. DEFINITIONS**

13 As used in this Agreement, in addition to any definitions elsewhere in this Agreement, the
14 following terms shall have the meanings set forth below:

15 2.1 **“Action”** means and refers to *Noelle Nakagaki v. Proven Staffing Consultants, LLC*,
16 the Complaint for which shall be filed in the San Diego County Superior Court attached hereto as
17 Exhibit 1.

18 2.2 **“Aggrieved Employees”** means and refers to Plaintiff and all other California
19 residents who are or were employed by Proven Staffing Consultants, LLC and who worked from
20 home at any point during at least one pay period during the PAGA Period and did not receive
21 reimbursement for work-related home office expenses. The Aggrieved Employees are estimated to
22 include 224 individuals as of February 27, 2022.

23 2.3 **“Agreement”** means and refers to this Settlement Agreement.

24 2.4 **“Settlement Administrator”** means and refers to a mutually-agreeable settlement
25 administrator with adequate security protocols, subject to Court approval, which will administer the
26 Settlement Fund as described in this Agreement.

27 2.5 **“Class Notice”** means and refers to the mutually-agreeable class notice approved by
28 the Court and in the form substantially similar to that which is attached hereto as Exhibit 2.

1 2.6 **“Class Period”** means and refers to the period between March 15, 2020 and
2 February 27, 2022.

3 2.7 **“Complaint”** means and refers to the operative complaint in the Action. The Parties
4 have stipulated to file the Complaint for purposes of facilitating class action and Private Attorneys
5 General Act (PAGA) settlement approval only.

6 2.8 **“Court”** means and refers to the Superior Court of California, County of San Diego.

7 2.9 **“Defendant”** means and refers to Proven Staffing Consultants, LLC.

8 2.10 **“Final Approval Order”** means and refers to the Court’s judgment and order
9 granting final approval of the class settlement following the motion as set forth in Section 5.3. This
10 Final Approval Order shall constitute approval pursuant to California Rules of Court 3.769(a) and a
11 judgment pursuant to California Rules of Court 3.769(h).

12 2.11 **“Final Effective Date”** means and refers to the later of the following: (a) the 65th
13 calendar day after entry of a signed order finally approving this Agreement and Settlement provided
14 no motion to intervene or motion to vacate the judgment, appeal, writ or other appellate proceeding
15 has been filed; or (b) the 7th calendar day after any motion to intervene or motion to vacate the
16 judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally
17 dismissed with no material change to the terms of this Agreement and there is no right to pursue
18 further remedies or relief, whichever is later.

19 2.12 **“LWDA”** means and refers to the Labor & Workforce Development Agency.

20 2.13 **“Notice Program”** means and refers to the notice procedures set forth in Section 6.

21 2.14 **“Opt Out Period”** means and refers to the period of time between the
22 commencement of the Notice Program and an agreed date certain forty-five (45) calendar days later
23 during which members of the Settlement Class may exercise the right to opt out of the Settlement
24 Class pursuant to the provisions of Section 7.

25 2.15 **“PAGA Letters”** means and refers to the letters sent by or on behalf of the Plaintiff
26 to the LWDA, dated January 31, 2022 and April 5, 2022.

27 2.16 **“PAGA Period”** means and refers to the period between July 31, 2020 and February
28 27, 2022.

1 2.17 **“Parties”** means and refers to the Settlement Class Representative, for herself and
2 on behalf of the Settlement Class and Aggrieved Employees, and Defendant.

3 2.18 **“Person”** means and refers to any individual, proprietorship, corporation,
4 partnership, association, trustee, unincorporated association, or any other type of legal entity,
5 except a governmental entity.

6 2.19 **“Preliminary Approval Order”** means and refers to the Court’s order granting
7 preliminary approval of this Agreement and approval of the Notice Program following the motion
8 as set forth in Section 5.1. This Preliminary Approval Order shall constitute an order for and setting
9 a final approval hearing pursuant to California Rules of Court 3.769(d) and 3.769(e).

10 2.20 **“Released Party”** or **“Released Parties”** means and refers to: (a) Proven Staffing
11 Consultants, LLC, and each and all of its past or present partners, parents, clients (including, but
12 not limited to BioDuro, LLC), subsidiaries, affiliates, investors, owners, or related entities
13 (regardless of whether such partners, parents, clients, subsidiaries, affiliates, or related entities are
14 individuals, corporations, partnerships, limited partnerships, limited liability companies, or other
15 forms of entity); (b) each and all of the predecessor or successor entities of any of those entities
16 identified in subparagraph (a); (c) any other individuals or entities of any kind, which have been or
17 could be alleged to be in any manner responsible (whether on an alter ego, joint employer, statutory
18 employer, integrated enterprise, or any other theory) for any actual or alleged violations described
19 in Section 2.22; and (d) all past and present directors, officers, representatives, insurers, agents,
20 shareholders, partners, members, managers, lawyers, and employees of any of the individuals or
21 entities identified in subparagraphs (a), (b), or (c).

22 2.21 **“Releasing Party”** or **“Releasing Parties”** means and refers to the Settlement Class
23 and its members, agents, partners, joint venturers, affiliates, predecessors, successors, spouses,
24 heirs, assigns, insurers, and any other Persons or entities claiming by or through the Settlement
25 Class, in their capacities as such.

26 2.22 **“Settled Claims”** means and refers to any and all claims, liabilities, guarantees,
27 rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions,
28 and causes of action, of every kind and/or nature whatsoever, whether now known or unknown,

1 suspected or unsuspected, asserted or unasserted, latent or patent, regardless of legal theory or type
2 or amount of relief or damages claimed, which any Releasing Party now has or at any time ever had
3 against Released Parties, that are alleged in the Complaint or which could have been alleged in the
4 Complaint based on the facts, claims and/or allegations asserted in the Complaint and/or PAGA
5 Letters (“Claims”), including: (a) alleged failure to provide timely and/or complete reimbursement
6 for necessary business-related expenditures, including but not limited to Claims under California
7 Labor Code Section 2802, California Business and Professions Code Section 17200, *et seq.*, and
8 PAGA; and (b) any other state or federal law, statute, regulation, or ordinance imposing liability
9 and/or obligations regarding the reimbursement of business expenses, or that could be brought
10 based on the factual allegations in the Complaint, including Fair Labor Standards Act (FLSA)
11 claims that could have been brought based on the factual allegations in the Complaint.. Without in
12 any way limiting the foregoing, Settled Claims shall include all Claims under statutes and
13 regulations set forth in this Section, based on unreimbursed business expenses, whether enforced
14 directly or pursuant to California Labor Code Section 2699, California Business and Professions
15 Code Section 17200, *et seq.*, or any other mechanism.

16 2.23 **“Settlement”** means and refers to the settlement reflected in and to be effectuated
17 through this Agreement.

18 2.24 **“Settlement Class”** or **“Settlement Class Member”** means and refers to Settlement
19 Class Representative and all other California residents who are or were employed by Defendant and
20 who worked from home at any point during at least one pay period during the Class Period and did
21 not receive reimbursement for work-related home office expenses. The Settlement Class is
22 estimated to include 267 individuals as of February 27, 2022. Excluded from the Settlement Class
23 are all Persons who properly and timely elect to opt out pursuant to Section 7.

24 2.25 **“Settlement Class Counsel”** means and refers to Craig Ackermann and Avi
25 Kreitenberg of Ackermann & Tilajef, P.C and Tatiana Hernandez of the Law Office of Tatiana
26 Hernandez, P.C.

27 2.26 **“Settlement Class Counsel’s Fees, Costs, and Expenses”** means and refers to the
28 amount awarded by the Court to Settlement Class Counsel for reasonable attorneys’ fees, costs, and

1 expenses associated with this Action and the resolution thereof, and no other settlement, as
2 described in Section 11.1.

3 2.27 **“Settlement Class Representative” or “Plaintiff”** means and refers to Noelle
4 Nakagaki.

5 2.28 **“Settlement Fund”** means and refers to the financial institution account established
6 to hold all proceeds from whatever source necessary to provide the benefits under this Agreement.

7 2.29 **“Settlement Termination Date”** means and refers to the date, if any, that
8 Defendant exercises its right to terminate this Agreement.

9 **3. SETTLEMENT PURPOSES ONLY**

10 3.1 **General.** This Agreement is for settlement purposes only.

11 3.2 **Settlement Class Only.** Any certification of a preliminary or final Settlement Class
12 pursuant to the terms of this Agreement shall not constitute nor be construed as an admission, and
13 shall not be admissible in any proceeding as an admission, on the part of Defendant or any other
14 Person that this Action or any other action is appropriate for class or representative treatment at trial
15 pursuant to Rule 23 of the Federal Rules of Civil Procedure, California Code of Civil Procedure
16 Section 382, California Labor Code Section 2698, *et seq.*, California Business and Professions
17 Code Section 17200, *et seq.*, or any similar class and/or representative action statute or rule. This
18 Agreement shall not prejudice Defendant’s rights or any other Person’s rights to oppose
19 certification of a litigated class or other representative treatment in this Action or in any other
20 action or proceeding. Settlement Class Counsel shall not refer to this Agreement or make any
21 argument concerning this Agreement in any contested proceeding to certify a litigated class or
22 obtain other representative treatment.

23 3.3 **Admissibility.** This Agreement, any negotiations or proceedings related hereto, the
24 implementation hereof, and any papers submitted in support of the motions for approval hereof
25 (collectively, the “Settlement Proceedings”) shall not be construed as, nor deemed to be evidence
26 of, any admission or concession by any of the Parties or any other Person regarding liability or the
27 appropriateness of class treatment, and shall not be offered or received in evidence in any action or
28 proceeding for any purpose whatsoever; provided, however, that this Agreement and the Settlement

1 Proceedings may be presented to the Court in connection with the implementation or enforcement
2 of this Agreement, or as may be necessary or appropriate to further the purposes sought to be
3 achieved by this Agreement.

4 **3.4 Denial of Liability.** By entering into this Agreement, it is understood that Defendant
5 (on behalf of itself and the Released Parties) does not admit and, in fact, expressly denies that: (i) it
6 has breached any duty, obligation, or agreement; (ii) it has engaged in any illegal, tortious, or
7 wrongful activity; (iii) it is liable to members of the Settlement Class or the Aggrieved Employees;
8 or (iv) any damages have been sustained by any Settlement Class Member or by any other Person.

9 **3.5 Filing of Complaint.** Settlement Class Counsel shall file and serve a Complaint
10 with the Court, substantially in the form attached hereto as Exhibit 1, following execution of this
11 Agreement by the Parties and prior to the lodging of a fully-executed copy of this Agreement with
12 the Court. The Parties agree that Defendant’s time to respond to the Complaint shall be stayed
13 pending the settlement approval process.

14 **4 JURISDICTION**

15 **4.1 Continuing Jurisdiction.** Once the Complaint is filed, the Court has, and shall
16 continue to have, jurisdiction to make any orders as may be appropriate to effectuate, consummate,
17 and enforce the terms of this Agreement, to approve an award of attorneys’ fees and costs pursuant
18 hereto, and to supervise the administration and distribution of money from the Settlement Fund
19 pursuant to California Code of Civil Procedure Section 664.6. Any dispute or question relating to or
20 concerning the interpretation, enforcement, or application of this Agreement shall be presented to
21 the Court for resolution.

22 **5 COURT APPROVAL OF THE SETTLEMENT**

23 **5.1 Preliminary Approval and Notice Approval.** After the execution of this
24 Agreement, Settlement Class Counsel shall move the Court for an order granting preliminary
25 approval of this Agreement and approval of the proposed Notice Program and, in connection
26 therewith, submit to the Court a mutually-acceptable proposed Preliminary Approval Order.
27 Settlement Class Counsel will provide drafts of the preliminary approval motion to Defendant’s
28 counsel for review at least three (3) business days before submitting the same to the Court.

1 **5.2 Objections.** The Preliminary Approval Order shall specify that Settlement Class
2 Members shall have until an agreed date certain, which shall be forty-five (45) calendar days from
3 the commencement of the Notice Program pursuant to Section 6, to send objections to this
4 Agreement to the Settlement Administrator, which then shall send those objections to counsel for
5 the Parties within three (3) business days. Settlement Class Counsel shall file any objections and the
6 Parties' responses thereto with the Court with the motion for final approval. The written and signed
7 objection must contain: the Settlement Class Member's full name, address, last four digits of their
8 social security number, the case name and number of the Action, a clear statement of the basis for
9 their objection, along with supporting documentation. If an objector also wishes to appear at the
10 Final Approval Hearing, in person or through an attorney, he or she need not file a notice of
11 intention to appear at the same time as the objection is filed. Filing the notice of intention to appear
12 is not necessary to preserve the right to appear at the Final Approval Hearing. If a Settlement Class
13 Member submits both a Request for Exclusion and a written objection, the Request for Exclusion
14 shall be void and the Settlement Class Member shall be deemed part of the Class and bound by the
15 Judgment upon approval by the Court. The Court retains final authority with respect to the
16 consideration and admissibility of objections.

17 Settlement Class Members who do not submit timely written objections to the Settlement
18 hereby waive their right to appeal from the Final Approval Order. If the Court approves the
19 Settlement, any objecting Settlement Class Member will remain a member of the Settlement Class
20 and be bound by the terms of the Settlement and the Final Approval Order just as any Settlement
21 Class Member who doesn't object.

22 **5.3 Final Approval.** Within thirty (30) calendar days following the expiration of the
23 Opt Out Period, if the Agreement has not been terminated in accordance with Section 8, Settlement
24 Class Counsel shall file a motion for final approval and, in connection therewith, submit to the
25 Court a mutually-acceptable proposed Final Approval Order. Settlement Class Counsel will provide
26 drafts of the final approval motion to Defendant's counsel for review at least three (3) business days
27 before submitting the same to the Court.

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1 **6. CLASS NOTICE**

2 6.1 **Mailed Notice.** Within twenty (20) calendar days after entry of the Preliminary
3 Approval Order, Defendant shall submit to the Settlement Administrator, in electronic form, a list
4 of all Settlement Class Members. The list shall include each Person's name, last known address,
5 social security number, and the number of months worked during the Class Period and PAGA
6 Period. This information shall be treated as confidential and shall not be disclosed without prior
7 approval of Defendant's counsel. Within fifteen (15) calendar days after receipt of the foregoing
8 list, the Settlement Administrator and/or its designee shall run a national change of address update
9 and send, by first class postage prepaid U.S. Mail, a copy of the Class Notice approved by the Court
10 to each Person on the final list. Any Class Notices returned to the Settlement Administrator as
11 undeliverable on or before the deadline for postmarking the opt outs shall be sent promptly via
12 First-Class U.S. Mail to the forwarding address affixed thereto, and the Settlement Administrator
13 shall indicate the date of such re-mailing on the Notice Packets. If no forwarding address is
14 provided, the Settlement Administrator shall promptly attempt to determine the correct address
15 using a single skip-trace or other search using the name, address and/or Social Security Number of
16 the Settlement Class Member involved, and it shall then perform a single re-mailing within five (5)
17 calendar days of receiving notice that the Class Notice was undeliverable. If after performing a skip
18 trace search, the Class Notice is still returned to the Settlement Administrator as undeliverable, that
19 Person will be deemed a Settlement Class Member. Those Settlement Class Members who receive
20 a re-mailed Class Notice shall have their deadline for postmarking an opt out or objecting to the
21 settlement extended by fifteen (15) calendar days from the date of re-mailing or until the original
22 deadline for postmarking an opt out, whichever is later. There is no obligation to attempt to locate
23 Class Members after the opt out deadline set forth in the Class Notice.

24 6.2 **Cost of Notice and Administration.** The notice administration fees and costs for
25 this Settlement shall be paid from the Settlement Fund. Settlement Class Counsel preliminarily
26 estimates that such fees and costs will be approximately \$7,500.00. If the actual fees and costs
27 exceed \$7,500.00, the amounts payable to Settlement Class Members under Section 10 shall be
28 reduced pro rata to cover any excess notice and administration costs. Any amounts not utilized for

1 administration costs shall be included in the distributions to Settlement Class Members.

2 6.3 **Records of Notice.** The Settlement Administrator shall keep records of all notices,
3 and the cost thereof. Promptly upon request, the Settlement Administrator shall provide a sworn
4 proof of mailing.

5 6.4 **Notice in English.** Based on the nature of their employment, all Settlement Class
6 Members are fluent in English such that no translation of the Class Notice is required.

7 6.5 **Notice of Final Judgment.** Notice of final judgment will be given to the Settlement
8 Class via posting on the Settlement Administrator’s website.

9 6.6 **Resolution of Disputes.** The number of months worked that Defendant provides to
10 the Settlement Administrator for each Settlement Class Member shall be presumed correct. If a
11 Settlement Class Member timely disputes the number of months listed on their Class Notice, the
12 dispute will be submitted to the Settlement Administrator, who will examine the records and either
13 verify the calculation or provide a corrected calculation. Disputes must be in a writing submitted to
14 the Settlement Administrator, postmarked on or before the opt out deadline. The dispute must
15 contain: the Class Member’s full name, address, signature, and last four digits of their Social
16 Security number; the case name and number of the Action, and any facts supporting the Settlement
17 Class Member’s dispute, along with any supporting materials confirming that the months attributed
18 to him or her are incorrect. The Settlement Administrator may consult with the Parties but its
19 determination of disputes will be final and non-appealable.

20 **7. RIGHT OF EXCLUSION**

21 7.1 **Procedure.** Settlement Class Members may elect to opt out of the Settlement Class
22 and thus exclude themselves from the Action and the Settlement Class at any time during the Opt
23 Out Period. To exercise the opt out right set forth in this Section 7.1, a Settlement Class Member
24 must submit a written request to the Settlement Administrator to exclude himself or herself from
25 this Agreement, which request shall contain the Settlement Class Member’s name, signature,
26 address, telephone number, the last four digits of their social security number, and a clear
27 statement that the Settlement Class Member opts out or requests exclusion from the Settlement.
28 Such requests for exclusion must be sent to the Settlement Administrator and must be postmarked

1 on or before the end of the Opt Out Period. All Settlement Class Members who do not opt out in
2 accordance with this Agreement during the Opt Out Period will be deemed to have forever waived
3 their right to opt out of the Settlement Class and will be deemed Settlement Class Members for all
4 purposes under this Agreement and will be irrevocably bound by this Agreement. Any individual
5 who timely and properly opts out shall not be entitled to any individual relief under this Agreement
6 except for their pro rata portion of the PAGA Payment and will not have any right to object, appeal,
7 or comment on the Settlement. No Aggrieved Employee may exclude themselves from settlement
8 of the PAGA claim. The Settlement Administrator shall provide regular updates to counsel for all
9 Parties as to any and all individuals who opt out of the Settlement Class and shall provide a list of
10 those who opt out within five (5) calendar days of the expiration of the Opt Out Period.

11 **7.2 Withdrawal of Election to Opt Out.** Prior to the entry of the Final Approval Order,
12 any Person who has elected to opt out may withdraw that election by notifying the Settlement
13 Administrator in writing that they wish to be a Settlement Class Member. The Settlement
14 Administrator shall maintain records of all withdrawn opt outs, and shall provide such information
15 to counsel for all Parties. At any time after the entry of the Final Approval Order, any Person who
16 has elected to opt out of this Agreement may withdraw that election only upon receiving the written
17 consent of Defendant and Court approval.

18 **8. SETTLEMENT TERMINATION**

19 **8.1 Termination if Court Approval Is Not Obtained.** This Agreement is expressly
20 conditioned upon: (i) Court approval of this Agreement; (ii) entry of the Preliminary Approval
21 Order in a mutually-agreeable form; and (iii) entry of the Final Approval Order in a mutually-
22 agreeable form. If the Court declines to enter either of these Orders, or modifies (in what Defendant
23 reasonably determines to be a material way) any aspect of this Agreement or of such Orders,
24 Defendant shall have the independent right to terminate this Agreement as set forth in Section 8.4.
25 For purposes of this Section 8, a “material” modification shall include, but is not limited to, any
26 modification in the releases to be provided, or any modification that would increase the Total
27 Maximum Settlement Payment (defined below).

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1 8.2 **Termination if Opt Out Limit Is Exceeded.** If 5% or more of the Settlement Class
2 Members opt out of the Settlement Class, Defendant shall have the right to terminate this
3 Agreement as set forth in Section 8.4.

4 8.3 **Termination after Appeal.** If a Court of Appeal on review of this Agreement
5 and/or the Final Approval Order declares unenforceable, reverses, vacates, or modifies (in what
6 Defendant reasonably determines to be a material way) any aspect of this Agreement or the Final
7 Approval Order, Defendant shall have the independent right to terminate this Agreement as set
8 forth in Section 8.4.

9 8.4 **Termination Procedure and Effect.** If Defendant elects to terminate this
10 Agreement pursuant to Sections 8.1, 8.2, and/or 8.3, Defendant may do so by giving written notice
11 to Settlement Class Counsel. Notice of termination pursuant to Section 8.1 must be given within
12 thirty (30) calendar days of the act or order declining to enter the Order or modifying this
13 Agreement, unless subject to further appeal, in which case the notice must be given prior to the
14 Final Effective Date. Notice of termination pursuant to Section 8.2 must be given prior to Final
15 Approval. Notice of termination pursuant to Section 8.3 must be given prior to the Final Effective
16 Date. If Defendant terminates this Agreement pursuant to Section 8, the termination shall void all
17 of the rights, obligations, and releases under this Agreement, except for those provisions that are
18 necessary to effectuate the termination. Within fifteen (15) calendar days after notice of
19 termination, the Settlement Administrator shall return all settlement payments made by Defendant
20 prior to such termination (inclusive of any interest and exclusive of notice and administration costs
21 already expended). The Settlement Administrator shall then allocate such previously expended
22 notice and administration costs equally between Plaintiff and Defendant and invoice Plaintiff and
23 Defendant for half of such costs (with a credit to Defendant for previously paid costs). All
24 payments to the Settlement Administrator shall be due thirty (30) calendar days after receipt of the
25 Settlement Administrator's invoice.

26 **9. SETTLEMENT PAYMENTS**

27 9.1 **Funding Commitment.** In exchange for the releases set forth in this Agreement and
28 subject to court approval, Defendant shall fund the obligations of this Agreement in accordance

1 with the procedures set forth herein up to a maximum cash amount of \$81,000.00 (“Total
2 Maximum Settlement Payment” or “TMSP”). No amount shall revert to Defendant. The TMSP
3 shall be used to pay all of Settlement Class Counsel’s Fees, Costs, and Expenses, all costs of
4 settlement administration, all incentive payments to the Settlement Class Representative, the
5 payment to the LWDA and the PAGA Payment, and all settlement payments to Settlement Class
6 Members. Defendant is the only Released Party obligated to pay the TMSP and in no event shall be
7 required to pay anything above, beyond or more than the TMSP, under any circumstances, as a
8 result of this Agreement. Because no portion of the settlement payments made to Settlement Class
9 Members constitute wages, Defendant is not obligated to pay any employer’s payroll taxes as part
10 of the Settlement. For clarity, no other Released Party shall be required to pay any monetary
11 amount, under any circumstance, as a result of this Agreement.

12 **9.2 Funding upon Final Effective Date.** Within thirty (30) calendar days after the Final
13 Effective Date, Defendant shall mail or wire the TMSP to the Settlement Administrator, which shall
14 then establish the Settlement Fund. The time to make such payment may be extended by mutual
15 consent of all the Parties. All of Defendant’s obligations under the Settlement are deemed satisfied
16 upon Defendant’s timely transmission of the TMSP to the Settlement Administrator.

17 **9.3 Interest on the Settlement Fund.** Any interest generated by the monies in the
18 Settlement Fund shall accumulate and become part of the Settlement Fund.

19 **10. PROTOCOL FOR PAYMENTS TO SETTLEMENT CLASS MEMBERS**

20 **10.1 Settlement Administrator.** Subject to Court approval, a reputable, experienced
21 entity with sufficient data security protocols shall be the Settlement Administrator. The Settlement
22 Administrator shall perform all duties necessary to administer the Settlement, including but not
23 limited to distributing and responding to inquiries about the Class Notice, determining the validity
24 of requests for exclusion/opt outs, calculating and distributing amounts due under the Settlement,
25 providing regular reporting to the Parties, administering and making payment of any funds
26 remaining from unclaimed and/or uncashed checks, and making all necessary tax payments and
27 preparing all tax reporting to the appropriate taxing authorities. The Settlement Administrator shall
28 have the sole authority to administer the Settlement Fund, and to disburse sums from the Settlement

1 Fund. The Settlement Administrator shall carry out its duties in strict accordance with the
2 procedures set forth in this Agreement, and any Party may move the Court to compel such
3 compliance. With or without good cause, the Parties may jointly move the Court to replace the
4 Settlement Administrator. With good cause, any Party may, of its own accord, move the Court to
5 replace the Settlement Administrator. The Court may on its own motion replace the Settlement
6 Administrator at any time with or without cause. Except for the specific funding obligations set
7 forth in Section 9, the Parties shall have no responsibility to members of the Settlement Class for
8 the administration of claims or the distribution of the cash benefits under this Agreement.

9 **10.2 Determination of Benefits.** After the Settlement Class Counsel's Fees, Costs, and
10 Expenses, all costs of settlement administration, all incentive payments to the Settlement Class
11 Representative, and the payment to the LWDA and PAGA Payment have been satisfied from the
12 Settlement Fund, the remainder (the "Remainder") shall be available to pay Settlement Class
13 Members. Each Settlement Class Member shall receive their pro rata share of the Remainder based
14 on the number of months they worked within the Class Period, except each month during which a
15 Settlement Class Member was required to work from home will be counted as 1 month and each
16 month a Settlement Class Member worked from home voluntarily will be counted as 0.5 month for
17 purposes of the calculation. The pro rata share of the Remainder payable to each Settlement Class
18 Member shall increase if any Settlement Class Member opts out of the Settlement. In other words,
19 the Remainder shall not be reduced if any Settlement Class Member excludes himself or herself
20 from the Settlement, but rather the entire Remainder shall be paid to Settlement Class Members.

21 **10.3 Notification of Proposed Benefits.** Ten (10) calendar days prior to distribution of
22 any amounts under the Settlement, the Settlement Administrator shall send a report to Settlement
23 Class Counsel and defense counsel showing the disposition of all Settlement amounts and the
24 proposed benefits to be paid to the Settlement Class Members and Aggrieved Employees. Neither
25 this report nor any other document provided to Settlement Class Counsel shall include any
26 identifying information for members of the Settlement Class.

27 **10.4 Objections to the Proposed Benefits.** Settlement Class Counsel and defense
28 counsel shall have five (5) calendar days from the transmission of the report of proposed benefits

1 referenced in Section 10.3 to notify the Settlement Administrator in writing of any errors in the
2 calculation of the proposed benefits.

3 **10.5 Resolutions of Objections.** If the Settlement Administrator receives timely
4 objections from a Party to any proposed benefit, the Settlement Administrator shall consider the
5 objections and: (i) attempt to resolve the objections between the Parties; or (ii) if the objections
6 cannot be resolved, the Parties shall submit the objections to the Court for resolution.

7 **10.6 Settlement Allocation.** Based upon an analysis of the facts of this Action, the
8 Parties determined and hereby agree that 0% of the settlement proceeds payable to the Settlement
9 Class Members are properly classified as wages. The payments will be classified as reimbursement
10 payments and interest. The Settlement Administrator shall issue an IRS Form 1099 to each
11 Settlement Class Member for their cash benefit.

12 **10.7 Notice and Payment to Settlement Class Members.** Within twenty (20) calendar
13 days after receipt of the funds described in Section 9.2 above, the Settlement Administrator shall
14 distribute to each Settlement Class Member a check in the amount equal to the total cash
15 payment(s) such Member is entitled to receive under Section 10.2, as corrected pursuant to Sections
16 10.4 and 10.5.

17 **10.7.1** All settlement checks sent to Settlement Class Members and not cashed
18 within one hundred eighty (180) calendar days of issuance shall be sent to the California
19 State Controller's Office: Unclaimed Property Fund. Any cash benefit owed to any
20 Settlement Class Member whose address cannot be located (after use of the search
21 processes described in Section 6.1) shall also be sent to the California State Controller's
22 Office: Unclaimed Property Fund.

23 **10.8 Taxes.** Settlement Class Representative, Settlement Class Members and Aggrieved
24 Employees are solely responsible for any and all tax obligations related to any payments made
25 under this Settlement. Defendant shall not make as part of this Settlement, nor be required to make,
26 any deductions, nor pay any monthly contributions for any insurance, retirement, 401(k) or profit-
27 sharing plans, or any benefit plans related to monies paid as a result of this Settlement.

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1 The Parties and counsel for the Parties make no representation as to the tax treatment or
2 legal effect of the payments called for hereunder. Settlement Class Representative and Settlement
3 Class Members/Aggrieved Employees are not relying on any statement, representation, or
4 calculation by the Parties, counsel for the Parties, or the Settlement Administrator in this regard.
5 The Parties, all Counsel, and all Settlement Class Members/Aggrieved Employees understand and
6 agree that they will be solely responsible for the payment of their own portion of any taxes and
7 penalties assessed on the payments that they receive or pay. In addition, Settlement Class Members
8 and Aggrieved Employees shall hold Defendant, Released Parties, Settlement Class Counsel, and
9 the Settlement Administrator harmless from and against any claims for taxes, interest, penalties,
10 other payments and costs by taxing authorities relating to Settlement Class Members' and/or
11 Aggrieved Employees' alleged failure to pay any taxes owed by virtue of payments made pursuant
12 to this Agreement.

13 **10.9 Payment to LWDA.** The Settlement Class Representative, as an allegedly
14 Aggrieved Employee, will file the Complaint on behalf of other current or former employees under
15 the Private Attorneys General Act, California Labor Code Section 2699, *et seq.* ("PAGA").
16 Settlement Class Counsel will submit a copy of this Settlement and the motions for approval to the
17 LWDA, as required by Labor Code section 2699(1)(2). Settlement Class Counsel will attach a copy
18 of the confirmation of submission to the LWDA as an exhibit to their motion for preliminary
19 approval and will submit a copy of the Final Approval Order and Judgment to the LWDA within 10
20 days of its entry, as required by Labor Code section 2699(1)(3).

21 From the Settlement Fund and subject to court approval, \$10,000.00 is allocated to and
22 designated as penalties pursuant to PAGA, seventy-five percent (75%) of which shall be paid to the
23 LWDA. Within twenty (20) calendar days after the Final Effective Date, the Settlement
24 Administrator shall pay \$7,500.00 to the LWDA from the Settlement Fund. This payment shall
25 constitute full satisfaction of the obligation, if any, to pay civil penalties to the LWDA pursuant to
26 California Labor Code Section 2699(i). Twenty-five percent (25%) of the amount allocated to and
27 designated as penalties pursuant to PAGA shall be payable to the Aggrieved Employees ("PAGA
28 Payment") based upon the calculation set forth in Section 10.2 above, as corrected pursuant to

1 Sections 10.4 and 10.5, and pursuant to the procedures set forth in Section 10.7 above. The portion
2 of the PAGA Payment made to Aggrieved Employees will be classified as penalties and the
3 Settlement Administrator shall issue an IRS Form 1099 to each Aggrieved Employee for this
4 payment.

5 The Parties agree that, as to the PAGA claim, no Settlement Class Member or Aggrieved
6 Employee can exclude themselves from that portion of the Settlement and that, absent an order
7 granting leave to intervene in the Action, no individual has standing to object to the Settlement of
8 the PAGA Claim. Any Settlement Class Member who is also an Aggrieved Employee and requests
9 exclusion from the Class will still receive their portion of the PAGA Payment.

10 **10.10 Payment to Settlement Administrator.** Within twenty (20) calendar days after
11 receipt of the funds described in Section 9.2 above, the Settlement Administrator shall pay itself up
12 to \$7,500.00 in satisfaction of all costs incurred in administering the Settlement, to be paid from the
13 Settlement Fund subject to court approval. Should the Settlement Administrator's fees be less than
14 \$7,500, the excess will be allocated to the Remainder.

15 **10.11 Maintenance of Records.** The Settlement Administrator shall maintain complete,
16 accurate, and detailed records regarding the administration of the Settlement Fund, including but
17 not limited to, any objection to proposed benefits and the resolution thereof and any and all receipts
18 by and disbursements from the Settlement Fund. The Settlement Administrator shall make such
19 records available to counsel for the Parties or to their designee upon reasonable request and at
20 reasonable times. Upon request, the Settlement Administrator shall provide such records to
21 Defendant in an electronic format designated by Defendant. The Settlement Administrator shall
22 maintain all records for a period of not less than five (5) years following the expiration of the Final
23 Effective Date.

24 **11. SETTLEMENT CLASS COUNSEL'S FEES, COSTS, AND EXPENSES AND**
25 **SETTLEMENT CLASS REPRESENTATIVE'S INCENTIVE PAYMENT**

26 **11.1 Settlement Class Counsel's Fees, Costs, and Expenses.** In connection with the
27 motion for final approval, Settlement Class Counsel shall file a motion with the Court seeking
28 approval of an award of attorneys' fees in an aggregate amount that does not exceed the sum of

1 \$20,250.00 (25% of the TMSP) and an award of actual costs and expenses incurred that does not
2 exceed \$3,000.00. Defendant agrees not to oppose such motion for attorneys' fees, costs, and
3 expenses, so long as Settlement Class Counsel's request complies with the terms set forth herein.
4 To the extent the Court approves less than the amount requested, the difference shall be reallocated
5 to the Remainder. The amounts so awarded shall be paid from the Settlement Fund for and in
6 complete satisfaction of all attorneys' fees, costs, and expenses incurred to date by the Settlement
7 Class Representative, Settlement Class Counsel on behalf of the Settlement Class Representative
8 and the Settlement Class, and of all such future fees, costs, and expenses, including fees, costs, and
9 expenses incurred in documenting this Settlement, securing Court approval of this Settlement,
10 monitoring this Settlement, reviewing and participating in the claims and distribution
11 administration process, and obtaining the Final Approval Order. The Settlement Administrator will
12 give Settlement Class Counsel an IRS Form 1099 for the awarded Settlement Class Counsel's Fees,
13 Costs, and Expenses. Not later than the Final Effective Date, Settlement Class Counsel shall
14 provide a fully and properly executed IRS Form W-9 for purposes of the payments which the
15 Settlement Administrator will make to Settlement Class Counsel. Within twenty (20) calendar days
16 after receipt of the funds described in Section 9.2 above, the Settlement Administrator shall wire
17 the amount of Settlement Class Counsel's Fees, Costs, and Expenses to Settlement Class Counsel
18 from the Settlement Fund, unless the Agreement is terminated.

19 **11.2 Incentive Payment.** In connection with the motion for final approval, Settlement
20 Class Counsel shall submit a request to the Court seeking approval for an award of an incentive
21 payment to the Settlement Class Representative appointed by the Court that does not exceed the
22 sum of \$7,500, to be paid from the Settlement Fund. Such payment shall be in addition to the
23 Settlement Class Representative's cash benefit under Section 10. Defendant agrees not to oppose
24 the request for an Incentive Payment, so long as the request complies with the terms set forth
25 herein. To the extent the Court approves less than the amount requested, the difference shall be
26 reallocated to the Remainder. The Settlement Administrator shall mail the incentive payment check
27 to the Settlement Class Representative (care of Settlement Class Counsel) within twenty (20)
28 calendar days after receipt of the funds described in Section 9.2 above. The Settlement Class

1 Representative agrees that the incentive payment is not a wage payment. The Settlement
2 Administrator shall issue an IRS Form 1099 to the Settlement Class Representative for her
3 incentive payment.

4 Although it is the contemplation of the Parties that the Incentive Payment does not represent
5 wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing
6 authority may take the position that some or all of the Incentive Payment constitutes wages for
7 income tax and withholding purposes. Settlement Class Representative agrees to assume the
8 responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and
9 any other relevant taxing authority the amounts required by law, if any, to be withheld by
10 Defendant from the Incentive Payment paid under this Settlement. In addition, Settlement Class
11 Representative shall hold Defendant, Released Parties, Settlement Class Counsel, and the
12 Settlement Administrator harmless for any taxes, interest, penalties, other payments and costs,
13 incurred by reason of any valid claims by taxing authorities relating to Settlement Class
14 Representative's alleged failure to pay any owed taxes.

15 **11.3 Additional Benefits to Settlement Class Representative.** Defendant agrees to
16 provide a neutral reference, consisting of name, position, and dates of employment, if contacted by
17 prospective employers and will not oppose Settlement Class Representative's pending
18 unemployment application. However, Defendant will provide true and accurate information to the
19 unemployment department and prospective employers.

20 **11.4 No Additional Fees, Costs, or Expenses.** Except as provided herein, each member
21 of the Settlement Class shall bear his/her/its own attorneys' fees, costs, and expenses incurred in
22 connection with any claim against Defendant and/or any other Person.

23 **12. FINAL ACCOUNTING AND DISPOSITION OF SETTLEMENT MONIES**

24 **12.1 Final Accounting.** By no later than ninety (90) calendar days after the earlier of (a)
25 the Settlement Termination Date or (b) the occurrence of both the Final Effective Date and the
26 distribution of all checks referenced in Section 10.7, the Settlement Administrator shall submit to
27 the Parties a final accounting of all monies paid into and out of the Settlement Fund.

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1 **13. RELEASES**

2 13.1 **Final Approval Order.** The Final Approval Order shall include a release by the
3 Releasing Parties of and from any and all Settled Claims.

4 13.2 **Settlement Class Members' Release.** Except for the obligations and rights created
5 by this Agreement, the Releasing Parties hereby fully, finally, and forever, waive, release, and
6 discharge Defendant and all other Released Parties and Persons of and from any and all Settled
7 Claims and promise never to assert in any forum any and all Settled Claims as of the Final Effective
8 Date. Upon the Final Effective Date, all Settlement Class Members will be bound by the Settlement
9 and releases herein, regardless of whether or not they received a settlement payment.

10 13.3. **Release of Plaintiff, State of California, and Aggrieved Employees'.** Upon the
11 date Defendant fully funds the TMSF, Plaintiff, on behalf of herself and the State of California, and
12 all Aggrieved Employees, including their heirs, agents, representatives, successors, assigns and
13 estates, shall be deemed to have fully, finally and forever released and discharged the Released
14 Parties from any and all Settled Claims, including all causes of action, claims, demands, rights, and
15 liability, arising from or based on a claim for civil penalties under PAGA, Labor Code sec. 2698, *et*
16 *seq.*, for any violations of the Labor Code or Wage Orders alleged or that could have been alleged
17 in the Complaint based on the facts and allegations alleged therein, as well as any based on the
18 alleged violations asserted in the January 31, 2022 and April 5, 2022 PAGA Letters for the PAGA
19 Period.

20 13.4 **Settlement Class Representative's General Release.** In addition, upon the Final
21 Effective Date, Plaintiff Noelle Nakagaki, for herself, and her heirs, successors, predecessors,
22 attorneys, agents, representatives and assigns, fully and forever releases and discharges the
23 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
24 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses,
25 debts, and expenses (including back wages, penalties, liquidated damages, and attorneys' fees and
26 costs actually incurred) of any nature whatsoever, from the beginning of time through the date of
27 her signature on this Settlement, known or unknown, suspected or unsuspected, including but not
28 limited to all claims arising out of, based upon, or relating to her employment with Defendant or the

1 remuneration for such employment. Without limiting the generality of the foregoing, Plaintiff
2 expressly releases all claims which were or could have been raised in the Action and all claims or
3 rights arising out of alleged violations of any contracts, express or implied (including but not
4 limited to any contract of employment); any contract or covenant of good faith or fair dealing
5 (express or implied); wrongful discharge; any tort, including negligence, fraud, misrepresentation
6 under California Labor Code section 970, negligent infliction of emotional distress, intentional
7 infliction of emotional distress, assault, battery, and defamation; any “retaliation” claims; any
8 claims relating to any breach of public policy; any legal restrictions on Defendant’s right to
9 discharge employees or refuse to hire applicants; and any federal, state, or other governmental
10 statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act
11 of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including
12 retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3)
13 sections 503 and 504 of the Rehabilitation Act of 1973 (disability discrimination); (4) Equal Pay
14 Act, 29 U.S.C. § 209(4)(1) (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 *et*
15 *seq.* (disability discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*
16 (family/medical leave); (7) California Fair Employment and Housing Act, Cal. Gov’t Code § 12900
17 *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or
18 harassment based on race, religious creed, color, national origin, ancestry, physical or mental
19 disability, marital status, sex (including pregnancy), sexual orientation, genetic, or age, including
20 retaliation for reporting discrimination or harassment); (8) California Family Rights Act, Cal. Gov’t
21 Code § 12945.1 *et seq.* (family/medical leave); (9) California Labor Code, including PAGA, or any
22 Industrial Welfare Commission Wage Order; (10) the Fair Labor Standards Act, 29 U.S.C. § 201 *et*
23 *seq.*; (11) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or
24 harassment); (12) Executive Order 11141 (age discrimination); (13) Employee Retirement Income
25 Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits); (14) state and federal false claims acts;
26 (15) Pregnancy Disability Leave Law; (16) National Labor Relations Act; (17) Occupational Safety
27 and Health Act; and (18) Business and Professions Code § 17200 *et seq.*

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1 **13.5 Plaintiff’s Release of Unknown Claims Under California Civil Code Section**
2 **1542.**

3 To the fullest extent permitted by law, the Plaintiff/Settlement Class Representative waives
4 and relinquishes any and all rights or benefits she has or may have under California Civil Code
5 Section 1542, or any comparable provision of state or federal law, against Released Parties.
6 California Civil Code Section 1542 provides:

7 “A general release does not extend to claims that the creditor or
8 releasing party does not know or suspect to exist in his or her favor at
9 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.”

10 The Plaintiff/Settlement Class Representative acknowledges that she is aware that she or her
11 attorneys may hereafter discover claims or facts in addition to or different from those now known
12 or believed to be true with respect to the subject matter of this Agreement and/or the Settled
13 Claims. The Settlement Class Representative acknowledges that she intends to and will fully,
14 finally, and forever settle and release any and all claims, including but not limited to the Settled
15 Claims described in Section 2.22, whether known or unknown, suspected or unsuspected, which
16 now exist, hereinafter may exist, or heretofore may have existed. In furtherance of this intention,
17 the releases contained in this Agreement shall be and remain in effect as full and complete releases
18 by the Plaintiff/Settlement Class Representative without regard to the subsequent discovery or
19 existence of such different or additional claims or facts.

20 **14. NOTICES**

21 **14.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed to
22 in writing by the Party receiving such communication, all notices, requests, or other required
23 communications hereunder shall be in writing and shall be sent by one of the following methods:
24 (a) by electronic mail; (b) by facsimile, with the original by first class mail, postage prepaid; or (c)
25 by personal or overnight delivery (including by Federal Express or other courier service). All such
26 communications shall be sent to the undersigned persons at their respective addresses as set forth
27 herein.

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Settlement Class Counsel:
Craig Ackermann
Avi Kreitenberg
Ackermann & Tilajef, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
cja@ackermanntilajef.com
ak@ackermanntilajef.com
Telephone: (310) 277-0614
Facsimile: (310) 277-0635

Tatiana Hernandez
Law Office of Tatiana Hernandez, P.C.
tatiana@thlawpc.com
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035
Telephone: (213) 909-1248
Facsimile: (310) 388-0639

Defendant:
Emily J. Fox
Nicole R. Roysdon
Wilson Turner Kosmo LLP
402 West Broadway, Suite 1600
San Diego, CA 92101
efox@wilsonturnerkosmo.com
nroysdon@wilsonturnerkosmo.com
Telephone: (619) 236-9600
Facsimile: (619) 236-9669

Notice shall be deemed effective: (1) if given by electronic means, at the time of transmission if the sender does not receive an error message; (2) if given by mail or personal delivery, when signed for or when delivery is refused; and (3) if given by facsimile, when received as evidenced by a confirmation or evidence of delivery.

14.2 Changes in Designated Recipients. Any Party may re-designate the Person to receive notices, requests, demands, or other communications required or permitted by this Agreement by providing written notice to the other Parties and the Settlement Administrator.

15. MISCELLANEOUS

15.1 Entire Agreement. This Agreement supersedes and replaces any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in

1 writing, between the Parties with respect to the subject matter hereof. The Parties acknowledge that
2 no representations, inducements, promises, or statements, oral or otherwise, have been made or
3 relied upon by any of the Parties or by anyone acting on behalf of the Parties which are not
4 embodied or incorporated by reference herein, and further agree that no other covenant,
5 representation, inducement, promise or statement not set forth in writing in this Agreement shall be
6 valid or binding.

7 **15.2 Modification or Amendment.** This Agreement may not be modified or amended,
8 except in writing with the unanimous consent of the Parties and with the approval of the Court.

9 **15.3 Execution in Counterparts.** This Agreement may be executed by signature of the
10 Parties hereto, or their authorized representatives, on multiple copies of this Agreement, including
11 copies transmitted by facsimile, electronic portable document format (PDF), or DocuSign, and
12 upon being so executed by all Parties hereto, shall be effective as if all signatures appeared on the
13 original of this Agreement.

14 **15.4 Authority of Counsel.** Settlement Class Counsel are authorized by the members of
15 the Settlement Class, and by the Court, to take all appropriate action required and permitted to be
16 taken by the Settlement Class pursuant to this Agreement to effectuate its terms, and, subject to
17 Court approval, are authorized to enter into any modification or amendments to this Agreement on
18 behalf of the Settlement Class which they deem appropriate.

19 Defendant’s counsel warrants that they are authorized by Defendant, to take all appropriate
20 action required to effectuate the terms of this Settlement, except for signing the documents,
21 including but not limited to this Settlement, that are required to be signed by the Parties.

22 **15.5 Headings.** The headings of the sections, paragraphs, subparagraphs, and exhibits of
23 this Agreement are included for convenience only and shall not be deemed to constitute part of this
24 Agreement or to affect its construction.

25 **15.6 Liens.** The Parties released under this Agreement shall have no obligation to pay or
26 otherwise resolve any liens that are or may be asserted against settlement payments to members of
27 the Settlement Class pursuant to the terms of this Agreement. In the event any such lien is asserted,
28 it is the responsibility of the Settlement Class Member to pay, compromise, or otherwise resolve the

1 lien at no cost to Defendant, the Released Parties, or the Settlement Fund.

2 **15.7 Inapplicability of California Code of Civil Procedure Section 384.** The Parties
3 agree that California Code of Civil Procedure Section 384 does not apply to this Settlement, as
4 Defendant will not pay any portion of the TMSP to Settlement Class Members who opt out of the
5 Settlement. Thus, there will be no “unpaid residue” within the meaning of California Code of Civil
6 Procedure Section 384. Neither the Settlement Class Representative nor Settlement Class Counsel
7 shall take, or cause any other person to take, a position before the Court that California Code of
8 Civil Procedure Section 384 applies to this Settlement.

9 **15.8 No Encouragement to Opt Out.** The Parties agree that neither they nor their
10 counsel will solicit or otherwise directly or indirectly encourage Settlement Class Members to
11 request exclusion from the Settlement Class, to object to this Settlement, or to appeal from the Final
12 Approval Order, and the Parties each represent that they are not aware of any Settlement Class
13 Member who intends to do so. The Settlement Class Representative will not request exclusion from
14 the Settlement Class. The Settlement Class Representative and Settlement Class Counsel will not
15 object to this Settlement and will not appeal from the Final Approval Order, or any portion of it.

16 **15.9 No Publicity.** The Parties agree not to make any public statements or contact the
17 press, which includes issuing a press release with any media (including, without limitation print or
18 Internet media of any kind), or to hold a press conference announcing the terms of the Settlement.
19 If the Parties are contacted by the press or receive other third party inquiries regarding the
20 Settlement or the case, the Parties shall be limited in their response to inform the initiating
21 contactor that the Parties have reached agreement to their mutual satisfaction and that the initiating
22 contactor should refer to the public records filed with the Court for more information. Each Party
23 shall use all reasonable efforts to ensure that any public statements or press communication about
24 the Settlement with Settlement Class Members prior to the Court-approved Class Notice being
25 mailed by the Settlement Administrator will be limited to a general statement that a settlement has
26 been reached and the details will be communicated to them by U.S. Mail in a forthcoming Court-
27 approved Class Notice. The Parties also agree not to place any information regarding this
28 Settlement on their websites.

1 15.10 **Gender.** Whenever in this Agreement the context so requires, the neutral gender
2 shall refer to and include the masculine or feminine or non-binary, and the singular shall refer to
3 and include the plural.

4 15.11 **Further Acts.** The Parties shall perform such further acts and execute such further
5 documents as may be reasonably necessary or appropriate to effectuate the terms and purposes of
6 this Agreement.

7 15.12 **Beneficiaries.** This Agreement shall be binding upon the Parties and each of them,
8 and each of their respective heirs, successors, and assignees, and shall inure to the benefit of the
9 Parties, as well as to each of the Released Parties, each of whom shall be deemed a third party
10 beneficiary of this Agreement.

11 15.13 **Choice of Law and Jurisdiction.** This Agreement in all respects shall be
12 interpreted, enforced, and governed by and under the laws of the State of California applicable to
13 instruments, Persons, and transactions which have legal contacts and relationships solely within the
14 State of California. Any action pertaining to the terms of this Agreement that is not covered by
15 Section 4.1 shall be brought in a court of competent jurisdiction located in the State of California.

16 15.14 **Warranty Regarding Advice.** Settlement Class Counsel warrants that the
17 Settlement Class Representative has been fully advised of and agrees to the terms of this
18 Agreement. The Settlement Class Representative hereby acknowledges that she has been
19 represented by legal counsel throughout all negotiations which preceded the execution of this
20 Agreement, and that this Agreement has been executed with the consent and on the advice of said
21 counsel.

22 15.15 **No Tax Advice.** None of the Released Parties has any responsibility or liability for
23 any tax matters relating to any payments made under this Agreement including, but not limited to,
24 tax advice and/or the withholding of or reporting of taxes.

25 15.16 **Assignment.** None of the rights, commitments, or obligations recognized under this
26 Settlement may be assigned by any Party, Settlement Class Member, Settlement Class Counsel, or
27 Defendant's counsel without the express written consent of each other Party and their respective
28 counsel. The representations, warranties, covenants, and agreements contained in this Settlement

1 are for the sole benefit of the Parties under this Settlement, and shall not be construed to confer any
2 right or to avail any remedy to any other person.

3 15.17 **Waiver of Compliance.** Any failure of any Party or their counsel hereto to comply
4 with any obligation, covenant, agreement, or condition herein may be expressly waived in writing,
5 to the extent permitted under applicable law, by the Party or Parties and their respective counsel
6 hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
7 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
8 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other
9 failure.

10 15.18 **Cooperation in Drafting.** The Parties have cooperated in the negotiation and
11 preparation of this Settlement. This Settlement will not be construed against any Party on the basis
12 that the Party, or the Party’s counsel, was the drafter or participated in the drafting of this
13 Settlement.

14 15.19 **Fair Settlement.** Settlement Class Representative, Defendant, Settlement Class
15 Counsel, and Defendant’s counsel believe that this Settlement reflects a fair, reasonable, and
16 adequate settlement of the Action and have arrived at this Settlement through arm’s-length
17 negotiations, taking into account all relevant factors, current and potential, and is consistent with
18 public policy, and fully complies with applicable provisions of law.

19 AGREED TO AND ACCEPTED:

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Dated: 7/7/2022 | 2:46 PM PDT

NOELLE NAKAGAKI

DocuSigned by:
By: Noelle Nakagaki
NOELLE NAKAGAKI
Settlement Class Representative

PROVEN STAFFING CONSULTANTS, LLC

Dated: _____

By: _____
Its: _____
Defendant

1 are for the sole benefit of the Parties under this Settlement, and shall not be construed to confer any
2 right or to avail any remedy to any other person.

3 15.17 **Waiver of Compliance.** Any failure of any Party or their counsel hereto to comply
4 with any obligation, covenant, agreement, or condition herein may be expressly waived in writing,
5 to the extent permitted under applicable law, by the Party or Parties and their respective counsel
6 hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
7 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
8 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other
9 failure.

10 15.18 **Cooperation in Drafting.** The Parties have cooperated in the negotiation and
11 preparation of this Settlement. This Settlement will not be construed against any Party on the basis
12 that the Party, or the Party’s counsel, was the drafter or participated in the drafting of this
13 Settlement.

14 15.19 **Fair Settlement.** Settlement Class Representative, Defendant, Settlement Class
15 Counsel, and Defendant’s counsel believe that this Settlement reflects a fair, reasonable, and
16 adequate settlement of the Action and have arrived at this Settlement through arm’s-length
17 negotiations, taking into account all relevant factors, current and potential, and is consistent with
18 public policy, and fully complies with applicable provisions of law.

19 AGREED TO AND ACCEPTED:

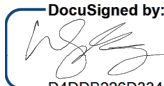
20 NOELLE NAKAGAKI

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22 Dated: _____

By: _____
NOELLE NAKAGAKI
Settlement Class Representative

24 PROVEN STAFFING CONSULTANTS, LLC

25 Dated: 7/7/2022
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DocuSigned by:

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Its: CEO
Defendant

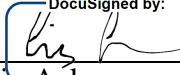
1 APPROVED AS TO FORM.

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ACKERMAN & TILAJEF, P.C.

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4 Dated: 7/7/2022 | 1:14 PM PDT

DocuSigned by:
By: 
Craig Ackerman
Avi Kreitenberg
Settlement Class Counsel

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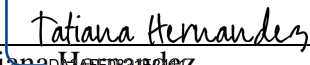
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LAW OFFICES OF TATIANA
HERNANDEZ, P.C.

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10 Dated: 7/7/2022 | 3:47 PM PDT

DocuSigned by:
By: 
Tatiana Hernandez
Settlement Class Counsel


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WILSON TURNER KOSMO LLP

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14 Dated: 07/07/2022

By: 
Emily J. Fox
Nicole R. Roysdon
Attorneys for Defendant

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EXHIBIT 1

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15 *Attorneys for Plaintiff, the Class, the LWDA, and the other Aggrieved Employees*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 17 **FOR THE COUNTY OF SAN DIEGO**

18 **NOELLE NAKAGAKI**, an individual, on
 19 behalf of the State of California, as a private
 20 attorney general, and on behalf of all Aggrieved
 21 Employees,

22 Plaintiffs,

23 v.

24 **PROVEN STAFFING CONSULTANTS**
 25 **LLC.**, a California Corporation, and DOES 1 to
 26 50, inclusive,

27 Defendant.

CASE NO.

**PLAINTIFF’S CLASS AND PAGA
 REPRESENTATIVE ACTION
 COMPLAINT FOR:**

- (1) **FAILURE TO REIMBURSE
 BUSINESS EXPENSES (LABOR
 CODE § 2802);**
- (2) **UCL VIOLATIONS (CAL. BUS. &
 PROF. CODE §§ 17200-17204); AND**
- (3) **PENALTIES PURSUANT TO
 LABOR CODE § 2699, ET SEQ.**

1 Plaintiff NOELLE NAKAGAKI (“Plaintiff”), on behalf of the people of the State of
2 California, the Labor Workforce Development Agency (LWDA), and as an “Aggrieved Employee”
3 acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, §
4 2699, *et seq.* (“PAGA”), and on behalf of all others similarly situated (“Class Members”) complains
5 of Defendant PROVEN STAFFING CONSULTANTS LLC and DOES 1 to 10 (“Defendant” or
6 “Proven”) and alleges the following upon information and belief:

7 **INTRODUCTION**

8 1. This is a class action brought pursuant to Code of Civil Procedure section 382 and a
9 representative action brought pursuant to Labor Code § 2699, *et seq.*, on behalf of the State of
10 California against Defendant for its (1) failure to reimburse its current and former employees for their
11 home office expenses in California during the pandemic for which they have not been fully
12 reimbursed; (2) unfair business practices based on the foregoing; and (3) PAGA penalties based on
13 the foregoing:

14 2. The Class is defined as follows: Plaintiff and all other California residents who are or
15 were employed by Defendant and who worked from home during at least one pay period in the period
16 from March 15, 2020 to February 27, 2022 (the “Class Period”) and did not receive reimbursement
17 for work-related home office expenses.

18 3. The Aggrieved Employees are defined as follows: Plaintiff and all other California
19 residents who are or were employed by Defendant and who worked from home during at least one
20 pay period in the period from July 31, 2020 to February 27, 2022 (the “PAGA Period”) and did not
21 receive reimbursement for work-related home office expenses.

22 **THE PARTIES**

23 4. Plaintiff Noelle Nakagaki is a resident of California and at all times pertinent hereto
24 worked for Defendant.

25 5. Plaintiff, the Class, and all Aggrieved Employees are, and at all times pertinent hereto,
26 have been hired to work for Defendant in California.

27 6. Defendant is a limited liability company headquarters in San Diego, California and
28 does business throughout the United States and within the State of California. Defendant employed

1 Plaintiff and similarly situated persons as employees in California. Defendant has done and does
2 business throughout the State of California, including in San Diego County.

3 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
4 of Defendant sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
5 therefore sues Defendant by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
6 informed and believes, and based thereon alleges, that each of the Defendant designated herein as a
7 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff may
8 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendant
9 designated hereinafter as DOES when such identities become known.

10 8. Plaintiff is informed and believes, and based thereon alleges, that Defendant engaged,
11 suffered, and permitted Plaintiff, the Class, and all other Aggrieved Employees to perform services
12 from which it benefitted. Defendant is liable for reimbursement expenses and civil penalties for
13 violation of the California Labor Code as to the Plaintiff, the Class, and other Aggrieved Employees
14 as set forth herein.

15 **JURISDICTION AND VENUE**

16 9. This Court has subject matter jurisdiction over any and all causes of action asserted
17 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
18 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
19 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
20 laws of the State of California or is subject to adjudication in the courts of the State of California.

21 10. This Court has personal jurisdiction over Defendant because Defendant has caused
22 injuries in the County of San Diego and State of California through its acts, and by its violation of
23 the California Labor Code and California state common law.

24 11. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
25 Procedure § 395. Defendant does business in California and in San Diego County, California. The
26 unlawful acts alleged herein have a direct effect on Plaintiff and all “employees” in the State of
27 California and San Diego County.

28 ///

FACTUAL ALLEGATIONS

1
2 12. At some point during the period from March 15, 2020 through February 27, 2022,
3 Plaintiff, the Class, and the Aggrieved Employees, at the direction of Defendant and/or with
4 Defendant's knowledge and acquiescence, have incurred home office expenses including, *inter alia*,
5 monthly home internet expenses, software subscription expenses, equipment expenses, and monthly
6 home electricity and home office infrastructure expenses, to perform necessary work-related duties.

7 13. During the Class Period, Plaintiff, the Class, and the Aggrieved Employees were thus
8 expected by Defendant to pay for, and have personally paid for, among other things, home internet
9 service, home electricity, and the purchase and maintenance of hardware used for work-purposes,
10 including keyboards, mice, as well as to allocate home office space, in the discharge of their job
11 duties (the "home office expenses"). These expenses ranged, but typically amounted from \$100 to
12 \$200 per month per Class Member. Defendant had no policy to affirmatively reimburse all employees
13 who were forced to work from home during the COVID-19 pandemic for their monthly recurring
14 home office expenses. Notably, Defendant did not provide any monthly recurring reimbursement
15 during the Class Period for such expenses. In sum, Defendant's expense-related policies and/or
16 practices required and expected, and/or with Defendant's knowledge thereof permitted, Plaintiff, the
17 Class, and the Aggrieved Employees to pay for monthly home internet, and home office infrastructure
18 expenses incurred in direct consequence of discharging their necessary, reasonable, and business-
19 related job duties on behalf of Defendant, without reimbursement in full by Defendant for such
20 expenses, as required by California law.

21 14. California Labor Code section 2802 requires an employer to "indemnify his or her
22 employee for all necessary expenditures or losses incurred by that employee in direct consequence
23 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where
24 necessary is defined to include all "reasonable" costs. "The elements of a claim under Section
25 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses were
26 incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the
27 directions of the employer; and (iii) the expenditures or losses were reasonable and necessary." *Marr*
28 *v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. Cal. Mar. 8, 2011) (*citing Gattuso v. Harte-*

1 *Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 568 (2007)). “In addition, the employer ‘must either know or
2 have reason to know that the employee has incurred [the] expense.’” *Id.* (citing *Stuart v. RadioShack*
3 *Corp.*, 641 F. Supp. 2d 901 (N.D. Cal. 2009)). Where an employer has knowledge that employees
4 are incurring a reimbursable expense, the employer must “exercise due diligence to ensure each
5 employee is reimbursed.” *Marr*, at *1. The right of an employee to expense reimbursements is not
6 waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any contract to waive them is null and
7 void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008).

8 15. Furthermore, under Labor Code section 2802, employers must reimburse employees
9 for all necessary and/or reasonable work-related expenses, regardless of whether or not employees
10 incurred any additional out-of-pocket expense from that work-related use, and regardless of whether
11 or not the employer decisions to send workers home that triggered the home internet and home office
12 costs were made in response to government orders. *See Cochran v. Schwan’s Home Service, Inc.*,
13 228 Cal. App. 4th 1137 (Cal. 2014) (“We hold that when employees must use their personal cell
14 phones for work-related calls, Labor Code section 2802 requires the employer to reimburse
15 them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the
16 reimbursement owed is a reasonable percentage of their cell phone bills.”).

17 16. Where, as here, employees in California are expected or mandated to use their internet
18 at home for work, courts have held that they incurred cell phone expenses in “direct consequence of
19 the discharge of his or her duties” and were entitled to reimbursement. *See Aguilar v. Zep, Inc.*, 2014
20 US Dist. LEXIS 120315, *54 (N.D. Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales
21 reps used home internet and computers for work, and even admitted that they would have incurred
22 the same expenses without work duties, the court nevertheless held that the employer was obligated
23 to reimburse some reasonable portion of these expenses); *see also Ritchie v. Blue Shield of California*,
24 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home
25 office claims processors with 2802 phone reimbursement claims for landline reimbursements where
26 company required claims processors working from home to have a landline, but rejecting certification
27 of claims for home office supplies as individualized).

28 17. Defendant is, was, or should have been aware that Plaintiff, the Class, and the

1 Aggrieved Employees regularly incurred and incur home office internet, and home electricity and
2 other infrastructure expenses in the discharge of their duties as employees, by virtue of Defendant's
3 direction and/or with Defendant's knowledge and acquiescence to Plaintiff, the Class, and the
4 Aggrieved Employees to work from home during the COVID-19 pandemic. Plaintiff, the Class, and
5 the Aggrieved Employees could not perform their job duties for Defendant without subscriptions for
6 internet service. Defendant nevertheless has, throughout the Class and PAGA Period, failed to
7 affirmatively reimburse Plaintiff, the Class, and the Aggrieved Employees for such monthly home
8 internet, and home office expenses incurred by them in connection with their work.

9 CLASS ACTION ALLEGATIONS

10 18. Plaintiff brings this action on behalf of herself and all others similarly situated as a
11 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed
12 of and defined as Plaintiff and all other California residents who are or were employed by Defendant
13 and who worked from home during at least one pay period in the period from March 15, 2020 to
14 February 27, 2022 and did not receive reimbursement for work-related home office expenses ("Class
15 Members"). All such Class Members were subject to Defendant's policy and practice of not
16 reimbursing home office expenses.

17 19. This action has been brought and may properly be maintained as a class action under
18 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
19 the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

20 a. Numerosity: The potential members of the Class as defined are so numerous
21 that joinder of all the members of the Class is impracticable. On information and belief, Defendant
22 employed over 250 employees who Plaintiff contends were subject to Defendant's unlawful
23 reimbursement policy during the Class Period. The Class Members are dispersed throughout
24 California. Joinder of all members of the proposed classes is therefore not practicable.

25 b. Commonality: There are questions of law and fact common to Plaintiff and the
26 Class that predominate over any questions affecting only individual members of the Class. These
27 common questions of law and fact include, without limitation:

28 i. Whether Plaintiff and Class Members incurred unreimbursed business

1 expenses in the discharge of their duties, including but not limited to home office expenses, in
2 violation of Labor Code § 2802;

3 ii. Whether Defendant intended, suffered and/or permitted, and/or knew and/or
4 should have known that Plaintiff and Class Members incurred unreimbursed home office expenses,
5 in the discharge of their duties;

6 iii. Whether Plaintiff is entitled to restitution under Business and Professions Code
7 § 17200;

8 iv. The proper formula(s) for calculating damages, interest, and restitution owed
9 to Plaintiff and the Class Members;

10 v. The nature and extent of class-wide damages.

11 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
12 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
13 belonging to them, arising out of and caused by Defendant's common course of conduct in violation
14 of law as alleged herein, in similar ways and for the same types of expenses.

15 d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly
16 and adequately represent and protect the interests of the Class and Class Members. Plaintiff's interests
17 do not conflict with those of Class and Class Members. Counsel who represent Plaintiff are competent
18 and experienced in litigating large wage and hour class actions, and will devote sufficient time and
19 resources to the case and otherwise adequately represent the Class and Class Members.

20 20. Superiority of Class Action: A class action is superior to other available means for the
21 fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not
22 practicable, and questions of law and fact common to the Class predominate over any questions
23 affecting only individual members of the Class. Each Class Member has been damaged or may be
24 damaged in the future by reason of Defendant's unlawful policies and/or practices of not fully
25 reimbursing home office expenses. Certification of this case as a class action will allow those
26 similarly situated persons to litigate their claims in the manner that is most efficient and economical
27 for the parties and the judicial system. Certifying this case as a class action is superior because it
28 allows for efficient and full disgorgement of the ill-gotten gains Defendant has enjoyed by

1 maintaining its unlawful home office expense reimbursement policies and/or practices, and will
2 thereby effectuate California’s strong public policy of protecting employees from deprivation or
3 offsetting of compensation earned in their employment. If this action is not certified as a Class Action,
4 it will be impossible as a practical matter for many or most Class Members to bring individual actions
5 to recover monies unlawfully withheld from their lawful compensation due from Defendant, due to
6 the relatively small amounts of such individual recoveries relative to the costs and burdens of
7 litigation.

8
9 **FIRST CAUSE OF ACTION**
10 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
11 **[Cal. Labor Code section 2802]**
12 **On Behalf of Plaintiff and the Class Against Defendant**

13 21. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
14 in the preceding paragraphs.

15 22. The actionable period for this cause of action March 15, 2020 to February 27, 2022.

16 23. Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
18 the discharge of his or her duties.” Section 2802(c) defines “necessary” to include all “reasonable
19 costs.”

20 24. In order to discharge their duties for Defendant during the Class Period, including
21 when stay-at-home orders were in place and/or when Defendant’s offices were closed, Plaintiff and
22 similarly situated Class Members regularly incurred home office expenses in the discharge of their
23 duties as employees by virtue of Defendant’s instructions to Plaintiff and the Class and/or with
24 Defendant’s knowledge and acquiescence. Defendant nevertheless has, throughout the Class Period,
25 failed to affirmatively reimburse Plaintiff and the Class for such home office expenses incurred by
26 them in connection with their work

27 25. Although having knowledge of such usage, Defendant did not reimburse Plaintiff and
28 similarly situated Class Members for a reasonable percentage of their work-related expenses, as
required by California law as stated in *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th
1137 (August 12, 2014) (“We hold that when employees must use their personal cell phones for work-

1 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
2 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed
3 is a reasonable percentage of their cell phone bills.”). *See also, Aguilar v. Zep, Inc.*, 2014 US Dist
4 LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps used
5 home internet and computers for work, and even admitted that they would have incurred the same
6 expenses without work duties, the court nevertheless held that the employer was obligated to
7 reimburse some reasonable portion of these expenses); *Ritchie v. Blue Shield of California*, 2014 WL
8 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home office claims
9 processors with 2802 phone reimbursement claims for landline reimbursements where company
10 required claims processors working from home to have a landline, but rejecting certification of claims
11 for home office supplies as individualized).

12 26. Defendant’s failure to pay for or reimburse the work-related business expenses of
13 Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members by
14 Labor Code §2802. See Labor Code §2804. Plaintiff and similarly situated Class Members are
15 entitled to reimbursement for these necessary expenditures, plus interest and attorneys’ fees and costs,
16 under Labor Code § 2802(c).

17 **SECOND CAUSE OF ACTION**
18 **UNFAIR COMPETITION LAW VIOLATIONS**
19 **[Bus. & Prof. Code § 17200]**
20 **On Behalf of Plaintiff and the Class Against Defendant**

21 27. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
22 in the preceding paragraphs.

23 28. Section 17200 of the California Business & Professions Code prohibits any unlawful,
24 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person
25 who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation
26 of the UCL. Such a person may bring such an action on behalf of herself and others similarly situated
27 who are affected by the unlawful, unfair, or fraudulent business practice.

28 29. Under section 17208 of the California Business and Professions Code, the statute of
limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this

1 cause of action is from four years ago through the present.

2 30. Section 90.5(a) of the Labor Code states that it is the public policy of California to
3 enforce vigorously minimum labor standards in order to ensure employees are not required to work
4 under substandard and unlawful conditions, and to protect employers who comply with the law from
5 those who attempt to gain competitive advantage at the expense of their workers by failing to comply
6 with minimum labor standards. The Wage Orders that Defendant is subject to also set forth minimum
7 standards.

8 31. Defendant has committed unlawful, unfair, and/or fraudulent business acts and
9 practices as defined by the UCL, by failing to reimburse and indemnify Plaintiff and similarly situated
10 Class Members for employment-related home office expenses from March 15, 2020 to February 27,
11 2022, in violation of Labor Code § 2802 and any applicable Wage Order.

12 32. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent
13 acts and practices described herein, Defendant has received and continues to hold unlawfully obtained
14 property and money belonging to Plaintiff and the Class in the form of unreimbursed employee home
15 office business expenses that reduced or offset compensation earned by Plaintiff and Class Members.

16 33. As a direct and proximate result of Defendant's unlawful business practices, Plaintiff
17 and the Class Members have suffered economic injuries including, but not limited to out-of-pocket
18 business expenses. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and
19 practices in the amount of those business expenses and interest accrued thereon.

20 34. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant
21 to Business & Professions Code §§ 17203 and 17208 for all unreimbursed business expenses, and
22 interest thereon, from at least March 15, 2020 through to the date of such restitution, at rates specified
23 by law. Defendant should be required to disgorge all the profits and gains it has reaped and restore
24 such profits and gains to Plaintiff and Class Members from whom they were unlawfully taken.

25 35. During the Class Period, Defendant committed acts of unfair competition, as defined
26 in sections 17200 *et seq.* of the California Business and Professions Code by, among other things,
27 failing to reimburse Plaintiff and the Class members for a reasonable portion of their monthly home
28 office expenses as required by California law, and therefore was substantially injurious to Plaintiff

1 and the Class members.

2 36. Defendant engaged in unfair competition in violation of sections 17200 *et seq.* of the
3 California Business & Professions Code by violating Section 2802 of the Labor Code.

4 37. Defendant’s course of conduct, act, and practice in violation of the California laws
5 mentioned above constitute independent violations of sections 17200 *et seq.* of the California
6 Business and Professions Code.

7 38. The unlawful, unfair and fraudulent business practices and acts of Defendant, as
8 described above, have injured Plaintiff and the Class in that they were denied reimbursement for a
9 reasonable percentage of their monthly business-related home office expenses, and therefore was
10 substantially injurious to Plaintiff and the Class Members.

11 39. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
12 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

13 40. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
14 specified herein by suing on behalf of herself and other similarly situated Class Members previously
15 or presently employed by Defendant in California. Plaintiff’s success in this action will enforce
16 important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this
17 action in the public interest. Therefore, an award of reasonable attorneys’ fees to Plaintiff is
18 appropriate pursuant to Code of Civil Procedure § 1021.5.

19 **THIRD CAUSE OF ACTION**
20 **PENALTIES PURSUANT TO PAGA LABOR CODE § 2699, *et seq.***
21 **[For Violations of Labor Code § 2802]**
22 **Plaintiff And All Aggrieved Employees Against Defendant**

23 41. Plaintiff, on behalf of herself and all Aggrieved Employees, realleges and incorporates
24 by reference all previous paragraphs.

25 42. Based on the above allegations incorporated by reference, Defendant has violated
26 Labor Code § 2802.

27 43. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all
28 other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial
subject to the following formula:

1 fees, pursuant to Labor Code § 2802(c), in an amount to be proved at trial.

2 4. That the Court find and declare that Defendant has violated the UCL and committed
3 unfair and unlawful business practices by failing to reimburse Plaintiff and similarly situated Class
4 Members for their reasonable home office business expenses incurred by them in the course of their
5 duties for the benefit of Defendant, their employer;

6 5. That the Defendant be ordered to pay restitution to Plaintiff and the Class Members
7 due to Defendant's UCL violations under the Second Cause of Action pursuant to Business and
8 Professions Code §§ 17200-17205, in the amount of their unreimbursed business expenses and
9 interest thereon;

10 6. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for Plaintiff
11 and all Aggrieved Employees because of Defendant's violation of, without limitation, Labor Code §
12 2802;

13 7. A civil penalty against Defendant in the amount of \$100 for the initial violation and
14 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
15 for Plaintiff and all Aggrieved Employees for each and every pay period during that occurred during
16 the PAGA Period;

17 8. An award of reasonable attorney's fees against Defendant as allowed by law,
18 including without limitation, in Labor Code § 2699(g)(1), for all the work performed by the
19 undersigned counsel in connection with the PAGA claims;

20 9. An award of all costs incurred by the undersigned counsel for Plaintiff in connection
21 with Plaintiff's and the Aggrieved Employees' claims against Defendant as allowed by law, including
22 without limitation, Labor Code § 2699(g)(1);

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10. Such other and further relief as this Court may deem proper and just.

Respectfully submitted,

ACKERMANN & TILAJEF, P.C.
LAW OFFICE OF TATIANA HERNANDEZ, P.C.

Dated: July 7, 2022



Craig J. Ackermann, Esq.

Tatiana Hernandez, Esq.

*Attorneys for Plaintiff, the Class, the LWDA, and the
Aggrieved Employees*

EXHIBIT 2

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
Nakagaki v. Proven Staffing Consultants, LLC
Case No. [REDACTED]

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX - [REDACTED]

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.
THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class and Private Attorneys General Act (“PAGA”) representative action (“the Action”) filed in the San Diego County Superior Court has been reached by Proven Staffing Consultants, LLC (“Proven” or “Defendant”) and Noelle Nakagaki (“Plaintiff”), an individual, on behalf of herself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The San Diego County Superior Court has ordered that this Notice be sent to you because you may be a Settlement Class Member. The purpose of this Notice is to inform you of the Settlement of this class and representative action and your legal rights under the Settlement as follows:

- Proven has agreed to settle a lawsuit brought on behalf of all California residents who are or were employed by Proven and worked from home at any point during at least one pay period during the period between March 15, 2020 and February 27, 2022 (the “Class Period”) and did not receive reimbursement for work-related home office expenses (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding Proven’s alleged failure to reimburse business expenses under Labor Code section 2802, incurred as a result of working from home during the COVID-19 pandemic. The Settlement also resolves claims for unfair competition and for civil penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged failure to reimburse business expenses. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases Proven from liability for these claims.
- The parties in the lawsuit disagree on whether Proven is liable for the allegations raised in this case and how much money could have been won if the employees won at trial. Proven denies all liability and believes that it paid you and other employees properly under the law.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Get a Payment	If you are a qualifying member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you do not exclude yourself you will give up certain rights and claims as set forth on page 6 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
Exclude Yourself	You will get no payment (except for your portion of the PAGA Payment, if applicable). Please send a letter to the Settlement Administrator to request exclusion as provided below. This is the only option that allows you to preserve and potentially bring your own claim against Proven about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion.
Object	To object, you must write to the Court about why you do not like the settlement. You will remain a Settlement Class Member, receive a payment, and remain bound by the Settlement. Directions are provided below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains the terms and details of a proposed settlement of a class and representative action lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed this lawsuit in San Diego County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not reimbursed for work-related home office expenses incurred during the COVID-19 pandemic and were subjected to unfair business practices. The lawsuit seeks reimbursement of expenses, restitution, civil penalties, interest, and attorneys' fees and costs.

Proven denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. Proven contends, among other things, that it complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. Proven further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Action, its allegations, or its claims.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiff or Proven. Plaintiff thinks she would have prevailed on her claims at a trial. Proven does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

B. Who is in the Class?

The Settlement Class consists of all California residents who are or were employed by Proven and who worked from home at any point during at least one pay period during the Class Period (between March 15, 2020 and February 27, 2022) and did not receive reimbursement for work-related home office expenses.

C. What does the Settlement provide?

1. Settlement Amount.

Proven will pay a total of Eighty-One Thousand Dollars and Zero Cents (\$81,000.00) (the “Total Maximum Settlement Payment” or “TMSP”) to settle the lawsuit.

The following sums will be paid from the TMSP: all settlement payments to the Settlement Class, Settlement Class Counsel’s attorneys’ fees in an amount not to exceed \$20,250.00 (25% of the TMSP, Settlement Class Counsel’s actual litigation costs and expenses in an amount not to exceed \$3,000.00, settlement administration costs estimated in an amount not to exceed \$7,500.00, the \$10,000 amount allocated to and designated as penalties under PAGA (75% of which will be paid to the California Labor and Workforce Development Agency (LWDA) and 25% of which will be paid to Aggrieved Employees), and an incentive payment to Plaintiff in an amount not to exceed \$7,500.00.

The funds used for the TMSP shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved incentive payment to the Plaintiff, Court-approved attorneys’ fees and litigation costs and expenses to Settlement Class Counsel, settlement administration costs, and the payment to the LWDA at the same time and manner as the settlement payments to the Settlement Class Members and Aggrieved Employees.

2. Remainder

“Remainder” means the TMSP minus Settlement Class Counsel’s attorneys’ fees and litigation costs and expenses, settlement administration costs, the payment to the LWDA and PAGA Payment, and the incentive payment to Plaintiff.

3. Your Individual Payment Amount.

Proven will provide the Settlement Administrator with the number of months that each Settlement Class Member worked during the Class Period and PAGA Period. Each Settlement Class Member shall receive their pro rata share of the Remainder based on the number of months they worked within the Class Period, except each month during which a Settlement Class Member was required to work from home will be counted as 1 month and each month a Settlement Class Member worked from home voluntarily will be counted as 0.5 month for purposes of the calculation.

Separately, 25% of the \$10,000 allocated to PAGA, or \$2,500, will be distributed to Aggrieved Employees (i.e., all California residents who are or were employed by Proven and who worked from home at any point during at least one pay period during the period between July 31, 2020 and February 27, 2022 and did not receive reimbursement for work-related home office expenses (“PAGA Period”)) based on the number of months (calculated as set forth in the paragraph above) each Aggrieved Employee worked

during the PAGA Period.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms 1099 (and the equivalent California forms) to Settlement Class Members and Aggrieved Employees reflecting the payments each Settlement Class Member and Aggrieved Employees receives under the Settlement. For tax purposes, settlement payments to Settlement Class Members will be classified as reimbursement payments and interest. The pro rata portion of the PAGA Payment that is paid to each Aggrieved Employee will be classified as penalties. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Reimbursement payments, interest, and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding. The Settlement Administrator shall issue an IRS form 1099 for payments of reimbursements, interest, and penalties.

Nothing in this Notice or the Settlement is intended to be tax advice. Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment and stay in the Class?

The Releasing Parties hereby fully, finally, and forever, waive, release, and discharge Defendant and all other Released Parties and Persons of and from any and all Settled Claims and promise never to assert in any forum any and all Settled Claims as of the Final Effective Date. Upon the date Defendant fully funds the TMSP, all Settlement Class Members will be bound by the Settlement and releases herein, regardless of whether or not they received a settlement payment.

“Releasing Party” or “Releasing Parties” means and refers to the Settlement Class and its members, agents, partners, joint venturers, affiliates, predecessors, successors, spouses, heirs, assigns, insurers, and any other Persons or entities claiming by or through the Settlement Class, in their capacities as such.

“Released Party” or “Released Parties” means and refers to: (a) Proven Staffing Consultants, LLC, and each and all of its past or present partners, parents, clients (including, but not limited to BioDuro, LLC), subsidiaries, affiliates, investors, owners, or related entities (regardless of whether such partners, parents, clients, subsidiaries, affiliates, or related entities are individuals, corporations, partnerships, limited partnerships, limited liability companies, or other forms of entity); (b) each and all of the predecessor or successor entities of any of those entities identified in subparagraph (a); (c) any other individuals or entities of any kind, which have been or could be alleged to be in any manner responsible (whether on an alter ego, joint employer, statutory employer, integrated enterprise, or any other theory) for any actual or alleged violations described in Section 2.22 (“Settled Claims”); and (d) all past and present directors, officers, representatives, insurers, agents, shareholders, partners, members, managers, lawyers, and employees of any of the individuals or entities identified in subparagraphs (a), (b), or (c).

“Settled Claims” means and refers to any and all claims, liabilities, guarantees, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action, of every kind and/or nature whatsoever, whether now known or unknown, suspected or unsuspected, asserted or unasserted, latent or patent, regardless of legal theory or type or amount of relief or damages claimed, which any Releasing Party now has or at any time ever had against Released Parties, that are alleged in the Complaint or which could have been alleged in the Complaint based on the facts, claims and/or

allegations asserted in the Complaint and/or PAGA Letters (“Claims”), including: (a) alleged failure to provide timely and/or complete reimbursement for necessary business-related expenditures, including but not limited to Claims under California Labor Code Section 2802, California Business and Professions Code Section 17200, *et seq.*, and PAGA; and (b) any other state or federal law, statute, regulation, or ordinance imposing liability and/or obligations regarding the reimbursement of business expenses, or that could be brought based on the factual allegations in the Complaint, including Fair Labor Standards Act (FLSA) claims that could have been brought based on the factual allegations in the Complaint.. Without in any way limiting the foregoing, Settled Claims shall include all Claims under statutes and regulations set forth in this Section, based on unreimbursed business expenses, whether enforced directly or pursuant to California Labor Code Section 2699, California Business and Professions Code Section 17200, *et seq.*, or any other mechanism.

“Final Effective Date” means and refers to the later of the following: (a) the 65th calendar day after entry of a signed order finally approving the Agreement and Settlement provided no motion to intervene or motion to vacate the judgment, appeal, writ or other appellate proceeding has been filed; or (b) the 7th calendar day after any motion to intervene or motion to vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally dismissed with no material change to the terms of the Agreement and there is no right to pursue further remedies or relief, whichever is later.

THE FINAL APPROVAL HEARING

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on [REDACTED], 202 [REDACTED], at 330 West Broadway, in Department [REDACTED] of the San Diego County Superior Court. The Court will determine: (i) whether the Settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (ii) whether the Settlement Class Members should be bound by the terms of the Settlement; (iii) the amount of the attorneys’ fees and costs awarded to Settlement Class Counsel; (iv) the amount approved for payment to the Settlement Administrator for the costs of administering the Settlement; and (v) the amount that should be awarded to Plaintiff as an incentive payment. At the Final Approval Hearing, the Court will hear any objections, as well as any arguments for and against the proposed Settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself, as explained in more detail on pages 6-7 below.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Settlement Class Counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – GET A PAYMENT**

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NOT

REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE IN ORDER TO RECEIVE THIS PAYMENT.

The estimated amount of your settlement payment is [REDACTED]. The amount of the settlement payment paid to each Settlement Class Member is based upon the number of months worked for Proven in California between March 15, 2020 and February 27, 2022, except each month during which a Settlement Class Member was required to work from home will be counted as 1 month and each month a Settlement Class Member worked from home voluntarily will be counted as 0.5 month. According to payroll records maintained by Proven, your number of months worked for Proven in California between March 15, 2020 and February 27, 2022 is [REDACTED].

If you believe that the number of months stated is incorrect, you may dispute the number of months by submitting a dispute in writing to the Settlement Administrator, which must contain your full name, address, signature, and last four digits of your Social Security number; the case name and number of the Action; and any facts supporting your dispute, along with any supporting materials confirming that the months attributed to you are incorrect. Your dispute must be postmarked to the Settlement Administrator at [REDACTED] (Address) no later than [REDACTED] (45 days after the date of the mailing). Please be advised that your number of months is presumed to be correct, unless you submit a dispute and supporting documentation to the Settlement Administrator no later than [DATE], 202[REDACTED]. If you believe that the number of months stated is correct, you do not have to do anything.

The settlement payment you will receive will be a full and final settlement of the Released Claims described in Section D above.

• **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any payment or benefits from the proposed Settlement (except for your portion of the PAGA Payment, if applicable). You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against Proven, subject to time limits called statutes of limitations and other potential defenses that Proven may assert, and to pursue your own claims in a separate suit.

You can request exclusion or “opt out” of the Settlement Class by sending a letter to the Settlement Administrator at [REDACTED] (address) by first class U.S. mail which must contain your name, signature, address, telephone number, the last four digits of your Social Security number, and a clear statement that you opt out or request exclusion from the Settlement. To be valid, your request for exclusion must be postmarked no later than [REDACTED] [45 days after mailing].

Anyone who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement (except for his or her portion of the PAGA Payment, if applicable) and will not be bound by the Settlement or have any right to object, appeal, or comment thereon. Individuals who fail to submit a valid and timely request for exclusion on or before [DATE], 202[REDACTED], are Class Members and will be bound by all terms of the Settlement and any final disposition entered in this Action if the Court approves the Settlement.

• **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you are a Settlement Class Member and would like to object to the Settlement, you should not submit a request for exclusion (*i.e.*, do not opt out). If you submit both a request for exclusion and an objection, your request for exclusion will be void and you will be deemed a part of the Settlement Class and bound by the Settlement.

To object to the Settlement in writing, you must complete, sign, and send a written notice of objection to the Settlement Administrator at [redacted] (Address), postmarked no later than [redacted] (45) days after the Notice was initially mailed to the Class Members, setting forth your full name, address, last four digits of your Social Security number, the case name and number of the Action, and a clear statement of the basis for your objection, along with supporting documentation.

You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. You need not file a notion of intention to appear at the Final Approval Hearing at the same time as your objection is filed. Filing the notice of intention to appear is not necessary to preserve the right to appear at the Final Approval Hearing. If you object, but the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as a Settlement Class Member who does not object.

CHANGE OF ADDRESS

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your settlement payment or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at [redacted] (Address). Otherwise, your settlement payment may not reach you. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Joint Stipulation of Class and Representative Action Settlement” which is available for viewing online on the following website: [Insert website provided by Settlement Administrator].

In addition, you can view the Action’s records online by visiting the Court’s website <https://roa.sdcourt.ca.gov/roa/>, entering the Case Number in the search box, and selecting “Search.”

ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO SETTLEMENT CLASS COUNSEL LISTED BELOW OR TO THE SETTLEMENT ADMINISTRATOR, [Administrator], [address] [telephone]. Please refer to the *Nakagaki v. Proven Staffing Consultants, LLC* Class Action Settlement.

Settlement Class Counsel:

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**PROVEN STAFFING CONSULTANTS, LLC WILL NOT RETALIATE AGAINST YOU FOR
PARTICIPATING IN THIS SETTLEMENT.**

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.**