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10 Attorneys for Plaintiff Debra Ann Gonzalez, individually,
11 and on behalf of all others similarly situated

12 *[Additional counsel listed on following page]*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF ALAMEDA**

15 DEBRA ANN GONZALEZ, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 HAYWARD F2, INC.; EAST BAY F2, INC.;
20 DUBLIN F2, INC.; TRACY F2, INC.; and DOES
21 1 through 20, inclusive,

22 Defendants.

Case No. 21CV001198

Assigned for All Purposes to:
Judge Evelio Grillo
Dept. 21

JOINT STIPULATION OF SETTLEMENT

1 **LITTLER MENDELSON, PC**

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7 Attorneys for Defendants

HAYWARD F2, INC.; EAST BAY F2, INC.; DUBLIN F2, INC.; TRACY F2, INC.

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1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiff Debra Ann Gonzalez (“Named
7 Plaintiff”) and the Class Members, on the one hand, and Defendants Hayward F2, Inc., East Bay F2,
8 Inc., Dublin F2, Inc., and Tracy F2, Inc. (“Defendants”), on the other hand. Named Plaintiff and
9 Defendants collectively are referred to in this Agreement as “the Parties.”

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendants to pay the settlement amount of Four Hundred Seventy-Five
12 Thousand Dollars (\$475,000.00) as provided in Section 3.06(a) below (“Gross Settlement Amount”)
13 pursuant to the terms and conditions of this Agreement and for the consideration set forth herein,
14 including but not limited to, a release of all claims by Named Plaintiff and the Class Members as set
15 forth herein.

16 **ARTICLE I**

17 **DEFINITIONS**

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

20 a. “Action” means the action described as follows: “*Debra Ann Gonzalez, individually*
21 *and on behalf of all others similarly situated v. Hayward F2, Inc., et al.; and DOES 1 through 20,*
22 *inclusive,*” Case No. 21CV001198, commenced on October 26, 2021, in the Superior Court of the
23 State of California for the County of Alameda.

24 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
25 Exhibit(s).

26 c. “Class” means all current and former non-exempt employees who are or were
27 employed by Defendants in California at any time during the Class Period.

28 d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

1 AEGIS LAW FIRM, PC
2 Samuel A. Wong
3 Kashif Haque
4 Jessica L. Campbell
5 9811 Irvine Center Drive, Suite 100
6 Irvine, California 92618
7 Telephone: (949) 379-6250
8 Facsimile: (949) 379-6251

9 e. "Class List" means a list based on Defendants' business records that identifies each
10 Class Member's name, last known home or mailing address, Social Security number or, as
11 applicable, other taxpayer identification number, dates of employment, and the number of Qualifying
12 Workweeks worked during the Class Period.

13 f. "Class Member(s)" means all members of the Class.

14 g. "Class Period" means May 1, 2017 through July 8, 2022.

15 h. "Court" means the California Superior Court for the County of Alameda, where the
16 Action is currently pending.

17 i. "Date of Finality" means the later of the following: (1) the date the Final Order is
18 signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no
19 appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or
20 other judicial review is taken from the Court's overruling of objections to the settlement, ten (10)
21 days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes
22 final.

23 j. "Defendants" means Defendants Hayward F2, Inc., East Bay F2, Inc., Dublin F2, Inc.,
24 and Tracy F2, Inc.

25 k. "Defense Counsel" means counsel for Defendants:

26 LITTLER MENDELSON, PC
27 Joshua J. Cliffe
28 Courtney Chambers
333 Bush Street, 34th Floor
San Francisco, CA 94104
Telephone: 415.433.1940
Facsimile: 415.399.8490
E-Mail: jcliffe@littler.com
cchambers@littler.com

1 l. “Disposition” means the method by which the Court approves the terms of the
2 Settlement and retains jurisdiction over its enforcement, implementation, construction,
3 administration, and interpretation.

4 m. “Final Order Approving Settlement of Class Action” or “Final Order” means the final
5 formal court order signed by the Court following the Final Fairness and Approval Hearing in
6 accordance with the terms herein, approving this Agreement.

7 n. “Gross Settlement Amount” means Four Hundred Seventy-Five Thousand Dollars
8 and Zero Cents (\$475,000.00) to be paid by Defendants as provided by this Agreement to settle this
9 Action. All payments to the Class, administration costs, attorney’s fees and costs, and Incentive
10 Awards, pursuant to Section 3.06(a) below, shall be paid out of the Gross Settlement Amount. The
11 employer’s share of payroll taxes arising from the payments made under this settlement shall be paid
12 by Defendants separate from and in addition to the Gross Settlement Amount. The Gross Settlement
13 Amount is subject to a pro rata increase pursuant to Section 3.04(e) below. No part of the Gross
14 Settlement Amount shall revert to Defendants.

15 o. “Incentive Award” means a monetary amount of up to Five Thousand Dollars
16 (\$5,000.00) for the Named Plaintiff, subject to Court approval, in recognition of her effort and work
17 in prosecuting the Action on behalf of Class Members, and for her general release of claims.

18 p. “Individual Settlement Payment(s)” means each Participating Class Member’s
19 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
20 by the calculations provided in this Agreement.

21 q. “LWDA” means The State of California Labor and Workforce Development Agency.

22 r. “LWDA Payment” means 75% of the \$35,000 allocated to the settlement of PAGA
23 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.06(e) of
24 this Agreement, as provided for below.

25 s. “Motion for Final Approval” means Plaintiff’s submission of a written motion,
26 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
27 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
28 to enter a Final Order in this Action.

1 t. "Motion for Preliminary Approval" means Plaintiff's submission of a written motion,
2 including any evidence as may be required for the Court to grant preliminary approval of the
3 Settlement as required by Rule 3.769 of the California Rules of Court.

4 u. "Named Plaintiff" means Debra Ann Gonzalez.

5 v. "Net Settlement Amount" means the Gross Settlement Amount less Court-approved
6 administration costs, Class Counsels' attorney's fees and costs, Incentive Awards, and LWDA
7 Payment, pursuant to Section 3.06(a)-(f) below.

8 w. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the
9 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
10 to Section 3.04(b) below.

11 x. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form
12 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

13 y. "PAGA" means the California Private Attorneys General Act of 2004, which is
14 codified in California Labor Code §§ 2698 *et seq.*

15 z. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
16 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have
17 agreed that the PAGA Settlement Amount is Thirty-Five Thousand Dollars (\$35,000), subject to
18 Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment,
19 and the remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
20 Members.

21 aa. "PAGA Group Members" means all Class Members employed by Defendants at any
22 time between October 26, 2020, through July 8, 2022 ("PAGA Period"), and the State of California
23 Labor and Workforce Development Agency ("LWDA").

24 bb. "Participating Class Member(s)" is defined as a Class Member who does not timely
25 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
26 Settlement Amount automatically without the need to return a claim form. Each Participating Class
27 Member will be paid his/her Individual Settlement Payment.

28

1 cc. "Preliminary Approval Date" means the date the Court preliminarily approves the
2 Settlement embodied in this Agreement.

3 dd. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
4 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
5 Administrator for the benefit of Participating Class Members.

6 ee. "Qualifying Workweeks" means the number of weeks that Class Members worked
7 for Defendants as non-exempt employees during the Class Period.

8 ff. "Released Parties" means Defendants, and its past, present, and future parents,
9 affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, affiliated
10 organizations, shareholders, board members, insurers, reinsurers and assigns, and each of their past,
11 present and future officers, directors, trustees, agents, employees, attorneys, contractors,
12 representatives, benefits plans sponsored or administered by the Released Parties, divisions, units,
13 and branches, and any other persons or entities acting on behalf of or in concert with any of the
14 foregoing. The Parties agree that this settlement by the Released Parties and the Private Attorney
15 General is intended to be broadly construed in resolution of all civil penalty claims in the cases
16 pending against the Released Parties.

17 gg. "Response Deadline" means the deadline by which Class Members must postmark or
18 fax to the Settlement Administrator requests for exclusion or written notices of objection. The
19 Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by
20 the Settlement Administrator, unless the sixtieth (60th) calendar day falls on a Sunday or federal
21 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
22 Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-
23 mailing.

24 hh. "Settlement Administration Costs" means all costs incurred by the Settlement
25 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
26 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
27 Payment checks and related tax reporting forms, administration of unclaimed checks, and generation
28 of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiff for her Incentive Award,

1 and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement
2 Amount.

3 ii. "Settlement Administrator" means Phoenix Settlement Administrators, Inc., which
4 the Parties have agreed will be responsible for the administration of the Individual Settlement
5 Payments to be made by Defendants from the Gross Settlement Amount and related matters under
6 this Agreement.

7 **ARTICLE II**

8 **CONTINGENT NATURE OF THE AGREEMENT**

9 **Section 2.01: Stipulation of Class Certification for Settlement Purposes**

10 Because the Parties have stipulated to the certification of the Class with respect to all causes
11 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and
12 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis.
13 This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality
14 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement
15 to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification
16 of the Class with respect to all causes of action alleged in the Action. Defendants do not consent to
17 certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date
18 of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the
19 Class as to Defendants will be vacated and Named Plaintiff, Defendants, and the Class will be
20 returned to their positions with respect to the Action as if the Agreement had not been entered into.
21 In the event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally
22 approving certification of any class contemplated by this Agreement shall be null, void, and vacated,
23 and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement
24 reflected in this Agreement, the fact that Defendants did not oppose the certification of a Class under
25 this Agreement, or that the Court preliminarily approved the certification of the Class, shall not be
26 used or cited thereafter by any person or entity, including in any manner whatsoever, including
27 without limitation any contested proceeding relating to the certification of any class. If the Date of
28 Finality does not occur, this Agreement shall be deemed null and void, shall be of no force or effect

1 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendants expressly
2 reserve the right to challenge the propriety of class certification in the Action for any purpose, if the
3 Date of Finality does not occur.

4 The Parties and their respective counsel shall take all steps that may be requested by the Court
5 relating to the approval and implementation of this Agreement and shall otherwise use their
6 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
7 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
8 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
9 resolution, the Parties agree to seek the assistance of mediator Jill Sperber to resolve the dispute.

10 ARTICLE III

11 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

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

14 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

15 Named Plaintiff will bring a motion before the Court for an order conditionally certifying the
16 Class to include all claims pled in the Action based on the preliminary approval of this Agreement.
17 The date that the Court grants preliminary approval of this Agreement will be the "Preliminary
18 Approval Date."

19 **Section 3.02: The Settlement Administrator**

20 The Parties have chosen Phoenix Settlement Administrators, Inc., to administer this
21 Settlement and to act as the Settlement Administrator, including but not limited to distributing and
22 responding to inquiries about the Notice Packet, determining the validity of exclusions/opt-outs,
23 calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the
24 Individual Settlement Payment checks and distributing them to Participating Class Members,
25 establishing and maintaining the QSF, and issuing the payment to Class Counsel for attorneys' fees
26 and costs, the Incentive Award check to Named Plaintiff, and the employer payroll taxes to the
27 appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms
28 and conditions of this Agreement.

1 All costs of administering the Settlement, including but not limited to all costs and fees
2 associated with preparing, issuing and mailing any and all notices to Class Members and/or
3 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
4 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax
5 returns and any other filings required by any governmental taxing authority or agency, all costs and
6 fees associated with preparing any other checks, notices, reports, or filings to be prepared in the
7 course of administering disbursements from the Net Settlement Amount, and any other costs and fees
8 incurred and/or charged by the Settlement Administrator in connection with the execution of its
9 duties under this Agreement (“Settlement Administration Costs”), shall be paid to the Settlement
10 Administrator from the Gross Settlement Amount.

11 **Section 3.03: Notice to Class Members**

12 No later than ten (10) business days after the Preliminary Approval Date, Defendants will
13 provide the Settlement Administrator with a “Class List” in electronic format based on its business
14 records, identifying the names of the Class Members, their last known home addresses, Social
15 Security numbers or, as applicable, other taxpayer identification number, their dates of employment
16 and weeks worked during the Class Period.

17 Within ten (10) business days of receiving a Class List from Defendants, the Settlement
18 Administrator will send Class Members, by first-class mail, at their last known address, the Court
19 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
20 Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate
21 share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of
22 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
23 Settlement Administrator will check all Class Member addresses against the National Change of
24 Address database and shall update any addresses before mailing. The Settlement Administrator will
25 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
26 Notice Packet was undeliverable. If a Class Member’s notice is re-mailed, the Class Member shall
27 have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the
28 initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class

1 Members shall not be required to submit claim forms in order to receive a proportional share of the
2 Net Settlement Amount.

3 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
4 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
5 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
6 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
7 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
8 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
9 that reasonable means be used to locate Class Members and that the Settlement Administrator be
10 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
11 Individual Settlement Payments to all Participating Class Members.

12 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
13 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
14 status report provided to the Parties.

15 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
16 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
17 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
18 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
19 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
20 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
21 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
22 procedures set forth in Section 3.06(g) below.

23 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
24 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
25 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
26 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
27 exclusion and objections that the Settlement Administrator received.

28

1 **Section 3.04: Responses to Notice**

2 **a. Class Member Disputes**

3 If any Class Member disagrees with Defendants' records as to his or her Qualifying
4 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
5 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
6 and submit such writing to the Settlement Administrator by the Response Deadline, along with any
7 supporting documentation. The Notice will also provide a method for the Class Member to challenge
8 the employment data on which his or her Individual Settlement Payment is based. The Settlement
9 Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith
10 to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the
11 final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on
12 the information provided to it.

13 **b. Requests for Exclusion from Class**

14 In order for any Class Member to validly exclude himself or herself from the Class and this
15 Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class
16 Member or his or her authorized representative, and must be sent to the Settlement Administrator,
17 postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement
18 Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall
19 contain instructions on how to validly exclude himself or herself from the Class and this Settlement
20 (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial
21 mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be
22 conclusively determined according to the records of the Settlement Administrator. Any Class
23 Member who timely and validly requests exclusion from the Class and this Settlement will not be
24 entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this
25 Agreement, and will not have any right to object, appeal, or comment thereon.

26 Any Class Member who fails to timely submit a request for exclusion shall automatically be
27 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
28 determined by the Court's Final Order Approving Settlement of Class Action, and by the other

1 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action
2 and/or released in this Agreement will be extinguished.

3 **c. Objections to Settlement**

4 For any Class Member to object to this Agreement, or any term of it, the person making the
5 objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the
6 Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)
7 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
8 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
9 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and
10 the date the signed objection was postmarked, shall be conclusively determined according to the
11 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
12 receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class
13 Members may also appear at the final approval hearing to object. The Court retains final authority
14 with respect to the consideration and admissibility of any Class Member objections.

15 **d. Encouragement of Class Members**

16 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
17 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
18 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
19 Class Members.

20 **e. Right of Plaintiff to Adjust Gross Settlement Amount**

21 Defendants have estimated the number of Class Members as 284 and the number of
22 workweeks to be 16,473. If the number of Class Members or the number of workweeks increases by
23 more than 10% (which is more than 312 Class Members or 18,120 workweeks) as of the end of the
24 Class Period, there will be a pro rata adjustment to the Gross Settlement Amount equal to \$1,672.54
25 per additional class member or \$28.84 per additional workweek, whichever is greater.

26 **Section 3.05: Final Fairness and Approval Hearing**

27 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
28 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement

1 and determine whether the Court should give it final approval, and (2) consider any objections made
2 and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the
3 Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a
4 Proposed Final Order Approving Settlement of Class Action.

5 **Section 3.06: Settlement Payment Procedures**

6 **a. Settlement Amount**

7 In exchange for the Released Claims set forth in this Agreement, Defendants agree to pay the
8 Gross Settlement Amount in the amount of Four Hundred Seventy-Five Thousand Dollars
9 (\$475,000.00), subject to a pro rata increase under the condition set forth in Section 3.04(e). The
10 Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class
11 Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement
12 Amount, and the Incentive Payments.

13 Within thirty (30) days of the Date of Finality, Defendants shall transfer the Gross Settlement
14 Amount plus Defendants' share of employer-side payroll taxes, as set forth herein, into a QSF
15 established by the Settlement Administrator either directly or by sending the funds to the Settlement
16 Administrator to be deposited and distributed. The Settlement Administrator will use these funds to
17 fund payment of the Individual Settlement Payments to Participating Class Members, Class
18 Counsel's attorneys' fees and costs, the Incentive Awards, the LWDA Payment, and the Settlement
19 Administration Costs.

20 Within ten (10) court days after receiving Defendants' final payment, funding the Gross
21 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments
22 to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the
23 Incentive Awards, and employer and employee tax withholdings applicable to the Net Settlement
24 Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a
25 search based on the National Change of Address Database to update and correct for any known or
26 identifiable address changes.

1 **b. Payment of Attorneys' Fees and Costs**

2 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
3 of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One
4 Hundred Fifty-Eight Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three Cents
5 (\$158,333.33). Class Counsel shall submit an application for an award of costs not to exceed Twenty-
6 Five Thousand Dollars (\$25,000.00). Such application for attorneys' fees and costs shall be heard
7 by the Court at the Final Fairness and Approval Hearing. Defendants shall not object to or oppose
8 any such application in these amounts. Class Counsel shall serve Defendants with copies of all
9 documents submitted in support of their application for an award of attorneys' fees and costs.

10 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
11 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
12 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
13 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
14 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees
15 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
16 will be reallocated to the Net Settlement Amount.

17 **c. Payment of Settlement Administration Costs**

18 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
19 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
20 Eight Thousand Dollars (\$8,000.00).

21 **d. Payment of Incentive Award to Named Plaintiff**

22 Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Five
23 Thousand Dollars (\$5,000.00), the request for which Defendants will not object to or oppose. The
24 Incentive Awards shall be paid out of the Gross Settlement Amount and shall not constitute payment
25 to any Participating Class Member(s) other than Named Plaintiff. To the extent that the Court
26 approves less than the amount of incentive award that Class Counsel request, the difference between
27 the requested and awarded amounts will be reallocated to the Net Settlement Amount.

1 Because it is the intent of the Parties that the Incentive Award represent payment to Named
2 Plaintiff for her service to the Class Members, and not wages, the Settlement Administrator will not
3 withhold any taxes from the Incentive Award. The Incentive Award will be reported on a Form 1099,
4 which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing
5 authorities as required by law.

6 **e. Payment to the Labor and Workforce Development Agency**

7 In consideration of claims made under PAGA, Class Counsel will request that the Court
8 approve allocation of Thirty-Five Thousand Dollars (\$35,000) of the Gross Settlement Amount to
9 these claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
10 Workforce Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be paid
11 to the Net Settlement Amount for distribution to PAGA Group Members. Defendants will not oppose
12 this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount.
13 The Court’s adjustment, if any, of the amount allocated to Named Plaintiff’s PAGA claim in the
14 Action, will not invalidate this Agreement.

15 **f. Payment of Individual Settlement Payments to Participating Class Members**

16 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
17 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
18 Participating Class Members in proportion to the number of individual Qualifying Workweeks for
19 each Class Member. To calculate the minimum amount each Class Member will receive based on
20 their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total
21 number of Qualifying Workweeks by all Class Members during the Class Period and then allocated
22 on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class
23 Member’s approximate Individual Settlement Payment amount will be included in his or her Notice
24 Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to
25 Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the
26 individual Qualifying Workweeks worked during the Class Period by each Participating Class
27 Member.

1 Each Individual Settlement Payment will represent wages and penalties allocated using the
2 following formula: 30% allocated to wages; and 70% allocated to interest and penalties. The amounts
3 paid as wages shall be subject to all tax withholdings customarily made from an employee's wages
4 and all other authorized and required withholdings and shall be reported by W-2 forms. The
5 employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. The
6 amounts paid as penalties and interest shall be subject to all authorized and required withholdings
7 other than the tax withholdings customarily made from employees' wages and shall be reported by
8 IRS 1099 forms.

9 No later than ten (10) business days after receiving the Gross Settlement Amount from
10 Defendants, the Settlement Administrator shall prepare and mail the checks for the Individual
11 Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the
12 Net Settlement Amount allocated to wages will be reduced by applicable employer and employee
13 tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of
14 the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the
15 extent required by law for the interest and penalty portions of the Individual Settlement Payments.
16 Participating Class Members shall have 180 days from the date their Individual Settlement Payment
17 checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration
18 of that 180-day time period will be void, and the uncashed funds shall be distributed to a *cy pres*
19 pursuant to California Code of Civil Procedure Section 384, to Bay Area Legal Aid
20 (<https://baylegal.org/>).

21 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
22 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
23 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
24 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
25 Settlement Administrator is unable to obtain a valid mailing address through this process, the
26 Settlement Administrator will tender the funds from the undeliverable checks to a *cy pres* pursuant
27 to California Code of Civil Procedure Section 384, to Bay Area Legal Aid (<https://baylegal.org/>).

28 **g. No Credit Toward Benefit Plans.**

1 The Individual Settlement Payments made to Participating Class Members under this
2 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
3 calculate any additional benefits under any benefit plans to which any Class Members may be
4 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
5 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
6 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
7 Members may be entitled under any benefit plans.

8 **ARTICLE IV**

9 **LIMITATIONS ON USE OF THIS SETTLEMENT**

10 **Section 4.01: No Admission**

11 Defendants dispute the allegations in the Action and disputes that, but for this Settlement, a
12 Class should not have been certified in the Action. This Agreement is entered into solely for the
13 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
14 construed as an admission of liability or wrongdoing by Defendants.

15 **Section 4.02: Non-Evidentiary Use**

16 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
17 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
18 deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties,
19 including but not limited to, evidence of a presumption, concession, indication, or admission by any
20 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
21 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
22 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
23 Agreement or for Defendants to establish that a Class Member has resolved any of his or her claims
24 released through this Agreement.

25 **Section 4.03: Nullification**

26 The Parties have agreed to the certification of the Class encompassing all claims alleged in
27 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
28 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this

1 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
2 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
3 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
4 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
5 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
6 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
7 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
8 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
9 should be certified by the Court in a non-settlement context in this Action or any other action, and in
10 any of those events, Defendants expressly reserve the right to oppose certification of the Class.

11 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
12 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

13 **ARTICLE V**

14 **RELEASES**

15 **Section 5.01: Released Claims by Class Members**

16 Upon the date Defendants transfer the Gross Settlement Amount, Named Plaintiff and
17 Participating Class Members who do not opt out of the Settlement, release the Released Parties from
18 any and all claims arising during the Class Period alleged in Named Plaintiff's Operative Complaint
19 or which could have been alleged based on the facts alleged in the Operative Complaint, including
20 but not limited to violation of Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512,
21 558, 1174, 1174.5, 2800, 2802, for (1) failure to provide meal periods (2) failure to authorize or
22 permit rest periods (3) failure to furnish accurate itemized wage statements (4) failure to pay wages
23 upon separation of employment and within the required time (5) failure to reimburse necessary
24 business expenses (6) failure to pay all wages owed, (7) violation of California Business and
25 Professions Code §§17200, *et seq.*, based on the preceding claims ("Released Claims"). The Parties
26 will stipulate to amend the complaint to include a claim for failure to pay overtime at the regular rate
27 of pay.

1 **Section 5.02: Released of PAGA Claims**

2 Upon the funding of the GSA, the State of California and Plaintiff hereby do and shall be
3 deemed to have fully, finally, and forever released, settled, compromised, relinquished and
4 discharged any and all of the Released Parties of and from the claims for civil penalties that could
5 have been sought by the Labor Commissioner for the violations of the California Private Attorneys
6 General Act of 2004 identified in the PAGA Letter and those based solely upon the facts alleged in
7 the PAGA Letter during the PAGA Period. However, to the extent the LWDA has released the
8 PAGA claims in connection with this Agreement, no PAGA Group Member may pursue these same
9 PAGA claims released here in another action. The PAGA Group Member will be collaterally
10 estopped from pursuing the PAGA claims released and compromised by the LWDA. No PAGA
11 group member may pursue the same PAGA claims in a representative capacity that are released here
12 in another action. After the Court grants final approval of the settlement, Plaintiff will provide the
13 LWDA with a copy of the Judgment which will include a list of the PAGA Group Members during
14 the PAGA Period. Plaintiff does not release any PAGA Group Members' claim for wages and
15 damages. This does not preclude the release of wages and damages by the Class Members as set
16 forth in Section 5.01. The PAGA Group Members will be issued a check for their share of the PAGA
17 Payment and will not have the opportunity to opt out of, or object to, the PAGA Payment and release
18 of the PAGA Claims set forth in this Section. The PAGA Group Members are bound by the release
19 of the PAGA Claims regardless of whether they cash or deposit their PAGA Settlement Amount or
20 opt out of being a Class Member.

21 **Section 5.03: Named Plaintiff's Release of Unknown Claims**

22 Upon the date of funding the GSA, Named Plaintiff, waives, releases, acquits, and forever
23 discharges the Released Parties from any and all claims, actions, charges, complaints, grievances,
24 and causes of action, of any nature arising from Named Plaintiff's employment with Defendants,
25 whether known or unknown, which exist or may exist as of the Parties' execution of this Agreement.

26 Section 1542 of the California Civil Code provides as follows:

27 *"A general release does not extend to claims that the creditor or releasing*
28 *party does not know or suspect to exist in his or her favor at the time of*

1 *executing the release and that, if known by him or her, would have*
2 *materially affected his or her settlement with the debtor or released party.”*

3 Plaintiff’s general release provided herein is made with an express waiver and relinquishment
4 of any claim, right, or benefit under California Civil Code § 1542.

5 **ARTICLE VI**

6 **MISCELLANEOUS PROVISIONS**

7 **Section 6.01: Amendments or Modification**

8 The terms and provisions of this Agreement may be amended or modified only by an express
9 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
10 and approved by the Court.

11 **Section 6.02: Assignment**

12 None of the rights, commitments, or obligations recognized under this Agreement may be
13 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
14 consent of each other Party and their respective counsel. The representations, warranties, covenants,
15 and agreements contained in this Agreement are for the sole benefit of the Parties under this
16 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

17 **Section 6.03: Governing Law**

18 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
19 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
20 of laws.

21 **Section 6.04: Entire Agreement**

22 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
23 contains the entire understanding of the Parties with respect to the subject matter contained herein.
24 In case of any conflict between text contained in Articles I through VI of this Agreement and text
25 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
26 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
27 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
28 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement

1 supersedes all prior agreements and understandings among the Parties with respect to the settlement
2 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
3 prior agreements or proposals.

4 **Section 6.05: Waiver of Compliance**

5 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
6 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
7 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
8 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
9 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
10 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

11 **Section 6.06: Counterparts and Fax/PDF Signatures**

12 This Agreement, and any amendments hereto, may be executed in any number of counterparts
13 and any Party and/or their respective counsel may execute any such counterpart, each of which when
14 executed and delivered shall be deemed to be an original. All counterparts taken together shall
15 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
16 signature.

17 **Section 6.07: Meet and Confer Regarding Disputes**

18 Should any dispute arise among the Parties or their respective counsel regarding the
19 implementation or interpretation of this Agreement, a representative of Class Counsel and a
20 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
21 to submitting such disputes to the Court.

22 **Section 6.08: Agreement Binding on Successors**

23 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
24 of each of the Parties.

25 **Section 6.09: Cooperation in Drafting**

26 The Parties have cooperated in the negotiation and preparation of this Agreement. This
27 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
28 was the drafter or participated in the drafting of this Agreement.

1 **Section 6.10: Fair and Reasonable Settlement**

2 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
3 the Action and have arrived at this Agreement through arm’s-length negotiation and in the context
4 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
5 further believe that the Settlement is and is consistent with public policy, and fully complies with
6 applicable law.

7 **Section 6.11: Headings**

8 The descriptive heading of any section or paragraph of this Agreement is inserted for
9 convenience of reference only and does not constitute a part of this Agreement and shall not be
10 considered in interpreting this Agreement.

11 **Section 6.12: Notice**

12 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
13 communications under this Agreement must be in writing and addressed as follows:

14 *To Named Plaintiff and the Class:*

15 Samuel A. Wong
16 Kashif Haque
17 Jessica L. Campbell
18 AEGIS LAW FIRM, PC
19 9811 Irvine Center Drive, Suite 100
20 Irvine, California 92618
21 Telephone: (949) 379-6250
22 Facsimile: (949) 379-6251

23 And

24 *To Defendants:*

25 LITTLER MENDELSON, PC
26 Joshua J. Cliffe
27 Courtney Chambers
28 333 Bush Street, 34th Floor
 San Francisco, CA 94104
 Telephone: 415.433.1940
 Facsimile: 415.399.8490
 E-Mail: jcliffe@littler.com

1 **Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction**

2 To the extent consistent with class action procedure, this Agreement shall be enforceable by
3 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
4 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the
5 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
6 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
7 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
8 extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more
9 of the Parties institutes any legal action or other proceeding against any other Party or Parties to
10 enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover
11 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness
12 fees incurred in connection with any enforcement actions.

13 **Section 6.14: Mutual Full Cooperation**

14 The Parties agree fully to cooperate with each other to accomplish the terms of this
15 Agreement, including but not limited to the execution of such documents, and the taking of such
16 other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties
17 to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its
18 terms. In the event the Parties are unable to reach agreement on the form or content of any document
19 needed to implement the Settlement, or on any supplemental provisions that may become necessary
20 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

21 **Section 6.15: Authorization to Act**

22 Class Counsel warrants and represents that they are authorized by Named Plaintiff, and
23 Defense Counsel warrants that they are authorized by Defendants, to take all appropriate action
24 required to effectuate the terms of this Agreement, except for signing documents, including but not
25 limited to this Agreement, that are required to be signed by the Parties themselves. Defendants
26
27
28

1 represent and warrant that the individual executing this Agreement on its behalf has the full right,
2 power, and authority to enter into this Agreement and to carry out the transactions contemplated
3 herein.

4 **Section 6.16: No Reliance on Representations**

5 The Parties have made such investigation of the facts and the law pertaining to the matters
6 described herein and to this Agreement as they deem necessary, and have not relied, and do not
7 rely, on any statement, promise, or representation of fact or law, made by any of the other parties,
8 or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or
9 asserted rights, or with regard to the advisability of entering into and executing this Agreement, or
10 with respect to any other matters. No representations, warranties, or inducements, except as
11 expressly set forth herein, have been made to any party concerning this Agreement.

12 **EXECUTION BY PARTIES AND COUNSEL**

13 The Parties and their counsel hereby execute this Agreement.

14 Dated: 12/14/2022 | 11:21 AM PST

DEBRA ANN GONZALEZ

15 By: 
16

17 Named Plaintiff

18 Dated: 12/14/22

HAYWARD F2, INC.

19 By: 
20

(Signature)

21 TAZ HARVEY

(Printed Name)

22 PRESIDENT

(Title)

23 Dated: 12/14/22

EAST BAY F2, INC.

24 By: 
25

(Signature)

26 TAZ HARVEY

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TAZ HARVEY
(Printed Name)
PRESIDENT
(Title)

Dated: 12/14/22

DUBLIN F2, INC.
By: [Signature]
(Signature)
TAZ HARVEY
(Printed Name)
PRESIDENT
(Title)

Dated: 12/14/22

TRACY F2, INC.
By: [Signature]
(Signature)
TAZ HARVEY
(Printed Name)
PRESIDENT
(Title)

1 **APPROVED AS TO FORM:**

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3

4 Dated: 12/13/2022

AEGIS LAW FIRM, PC

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6 By: Namrata Kaur
7 Samuel A. Wong
8 Jessica L. Campbell
9 Namrata Kaur

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Attorneys for Named Plaintiff Debra Ann
Gonzalez

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11 Dated: 12/13/22
12 _____

LITTLER MENDELSON, PC

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13 By: Courtney J. O. Chambers
14 Joshua J. Cliffe
15 Courtney Chambers

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Attorneys for Defendants Hayward F2, Inc., East
Bay F2, Inc., Dublin F2, Inc., and Tracy F2, Inc.

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