

## STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Marcos Garnica (“Plaintiff”), individually and on behalf of all members of the Settlement Class, defined below, and Defendant So Cal Retail Services, Inc. (“SCR” or “Defendant”). Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Daniel Brown and Ethan Surls of Stansbury Brown Law, PC (“Class Counsel”). SCR is represented by Lisa Garner and Thomas McMullen of Gordon Rees Scully Mansukhani, LLP.

Plaintiff filed a class action complaint (“Complaint”) against SCR on March 5, 2021, in Los Angeles County Superior Court, Case No. 21STCV08762 which alleges causes of action for: (1) minimum wage violations (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse for necessary business expenses; (6) wage statement violations; (7) waiting time penalties; and (8) unfair competition.

Plaintiff filed a First Amended Class and Representative Action Complaint (“FAC”) on May 28, 2021, to add an additional cause of action for civil penalties under the Private Attorneys General Act (“PAGA”) pursuant to Labor Code Sections 2698 *et seq.* The Complaint and FAC are referred to hereinafter as the “Lawsuit”.

On March 23, 2022, the Parties attended and participated in good faith, arms’ length settlement discussions at a mediation before experienced wage & hour Mediator Tripper Ortman, Esq. Prior to mediation, the Parties conducted significant investigation of the facts and law. This included review and analysis of Defendant’s policies and putative class members’ time records and payroll records. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding Plaintiff’s claims, the defenses thereto, and the damages and penalties claimed by Plaintiff in the Lawsuit. As a result of the Parties thorough investigation of the allegations and defenses thereto, they were able to reach an agreement at the mediation after extensive negotiations.

Given the risks and uncertainties of litigation, the Parties have agreed to settle this Lawsuit on the terms set forth herein and subject to the approval of Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability as the Settlement Agreement is intended solely to allow the Parties to buy their peace and resolve the disputed claims asserted in this Lawsuit.

**1. Certification for Settlement Purposes.** For the purposes of this Settlement Agreement only, the Parties stipulate to certification of the following Settlement Class:

1. **Settlement Class** – All individuals who worked for Defendant So Cal Retail Services, Inc. (“Defendant”) in California as non-exempt employees from March 5, 2017 through March 31, 2022 (“Settlement Class” or “Settlement Class Members”). The “Class Period” as referred to herein shall be from March 5, 2017 to March 31, 2022.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or Federal Rule of Civil Procedure Rule 23.

If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

## 2. Releases.

- A. **Class Releases by Settlement Class Members.** Plaintiff and every member of the Settlement Class (except those who opt out, as described below) will fully release and discharge Defendant, its past or present officers, directors, shareholders, and managers, supervisors, owners, agents, principals, heirs, representatives, and its respective successors, predecessors in interest, insurers, and attorneys (collectively the “Released Parties”) from all Released Claims. Participating Class Members release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including, any and all claims for: (a) failure to pay all regular wages, minimum wages, and overtime wages due; (b) failure to provide meal periods or compensation in lieu thereof; (c) failure to provide rest periods or compensation in lieu thereof; (d) failure to reimburse necessary business expenses; (e) failure to provide complete, accurate wage statements; (f) failure to pay wages timely at time of termination or resignation; and (g) unfair business practices that could have been premised on all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action. Except as set forth above, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period. This release shall apply to all Participating Class Members and all claims arising during the Class Period. Separate and apart from the Released Claims by Participating Class Members, Plaintiff Garnica as an individual will provide a complete and general release of all known or unknown claims he may hold through the Effective Date of this Agreement.
- B. **PAGA Release by Aggrieved Employees.** Plaintiff and every non-exempt employee who worked for Defendant from March 5, 2020 through March 31, 2022 (“Aggrieved Employees”) will fully release and discharge the Released Parties from all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), for claims that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and ascertained in the course of the Lawsuit and the March 5, 2022 letter Plaintiff sent to the California Labor and Workforce Development Agency (“LWDA”) (“PAGA Notice”), including any and all claims for civil penalties for violations of Labor Code sections 201 - 204, 210, 226, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, and 2699 (collectively, the “PAGA Released Claims”), regardless of whether the Aggrieved Employee opts out from the Settlement Agreement. The release period shall run from March

5, 2020 through March 31, 2022 (“PAGA Period”). Except as set forth above, Aggrieved Employees do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

- C. **Parties’ Mutual Release of Unknown Claims.** Plaintiff and SCR have agreed to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against each other and the Released Parties. Plaintiff and SCR understand that this release includes unknown claims and that he or it is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

However, to the extent that Plaintiff or SCR has claims that cannot be released as a matter of law (i.e., workers’ compensation claims), then those claims will not be released.

- D. If SCR fails to fully fund the Settlement as provided for by this Settlement, then the releases in this Settlement will be null and void. The releases will become effective upon full payment of the Maximum Settlement Amount.

3. **Settlement Payment.** In exchange for the releases set forth in this Settlement Agreement, SCR agrees to pay a common fund of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) (the “Maximum Settlement Amount” or “MSA”) in full and complete settlement of this matter, as follows:

- A. The Maximum Settlement Amount shall be deposited with the Settlement Administrator in two (2) installments as follows: (i) SCR shall make the first installment payment of \$50,000.00 within fifteen (15) days of the date of Preliminary Approval and (ii) SCR shall pay the remainder of the MSA and its share of payroll taxes within thirty (30) days of the date of Final Approval (which, for this purpose, shall be defined as the date on which the Court enters an Order granting Final Approval, or solely in the event that there are any objections to the settlement, the filing of an objection being a prerequisite to the filing of an appeal, the later of: (i) the last date on which any appeal might be filed, or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review); The Settlement Administrator shall hold all portions of the Maximum Settlement Amount in an interest-bearing account for the benefit of the Settlement Class until the time for disbursement as called for in this Settlement Agreement.

- B. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
- (1) All payments to the Settlement Class;
  - (2) All fees and expenses of the Settlement Administrator associated with the administration of the settlement, which are anticipated to be no greater than Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00).
  - (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff's Enhancement Payment, subject to Court approval, in recognition of Plaintiff's general release of claims, contributions to the Lawsuit, and service to the Settlement Class. In the event that the Court reduces or does not approve the requested Enhancement Payment, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding;
  - (4) Up to one-third of the Maximum Settlement Amount in attorneys' fees, which is currently estimated to be Eighty Three Thousand Three Hundred Thirty Three Dollars (\$83,333.00), plus up to Twenty Thousand Dollars and Zero Cents (\$20,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. In the event that the Court reduces or does not approve Class Counsel's requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding; and
  - (5) Five Thousand Dollars and Zero Cents (\$5,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, Three Thousand Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) will be payable to the Aggrieved Employees as the "PAGA Amount."
- C. Defendant's share of payroll taxes shall be paid by Defendant separate and apart from the Maximum Settlement Amount.
- D. **Escalator Clause.** SCR represents that as of March 23, 2022, there were approximately 118 putative class members that worked a combined 7,685 work weeks during the class period. If either the actual number of class members is ten percent (10%) more than 118 or the number of work weeks worked during the class period is ten percent (10%) more than 7,685 work weeks, SCR shall increase the MSA on a pro-rata basis equal to the increase in the number of class members and/or work weeks if the number of class members or number of work weeks is greater than 10% (e.g., if the number of work weeks or class members increases by 11%, SCR will increase the MSA by 1%; e.g., if the number of work weeks or class members increases by 25%, SCR will increase the MSA by 15%).

4. **Settlement Award Procedures.** Settlement Class Members are not required to submit a claim form to receive their Individual Settlement Award. Individual Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for the Settlement Administrator's fees and expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees, and Class Counsel's costs. The remaining amount shall be known as the "Net Settlement Fund."
  - B. From the Net Settlement Fund, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Award.

Settlement Awards shall be based on the following formula:

- i. **Waiting Time Amount:** Twenty percent (20%) of the Net Settlement Fund shall be designated as the "Waiting Time Amount." Each participating Settlement Class Member who separated their employment from SCR at any time from March 5, 2018 through March 31, 2022 ("Waiting Time Period"), shall receive an equal, pro-rata share of the Waiting Time Amount.
  - ii. **Wage Statement Amount:** Fifteen percent (15%) of the Net Settlement Fund shall be designated as the "Wage Statement Amount." Each participating Settlement Class Member who was employed by SCR at any time from March 5, 2020 through March 31, 2022 shall receive a portion of the Wage Statement Amount proportionate to the number of pay periods that he or she worked during the period from March 5, 2020 through March 31, 2022 ("Wage Statement Period").
  - iii. The remainder of the Net Settlement Fund shall be distributed to each participating Settlement Class Member based on their proportionate share of Eligible Workweeks (defined below) during the Class Period, by multiplying the remaining Net Settlement Fund by a fraction, the numerator of which is the participating Settlement Class Member's Eligible Workweeks during the Class Period, and the denominator of which is the total Eligible Workweeks of all participating Settlement Class Members during the Class Period.  
  
An "Eligible Workweek" shall be any workweek in which the Class Member worked at least one day during the workweek based on SCR's records.
- C. **PAGA Amount:** Each Aggrieved Employee who was employed by SCR at any time from March 5, 2020 through March 31, 2022, shall receive a portion of the One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) of the Net Settlement Fund that has been designated as the "PAGA Amount" proportionate to

the number of pay periods that he or she worked during the period from March 5, 2020 through March 31, 2022 (“PAGA Period”).

- D. Within ten (10) days following the full funding of the Maximum Settlement Amount with the Settlement Administrator by SCR, the Settlement Administrator will calculate Individual Settlement Award amounts and mail Individual Settlement Awards to participating Settlement Class Members and transfer to Class Counsel its attorney’s fees and verified costs.
- E. For purposes of calculating applicable taxes and withholdings for the Settlement Class Members, twenty percent (20%) of each Individual Settlement Award shall be designated as wages subject to W-2 reporting and normal payroll withholdings; the remaining eighty percent (80%) of each Individual Settlement Award shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans. Additionally, 100% of the PAGA Amount paid to Aggrieved Employees shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings.
- F. Each Settlement Class Member who receives an Individual Settlement Award must negotiate the settlement check within one hundred eighty (180) days from the date of issuance. The one hundred eight (180) day expiration of the settlement checks will be pre-printed on the front of the settlement check. Any funds payable to Settlement Class Members whose checks are not negotiated within one hundred eighty (180) days period will not be reissued and will be transferred by the settlement administrator to Inner City Law Center, a nonprofit poverty-law firm serving the poorest and most vulnerable residents of Los Angeles as a *cy pres*.
- G. Neither Plaintiff nor SCR shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by his or its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Class Counsel’s Attorneys’ Fees and Litigation Costs.** The Parties agree upon a total award of attorneys’ fees to Class Counsel of one-third of the Maximum Settlement Amount, which is currently estimated to be Eighty-Three Thousand Three Hundred Thirty-Three Dollars (\$83,333.00), plus up to Twenty Thousand Dollars and Zero Cents (\$20,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court’s approval of this Settlement Agreement, including any objections raised, responses to any intervenors and any appeals necessitated by those objections or intervenors. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award as approved by the Court.

6. **Plaintiff's Enhancement Payment.** The Parties agree to a Class Representative Enhancement Payment for Plaintiff of Five Thousand Dollars and Zero Cents (\$5,000.00) in exchange for the general release of his claims, his time and risks in prosecuting this case, and his service to the Settlement Class. This payment will be in addition to Plaintiff's Individual Settlement Award as a Settlement Class Member and shall be reported on an IRS Form 1099 by the Settlement Administrator. It is the intent of the Parties that the Enhancement Payment to the Plaintiff is for his services in connection with this Lawsuit and is not wages, therefore the Settlement Administrator shall not withhold any taxes from the Enhancement and shall report it on an IRS Form 1099, which shall be provided to Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Enhancement does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Enhancement Payment constitutes wages for income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by SCR from the Enhancement paid under this Settlement Agreement. In addition, Plaintiff shall hold SCR, Released Parties and Class Counsel harmless and indemnify SCR, Released Parties and Class Counsel for all taxes, interest, penalties, other payments and costs, incurred by SCR by reason of any claims relating to the non-withholding of taxes from the Enhancement.

7. **Settlement Administrator.** The Parties agree to the appointment of Phoenix Settlement Administrators as Settlement Administrator nor to Class Counsel seeking Court approval to pay up to Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00) from the Maximum Settlement Amount for its services. The Settlement Administrator shall be responsible for sending all required notices in both English and Spanish, calculating the Net Settlement Fund, calculating each Class Member's Individual Settlement Award amount, preparing all checks and mailings and disbursing all residuals resulting from uncashed settlement checks as set forth in Section 4(E). The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount by Class Counsel only after checks have been mailed to all Settlement Class Members.

8. **Preliminary Approval.** Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Daniel J. Brown and Ethan C. Surls of Stansbury Brown Law, PC as Class Counsel;
- C. Appointing Marcos Garnica as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice Packet (which is comprised of the Class Notice,), and directing the mailing of same in English and Spanish; and

- G. Scheduling a Final Approval hearing.
- H. Plaintiff shall submit the proposed settlement to the Labor Workforce Development Agency (“LWDA”) pursuant to Labor Code § 2699(1)(2). Proof of this submission will be provided to Defendants’ respective Counsel.
- I. If Final Approval is granted, Plaintiff shall submit a copy of the Superior Court’s judgement after entry of the judgement or order, pursuant to Labor Code § 2699(1)(3). Proof of this submission will be provided to SCR’s’ Counsel.

9. **Notice Procedures.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within fifteen (15) days after entry of an order preliminarily approving this Settlement Agreement, SCR will provide the Settlement Administrator with a class list including the names, last known addresses, and social security numbers (in electronic format) of Settlement Class Members, as well as the total workweeks worked by each member of the Settlement Class during the Class Period.
- B. Within seven (7) days from receipt of the class list information, the Settlement Administrator shall: (i) run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the addresses of any Settlement Class Member for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet to each Settlement Class Member in English and Spanish at their last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. The Settlement Administrator shall use its best professional efforts, including utilizing a “skip trace,” to track any Settlement Class Member’s mailing returned as undeliverable, and will re-send the Notice Packet promptly upon identifying updated mailing addresses through such efforts. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.
- D. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class Member immediately, and in any event within three (3) business days of obtaining the updated address. Settlement Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have twenty (20) days from the date of re-mailing, or until the Response



Deadline has expired, whichever is later, to mail a Request for Exclusion, challenge or objection.

- E. **Opt-Out/Request for Exclusion Procedures.** Any Settlement Class Member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
- i. The Request for Exclusion must: (1) contain the name, address, telephone number of the Settlement Class Member; (2) contain a statement that the Settlement Class Member wishes to be excluded from the class settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion fails to comply with items (1)-(3), it will not be deemed a valid Request for Exclusion from this settlement, except a Request for Exclusion not containing a Class Member's telephone number will be deemed valid. The date of the postmark on the Request for Exclusion, shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement (although the PAGA settlement and release provisions will apply to each such individual, and such individual shall be entitled to that individual's share of the PAGA Amount) or have any right to object, intervene, appeal or comment thereon. Any Settlement Class Member who does not submit a Request for Exclusion is automatically deemed a participating Settlement Class Member.
- F. **Objections.** Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and SCR's counsel as well as filing them with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection must: (1) contain the objecting Settlement Class member's full name and current address; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) objections must be postmarked on or before the Response Deadline. The Court will hear from any Class Member who attends the final approval hearing and asks to speak regarding his or her objection, regardless of whether a written objection was submitted.
- G. **Challenges to Individual Settlement Award Calculations.** Each Notice Packet mailed to a Settlement Class Member shall disclose the amount of the Settlement Class Member's estimated Settlement Award as well as all of the information that

was used from Defendant's records in order to calculate the Settlement Award, including the Settlement Class Member's number of Eligible Workweeks during the Class Period, the number of pay periods worked during the PAGA/Wage Statement periods, and whether the Settlement Class Member's employment ended during the period of March 5, 2017 through March 31, 2022. Settlement Class Members will have the opportunity, should they disagree with SCR's records regarding the number of Eligible Workweeks and/or pay periods stated in their Notice Packet and/or whether their employment ended between March 5, 2017 and March 31, 2022, to challenge the data provided. In order to challenge SCR's data, the Settlement Class Member must provide documentation and/or an explanation demonstrating that SCR's data is incorrect and evidencing the correct number of Eligible Workweeks and or pay periods that the Settlement Class Member believes they should have been credited with and/or evidence of the correct date their employment ended. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall provide a copy of the challenge and any supporting documentation to counsel for the Parties within five (5) days of receipt.

- H. **Dispute Resolution.** The Settlement Administrator shall have the responsibility of resolving all disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of Settlement Class Member's Individual Settlement Awards, the allocation of W-2 wages, and the number of Eligible Workweeks and/or pay periods. Where the information submitted by SCR from its records differs from the information submitted by the Settlement Class Member, the Settlement Administrator shall request a conference call between the Settlement Administrator, Class Counsel, and defense counsel to discuss and resolve the dispute. In advance of the conference call, the Settlement Administrator shall email copies of all available information to all counsel. After consulting with the Parties to determine whether an adjustment is warranted, the Settlement Administrator will finally determine the eligibility for and amount of any Settlement Award. Such determination shall be binding upon the Settlement Class Member and the Parties.

10. **Final Approval Process.** Following preliminary approval and the close of Response Deadline under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's application for Settlement Administrator's fees and expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the LWDA's share of the PAGA payment; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission.** SCR denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, that it has any liability to anyone under the claims asserted in the Lawsuit, and that but for this settlement a class should not be certified in this Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability or wrongdoing by SCR. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Right of Rescission.** No later than seven (7) court days after the Response Deadline, the Settlement Administrator shall identify the Class Members who have timely submitted written requests for exclusion in a declaration to the court in support of the motion for final approval. Should the Court order the parties to include the names of the Class Members who timely submitted a written request for exclusion in the order granting final approval, the parties will comply with the Court's Order.

If ten percent (10%) or more of the Class Members submit valid requests for exclusion, Defendant at its sole option may withdraw from this Settlement by giving written notice to Class Counsel and the Settlement Administrator within fifteen (15) business days of the Response Deadline. If this right is exercised, Defendant will be exclusively responsible for all settlement administration costs incurred to date by the Settlement Administrator.

14. **Circular 230 Disclaimer.** Each party to this agreement (for purposes of this section, the "acknowledging party" and each party to this agreement other than the acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this agreement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor will any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this agreement, (b) has not entered into this agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this agreement.

15. **No Prior Assignments.** The Parties, Class Counsel, and Counsel for Defendants represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

16. **Nullification of Settlement Agreement.** In the event that: (a) the Court does not finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any material term of the Settlement Agreement; or (c) the Settlement does not become final as written and agreed to by the Parties for any other reason, then the Settlement Agreement will be null and void, all amounts deposited into the Qualified Settlement Fund Account will be returned to Defendant, and the Parties shall be returned to their original respective positions. In such an event, any order or judgment entered by the Court in furtherance of the Settlement Agreement will likewise be treated as void from the beginning.

17. **Calculating Deadlines.** If the date by which any action is required to be performed under the Settlement falls on a Saturday, Sunday or legal court holiday in the State of California, then the date by which such action shall be required to be performed shall be the next following day that is not a Saturday, Sunday or legal court holiday in the State of California.

18. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate the Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to the Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of the Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

19. **Binding on Successors and Assigns.** The Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

20. **California Law Governs.** All terms of the Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

21. **Investigation of the Claims.** Each Party conducted significant investigation of the facts and law both before and after the Action was filed. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding the Plaintiff's claims, the defenses thereto and the damages claimed by Plaintiff.

22. **Benefits of Settlement to Class Members.** Plaintiff has considered the expense and length of continued proceedings necessary to continue the Action against Defendants through trial and any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in class certification. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action and Defendant's' defenses thereto. Plaintiff

has also considered the settlement negotiations conducted by the Parties. Based on the foregoing, Plaintiff has determined that the Settlement set forth in the Settlement Agreement is fair, adequate, and reasonable, and is in the best interest of the Settlement Class.

23. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe the Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at the Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of the Settlement.

24. **Invalidity of Any Provision.** Before declaring any provision of the Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of the Settlement Agreement valid and enforceable.

25. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of the Settlement Agreement. The Parties agree to cooperate to promote participation in the Settlement, and in seeking court approval of the Settlement. The Parties and their counsel agree not to take any action to encourage any Settlement Class Members to opt out of or to object to the Settlement. Defendant agrees not to obtain waivers or Pick Up Stix agreements from the Settlement Class Members during the Settlement approval process and will work in good faith to reach an agreement approved by the Court. Defendant further agrees that it will not oppose Plaintiff's motion for preliminary approval or motion for final approval.

26. **Confidentiality.** Plaintiff, Class Counsel, Defendant and Counsel for Defendant agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the Settlement Agreement. In addition, Plaintiff, Class Counsel, Defendant and Counsel for Defendant agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement of this case, including, but not limited to, any postings on any websites maintained by Class Counsel. Nothing in the Settlement Agreement shall limit Defendant's ability to fulfill disclosure obligations reasonably required by law or in furtherance of business purposes, including the fulfillment of obligations stated in the Settlement Agreement.

27. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into the Settlement, and further intend that the Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms.

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

if to SCR:

Lisa K. Garner  
GORDON REES SCULLY MANSUKHANI, LLP  
633 West Fifth St., 52<sup>nd</sup> Floor  
Los Angeles, CA 90071  
lgarner@grsm.com

if to Plaintiff:

Daniel J. Brown  
STANSBURY BROWN LAW, PC  
2610 ½ Abbot Kinney Blvd.  
Venice, CA 90291  
dbrown@stansburybrownlaw.com

29. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

30. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

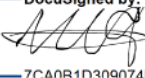
APPROVED AND ACCEPTANCES AND AGREEMENT BY THE PARTIES

DATED: So Cal Retail Services, Inc.

By: \_\_\_\_\_  
Jeff Coss, President

DATED: 10/6/2022

Marcos Garnica

DocuSigned by:  
  
7CA0B1D309074D1

\_\_\_\_\_  
Plaintiff and Settlement Class Representative

if to SCR:

Lisa K. Garner  
GORDON REES SCULLY MANSUKHANI, LLP  
633 West Fifth St., 52<sup>nd</sup> Floor  
Los Angeles, CA 90071  
lgarner@grsm.com

if to Plaintiff:

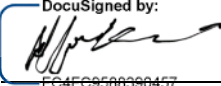
Daniel J. Brown  
STANSBURY BROWN LAW, PC  
2610 ½ Abbot Kinney Blvd.  
Venice, CA 90291  
dbrown@stansburybrownlaw.com

29. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

30. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

APPROVED AND ACCEPTANCES AND AGREEMENT BY THE PARTIES

DATED: October 19, 2022 | 12:41 PM PDT  
So Cal Retail Services, Inc.

DocuSigned by:  
  
By: \_\_\_\_\_  
FC4FC9586990457...  
Jeff Coss, President


DATED: Marcos Garnica

\_\_\_\_\_  
Plaintiff and Settlement Class Representative

**APPROVED AS TO FORM (BY COUNSEL ONLY):**

DATED: October 19, 2022

GORDON REES SCULLY MANSUKHANI, LLP

By:  \_\_\_\_\_

Lisa K Garner  
Attorneys for Defendant So Cal Retail Services, Inc.

DATED: October 6, 2022

STANSBURY BROWN LAW, PC

By:  \_\_\_\_\_

Daniel J. Brown  
Attorneys for Plaintiff