

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

Subject to final approval by the Court, it is stipulated, by and between Plaintiff Andrea Marquez (“Plaintiff”), on behalf of herself, other similarly situated putative class members, and other aggrieved employees, and Defendants Nihon Kohden America, Inc. and Vaco LLC (“Defendants”) that the Action is hereby compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement,” “Settlement,” or “Agreement”) and that the Court shall make and enter judgment subject to the definitions, recitals, and terms set forth herein, which by this reference become an integral part of the Agreement. Plaintiff and Defendants are collectively referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement pursuant to the terms of this Agreement in a sum not to exceed \$7,500. All Administration Costs shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation of Class Action and PAGA Settlement.”
- C. **Attorney Fee Award**: The amount, not to exceed thirty-five percent (35%) of the Gross Settlement Amount or \$52,500, if it is approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendants.
- D. **Action or Case**: The lawsuit originally filed by Plaintiff Andrea Marquez on February 17, 2021, entitled *Marquez v. Nihon Kohden America, Inc. et al.*, Case No. 30-2021-01184495-CU-OE-CXC, in the Superior Court of California, County of Orange, including the First Amended Complaint filed by Plaintiff.
- E. **Class**: All current and former hourly-paid or non-exempt employees of Vaco who were assigned to work at Nihon Kohden within the State of California during the Class Period.
- F. **Class Counsel**: Douglas Han, Shunt Tatavos-Gharajeh, and Lizette Rodriguez of Justice Law Corporation.

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- G. Class Data:** Information regarding Class Members that Vaco will compile from its available, existing, electronic records and provide to the Settlement Administrator. The Class Data shall be formatted as a Microsoft Excel spreadsheet and shall include: (1) each Class Member's full name; (2) each Class Member's last known address; (3) each Class Member's last known telephone number; (4) each Class Member's Social Security number; and (5) information sufficient to allow the Settlement Administrator to calculate the number of weeks and pay periods worked by each Class Member.
- H. Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- I. Class Notice or Notice:** The "Notice of Class Action Settlement" provided to all Class Members regarding the terms of this Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval. The Class Notice shall constitute notice to the Class pursuant to California Rule of Court, rule 3.769(f) and, once approved by the Court, shall be deemed compliant with California Rule of Court, rule 3.766.
- J. Class Period:** The time period from February 18, 2017 to January 27, 2022.
- K. Class Representative or Plaintiff:** Andrea Marquez.
- L. Class Representative Enhancement Payment:** The amount the Court awards to Plaintiff Andrea Marquez for her services as the Class and PAGA Representative, which will not exceed \$10,000. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendants. This enhancement is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- M. Complaint:** The complaint filed by Plaintiff Andrea Marquez in the Superior Court of California, County of Orange, on February 17, 2021, in the case entitled *Marquez v. Nihon Kohden America, Inc.*, Case No. 30-2021-01184495-CU-OE-CXC, including the First Amended Complaint filed by Plaintiff.
- N. Cost Award:** The amount that the Court awards Class Counsel for payment of actual litigation costs, which shall not exceed \$20,000. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendants. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- O. Counsel for Defendants or Defense Counsel:** Attorneys Diana M. Estrada of Wilson, Elser, Moskowitz, Edelman & Dicker LLP.

- P. **Court:** The Superior Court of California, County of Orange.
- Q. **Defendants:** Nihon Kohden America, Inc. (“Nihon Kohden”) and Vaco LLC (“Vaco”).
- R. **Effective Final Settlement Date or Effective Date:** The date by when both of the following occur: (1) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (2) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (i) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (ii) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; (iii) if a timely appeal(s) from the Judgment is filed, the day after the highest appellate court to which an appeal can be taken affirms the Judgment or if remanded, the day after the deadline for filing a notice of appeal following any further proceedings at the Court after remand, provided that is a further appeal is filed, the provisions of this paragraph regarding timely appeals shall apply.
- S. **Eligible Aggrieved Employees:** The aggrieved employees eligible to recover settlement funds from the PAGA Payment shall consist of all current and former hourly-paid or non-exempt employees of Vaco who were assigned to work at Nihon Kohden within the State of California during the PAGA Period.
- T. **Exclusion Form:** The Election Not to Participate In (“Opt Out” From) Class Action Settlement, substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval.
- U. **Final Approval, Final Approval Order, Judgment, and Final Judgment:** “Final Approval” or “Final Approval Order” means the final order entered by the Court, following the Final Fairness and Approval Hearing, finally approving this Agreement. “Judgment” or “Final Judgment” means the final judgment entered by the Court following the Final Fairness and Approval Hearing.
- V. **Gross Settlement Amount or GSA:** The value of the Settlement is a fixed total non-reversionary amount of One Hundred Fifty Thousand Dollars (\$150,000). This is the gross amount Vaco shall be required to pay under this Settlement Agreement on behalf of Defendants, which includes without limitation: (1) Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) Administration Costs paid to the Settlement Administrator, as approved by the Court; and (5) PAGA Payment paid to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Vaco’s portion of payroll taxes as the Class Members’ current or former employer is not included in the GSA and will be a separate obligation of Vaco. Nihon Kohden will pay no portion of the Gross Settlement Amount or

payroll taxes. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

- W.** **Individual Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form, unless the Class Member timely submits a valid Exclusion Form.
- X.** **LWDA**: California Labor and Workforce Development Agency.
- Y.** **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Class Members who do not request exclusion from the Settlement.
- Z.** **Notice Packet**: Collectively, the Class Notice and Exclusion Form that will be mailed to all identified Class Members by the Settlement Administrator.
- AA.** **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Labor Code section 2698 *et seq.*).
- BB.** **PAGA Payment**: The PAGA Payment consists of \$15,000 of the Gross Settlement Amount allocated for the settlement and release of claims for civil penalties under the PAGA. Seventy-five percent (75%) of the PAGA Payment (\$11,250) shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment (\$3,750) of the PAGA Payment shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as set forth below.
- CC.** **PAGA Period**: The time period from February 18, 2021 to January 27, 2022.
- DD.** **PAGA Released Claims**: As of the Effective Final Settlement Date and upon fulfillment of the payment obligations under Section III(H)(2) of this Agreement, the claims that Plaintiff, the other Eligible Aggrieved Employees, and LWDA are releasing in exchange for the consideration provided for by this Agreement are defined as any and all causes of action for civil penalties pursuant to PAGA that were alleged or which could have been alleged in the Action based on the facts and allegations pleaded in the First Amended Complaint in the Action and/or the LWDA notice letter. This includes all claims for civil penalties based upon or arising out of Defendants' alleged: (1) failure to pay minimum wage; (2) failure to pay overtime wages; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to pay meal period premium wages; (6) failure to pay rest period premium wages; (7) failure to

provide accurate wage statements; (8) failure to timely pay final wages during employment and at separation; (9) failure to maintain accurate payroll records; (10) failure to reimburse business-related expenses; and (11) claims for civil penalties arising under or based upon alleged violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, 2698 *et seq.*, 2699 *et seq.*, and/or those arising under applicable Industrial Welfare Commission Wage Orders. The Released Parties shall be entitled to a release of the PAGA Released Claims which occurred only during the PAGA Period and during such time that the Eligible Aggrieved Employee was classified as non-exempt and/or hourly-paid.

- EE. Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from the Settlement. Participating Class Members will release all of the Released Claims and will be bound by all terms of the Settlement and any final judgment entered in this Action.
- FF. Parties:** Plaintiff Andrea Marquez, individually and as the Class Representative, and Defendants Nihon Kohden America, Inc. and Vaco LLC.
- GG. Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement following the Preliminary Approval Hearing.
- HH. Qualified Settlement Fund or QSF:** A fund within the meaning of Treasury Regulation section 1.46B-1, 26 C.F.R. section 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members, Eligible Aggrieved Employees, Plaintiff and Class Counsel.
- II. Released Claims:** As of the Effective Final Settlement Date and upon fulfillment of the payment obligations under Section III(H)(2) of this Agreement, the claims that Plaintiff and the other Participating Class Members are releasing in exchange for the consideration provided for by this Agreement are defined as all class claims pled or that could have been pled, whether known or unknown, that reasonably arise out of the same set of operative facts or are reasonably related to the allegations contained in the Action and First Amended Complaint in the Action or any other claims that could have been asserted in the Action and First Amended Complaint in the Action based on the facts alleged. This includes, but not limited to: (1) minimum wages; (2) overtime and double time wages (including, but not limited to, any claims for additional wages owed due to "off-the-clock" work); (3) meal and rest breaks; (4) failure to keep time records; (5) wage statement violations; (6) separation pay violations; (7) unreimbursed business expenses; (8) untimely payment of wages; (9) failure to maintain records; and (10) unfair business practices. The definition of Released Claims covers all the claims described above. The Released Parties shall be entitled to a release of the Released Claims which occurred only during the Class Period and during such time that the

Participating Class Member was classified as non-exempt and/or hourly-paid. The Released Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the Class Period.

- JJ. Released Parties:** Defendants and each of their respective parent companies, subsidiaries, affiliates, without limitation current and former management companies, shareholders, members, owners, agents (including without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors, and employees) and any of their respective predecessors, successors, and assigns.
- KK. Release of Claims Between Vaco and Nihon Kohden:** Vaco and Nihon Kohden hereby agree to settle and fully resolve any and all disputes and claims between them relating to this Action, including the defense of the litigation or the retention of counsel related to this Action. In this regard, Vaco hereby waives, releases, and fully discharges Vaco from any and all claims, actions, charges, and causes of action, of whatever nature, that Vaco may have against Nihon Kohden relating to or arising out of this Action as of the Effective Date of this Agreement. Nihon Kohden hereby waives, releases, and fully discharges Vaco from any and all claims, actions, charges, and causes of action, of whatever nature, that Nihon Kohden may have against Vaco relating to or arising out of this Action as of the Effective Date of this Agreement, it being Defendants' intent to fully settle and resolve any and all such claims and disputes, whether known or unknown, regarding this Action.
- LL. Response Deadline:** Sixty (60) calendar days from the initial mailing of the Notice and the last date on which Class Members may request exclusion from or object to the Settlement. Class Members who receive a remailed Notice will have an additional ten (10) calendar days, for a total of seventy (70) calendar days from the initial mailing of the Notice, to request exclusion from or object to the Settlement.
- MM. Settlement Administration:** The Settlement Administrator will mail the Notice Packet by first-class U.S. mail to all identified Class Members. The Notice Packet will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt out of (exclude themselves from) the Settlement. Any Class Member who does not receive a Notice Packet after the steps outlined above have been taken will still be bound by the Settlement and/or Judgment.
- NN. Settlement Administrator:** The third-party administrator agreed upon by the Parties to administer this Settlement is Phoenix Class Action Administration Solutions.

II. RECITALS

- A. Procedural History.** On December 14, 2020, Plaintiff provided initial written notice to the LWDA and Defendants of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions. On February 17, 2021, Plaintiff filed a wage-and-hour class action complaint against Nihon Kohden in the Superior Court of California, County of Orange, alleging the following causes of action: (1) violation of Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor Code section 226.7 (unpaid rest period premiums); (4) violation of Labor Code sections 1194 and 1197 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid); (6) violation of Labor Code section 226(a) (noncompliant wage statements); (7) violation of Labor Code sections 2800 and 2802 (unreimbursed business expenses); (8) violation of Labor Code section 2698, *et seq.* (Private Attorneys General Act of 2004) seeking civil penalties and (9) violation of Business & Professions Code sections 17200, *et seq.*; and seeking recovery of unpaid wages and statutory penalties. Plaintiff will file a First Amended Complaint, including Vaco as a Defendant and modifying the class and aggrieved employees definitions accordingly.
- B. Investigation and Discovery.** Both before and after the Action was filed, the Parties conducted significant investigation and discovery of the relevant facts and law. Prior to mediation, Defendants produced documents relating to their wage-and-hour policies, practices, and procedures, including those regarding meal and rest periods, COVID-19 protocol, overtime, and logging hours worked. Plaintiff also reviewed time and pay records and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period. Further, Plaintiff interviewed putative class members who worked for Defendants during the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.
- C. Mediation.** On February 22, 2022, the Parties remotely participated in a private mediation with Jeffery Krivis, a well-respected mediator with considerable experience mediating wage-and-hour class actions. This mediation took place only after the Parties informally exchanged extensive information and data. The mediation and subsequent negotiations resulted in the Settlement described herein to resolve this Action in its entirety.
- D. Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of additional proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiff and Class Counsel have also taken into account the

uncertainty and risks of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations, including a full day of formal mediation. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

- E. Defendants' Reasons for Settlement.** Defendants recognize the defense of this litigation will be protracted and expensive for all Parties. Substantial amounts of Defendants' time, energy, and resources have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims Plaintiff has asserted. Defendants have also considered risks of further litigation in reaching their decision to enter this Settlement. Despite continuing to contend they are not liable for any of the claims set forth by Plaintiff, Defendants have agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims as set forth in the Action.
- F. Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, make no concessions or admissions of liability of any sort, make no concessions or admissions that any Class Member is or was employed by Defendants, and contend that for any purpose other than settlement, the case is not appropriate for class or representative treatment. Defendants assert a number of defenses to the claims and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in this Case. The monies being paid as part of the settlement are genuinely disputed and the Parties agree that the provisions of Labor Code section 206.5 are not applicable to this Settlement. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendants or as to whether a class or classes should be certified, other than for settlement purposes only.
- G. Plaintiff's Claims.** Plaintiff asserts Defendants' defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Case. However, if this Settlement is finally approved by the Court, none of Plaintiff, Class Members, or Class Counsel will oppose Defendants' efforts to use this Agreement to prove that Plaintiff and

Class Members have resolved and are forever barred as a matter of law from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Settlement Consideration by Defendants – Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, excluding payroll taxes, that Vaco is obligated to pay under this Settlement Agreement is fixed total non-reversionary amount of One Hundred Fifty Thousand Dollars (\$150,000). In no event shall Vaco be required to pay more than the Gross Settlement Amount, other than its share of payroll taxes.
- B. Notice to the LWDA.** On December 14, 2020, Plaintiff filed and served her Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3. Thus, Plaintiff maintains she has satisfied her notice obligations under PAGA.
- C. Class Certification.** For the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree in order for this Settlement to occur, the Court must conditionally certify the Class as defined in this Agreement.
- D. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. This Agreement is contingent upon Preliminary and Final Approval. If the Settlement does not become final and effective, for whatever reason, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall have no bearing on and shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Case or in any other lawsuit. Defendants reserve the right to oppose class certification should this Settlement be materially modified, withdrawn, or reversed on appeal, or otherwise fails to become final and effective. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorney Fee Award, and/or Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- E. Appointment of Class Representative.** For the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as the representative for the Class.
- F. Appointment of Class Counsel.** For the purposes of this Settlement, the Parties stipulate and agree Class Counsel shall be appointed to represent the Class.

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G. Individual Settlement Share. Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

a. Individual Settlement Share Calculation. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to: (i) the number of weeks he or she worked as a hourly-paid non-exempt California employee of Vaco and assigned to Nihon Kohden during the Class Period based on the Class Data provided by Vaco; (ii) divided by the total number of weeks worked by any and all Participating Class Members during the Class Period based on the same Class Data; and (iii) multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share is tied directly to the number of weeks he or she worked during the Class Period.

2. Tax Withholdings. Each Participating Class Member's Individual Settlement Share will be apportioned as follows: twenty percent (20%) as wages and eighty percent (80%) as penalties and interest. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The employees' share of payroll tax withholdings and other legally required withholdings shall be withheld from the portion of each Participating Class Member's Individual Settlement Share attributed to wages. Eligible Aggrieved Employees' Individual Settlement Shares, from the Eligible Aggrieved Employees' portion of the PAGA Payment, will be allocated as one hundred percent (100%) penalties and shall be reported by IRS 1099 forms.

H. Settlement Disbursement.

1. Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The maximum amount Vaco can be required to pay under this Settlement for any purpose is the Gross Settlement Amount, other than Vaco's payment of payroll taxes. The Settlement Administrator shall keep

Counsel for Defendants and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Counsel for Defendants and Class Counsel. No person shall have any claim against Defendants, Counsel for Defendants, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- 2. Funding the Settlement.** No later than fourteen (14) calendar days after the Effective Final Settlement Date (assuming the First Amended Complaint has already been filed), Vaco shall deposit the Gross Settlement Amount of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000) into the QSF (as defined below). Vaco shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share.
- 3. Disbursement.** Within twenty-one (21) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, Administration Costs, and PAGA Payment. The Settlement Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment to LWDA for settlement of the PAGA claims.
- 4. QSF.** The Parties agree the QSF is intended to be a "Qualified Settlement Fund" under section 468B of the Code and Treasury Regulations section 1.4168B-1, 26 C.F.R. section 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. section 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- 5. Uncashed Checks.** Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Share checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, pay the amount of the Individual Settlement Share to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Participating Class Member

and Eligible Aggrieved Employees will have his or her Individual Settlement Share available to him or her per the applicable claim procedure to request that money from the State of California.

6. **Final Report by Settlement Administrator.** Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.
7. **Payments.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:
 - a. **To the Plaintiff.** In addition to her Individual Settlement Share, and subject to the Court's approval, Plaintiff will receive Ten Thousand Dollars and Zero Cents (\$10,000) as a Class Representative Enhancement Payment in exchange for a release of the Released Claims, a General Release, and for her time, effort, and the risk she undertook in bringing and prosecuting this matter. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. The Settlement Administrator shall issue an IRS Form 1099-MISC to Plaintiff for her Class Representative Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on her Class Representative Enhancement Payment and shall hold harmless Defendants and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Payment. If the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the settlement and it will remain binding. If the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
 - b. **To Class Counsel.** Class Counsel will apply to the Court for a total Attorney Fee Award not to exceed thirty-five percent (35%), or \$52,500, of the GSA and a Cost Award not to exceed \$20,000. Defendants take no position on the requests for these payments

provided they do not exceed these amounts. Class Counsel, Plaintiff and the Participating Class Members will not apply to the Court for any payment of attorneys' fees and costs that are in addition to the foregoing or that exceed the GSA. The Parties agree that, over and above the Court-approved Attorney Fee and Cost Awards, each of the Parties, including all Participating Class Members, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, prosecution, or settlement of the Action; the negotiation, execution, or implementation of this Agreement; and/or the process of obtaining, administering, or challenging an Order Granting Preliminary Approval and/or Final Approval. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. If the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members. This Settlement is not contingent on the award of Attorney Fee Award and Cost Award. Nothing in this section or Settlement limits the rights of Class Counsel to appeal any decision by the Court regarding Attorney Fee Award or Cost Award. Class Counsel assumes full responsibility and liability for taxes owed on the Attorney Fee Award and Cost Award, holds Defendants harmless, and indemnifies Defendants from any dispute or controversy regarding any division or sharing of any of these payments.

- c. **To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of each Participating Class Member's portion of normal payroll withholding taxes out of each Participating Class Member's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Vaco's portions of payroll withholding taxes. The Settlement Administrator will submit Vaco's portion of payroll withholding tax calculation to Vaco for additional funding and forward that amounts, along with each Participating Class Member's Individual Settlement Share withholdings, to the appropriate taxing authorities.

- d. To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court in an amount not to exceed \$7,500. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members. If the Court does not approve the entirety of the requested Administration Costs, the Settlement Administrator shall pay to itself whatever amount the Court awards, and neither Defendants nor Plaintiff shall be responsible for paying the difference between the amount requested and the amount awarded.
- e. To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund. Individual Settlement Shares shall be mailed by regular first-class U.S. mail to Participating Class Members' last known mailing addresses no later than twenty-one (21) calendar days after the funding of the Settlement. Any checks issued to Participating Class Members shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance. The Settlement Administrator shall skip trace any checks issued to Participating Class Members that are returned as undeliverable.
- f. PAGA Payment.** Fifteen thousand dollars (\$15,000) shall be allocated from the Gross Settlement Amount for the settlement and release of claims for civil penalties under PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment (\$11,250) to the LWDA. The Settlement Administrator shall distribute the remaining twenty-five (25%) of the PAGA Payment (\$3,750) to the Eligible Aggrieved Employees as described in this Agreement. Class Counsel will take all action required by California Labor Code section 2699(l).
- g. To Eligible Aggrieved Employees.** The Settlement Administrator shall pay each Eligible Aggrieved Employee according to his or her proportional share of the PAGA Payment allocated to the Eligible Aggrieved Employees, which will be based upon the total number of pay periods during which the Eligible Aggrieved Employee was employed during the PAGA Period. Each individual share will be calculated by: (i) determining the total number of pay periods during the PAGA Period during which the Eligible Aggrieved Employee was

employed; (ii) dividing this number by the total number of pay periods during the PAGA Period during which all Eligible Aggrieved Employees were employed; and (iii) multiplying this number by the \$12,500 allocated to the Eligible Aggrieved Employees. Individual Settlement Shares for Eligible Aggrieved Employees shall be mailed by regular first-class U.S. mail to Eligible Aggrieved Employees' last known mailing addresses no later than twenty-one (21) calendar days after the funding of the Settlement. Any checks issued to Eligible Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance. The Settlement Administrator shall skip trace any checks issued to Eligible Aggrieved Employees that are returned as undeliverable.

I. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree Phoenix Class Action Administration Solutions shall be retained to serve as Settlement Administrator. By accepting the role as Settlement Administrator, the Settlement Administrator is bound to all of the terms, conditions and obligations described in this Settlement Agreement. The Settlement Administrator shall be responsible for: (1) preparing, printing, and mailing the Notice Packet to Class Members; (2) keeping track of any objections or requests for exclusion from Class Members; (3) calculating each Class Member's and Eligible Aggrieved Employee's Individual Settlement Share; (4) calculating any and all payroll tax deductions as required by law; (5) mailing Individual Settlement Shares to Participating Class Members; (6) performing skip traces and re-mailing Notice Packets and Individual Settlement Shares; (7) providing weekly status reports to Counsel for Defendants and Class Counsel, which are to include updates on any objections or requests for exclusion that have been received; (8) providing a due diligence declaration for submission to the Court prior to the Final Approval Hearing; (9) mailing the portion of the PAGA Payment to the LWDA; (10) distributing the Attorney Fee Award and Cost Award to Class Counsel; (11) printing and providing Class Members and Plaintiff with W-2 and 1099 forms as required under the Settlement and applicable law; (12) providing a due diligence declaration for submission to the Court upon the completion of the Settlement; (13) providing any funds remaining in the QSF as a result of uncashed checks to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law, including the administration of related tax reimbursements; and (14) performing such other tasks as the Parties mutually agree.

1. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. Plaintiff, Class Counsel, Defendants and Defense Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the Individual Settlement Shares or any other distribution of monies contemplated by this Agreement.

J. 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:

- (1) No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. 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.

K. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Notice Packet. Plaintiff’s Motion for Preliminary Approval shall include this Settlement Agreement.
- b. At the Preliminary Approval Hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Notice Packet; and setting the Final Approval Hearing.
- c. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations. The amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative

Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding. The Court's approval or denial of any amount requested for these items is not a condition of the Settlement and shall be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for Attorney Fee Award, Cost Award, Administration Costs, and/or Class Representative Enhancement Payment shall not operate to terminate or cancel this Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and/or Class Representative Enhancement Payment.

- 2. Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Notice Packet in accordance with the following procedure:
 - a.** Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Vaco shall deliver to the Settlement Administrator the Class Data. If any or all of the Class Data is unavailable to Vaco, Vaco will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Class Data shall be based on Vaco's payroll, personnel, and other business records. The Settlement Administrator will conduct a National Change of Address Database search (which provides updated addresses for individuals who have moved in the past four years and who have provided the U.S. Postal Service with a forwarding address) for all Class Members to obtain the most up-to-date address information. The Settlement Administrator shall maintain the Class Data and all information contained therein as private and confidential. This provision shall not impede Class Counsel's ability to discharge their fiduciary duties, including effectuating the terms of this Settlement.
 - b.** Within thirty (30) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Notice Packet to all identified Class Members via first-class regular U.S. Mail, using the most current mailing address information available.
 - c.** If a Notice Packet is returned because of an incorrect address, within ten (10) calendar days after receipt of the returned Notice Packet, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Notice Packet to the Class Member. The Settlement Administrator will

conduct a skip trace to attempt to find the Class Member's current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re mailing Notice Packets to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice Packet shall be remailed to the original address. If the Notice Packet is remailed, the Settlement Administrator will note for its own records the date and address of each re mailing. Those Class Members who receive a remailed Notice Packet, whether by skip trace or forwarded mail, will have an additional ten (10) calendar days from the original Response Deadline to postmark an Exclusion Form or an objection to the Settlement. The Settlement Administrator shall mark on the envelope whether the Notice Packet is a remailed Notice Packet.

- d.** Class Members will have the opportunity to dispute the information provided in their Notice Packets. All such disputes must be in writing, postmarked by the Response Deadline, and sent via first-class U.S. mail to the Settlement Administrator. To the extent a Class Member disputes the number of workweeks or pay periods with which he or she has been credited or the amount of his or her Individual Settlement Share, the Class Member may produce and submit evidence to the Settlement Administrator showing the disputed information is inaccurate. The Settlement Administrator will evaluate any evidence submitted by the Class Member and will make the initial decision as to the number of eligible workweeks or pay periods with which the Class Member should be credited and/or the amount of the Individual Settlement Share to which the Class Member may be entitled. The Court shall have the right to review any decision made by the Settlement Administrator regarding such a dispute and will make the final determination. In other words, the Court will resolve any workweek and/or pay period disputes not otherwise resolved by the Settlement Administrator and the Parties. The Parties will file with the Court any and all disputes submitted by Class Members, the evidence submitted in support of such disputes, and the resolution of those disputes.

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- e. If the Settlement Administrator receives an incomplete or deficient Exclusion Form, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and shall provide the Class Member fourteen (14) calendar days with which to cure the deficiency. If the Settlement Administrator does not receive a cured Exclusion Form, postmarked by the last and fourteenth (14th) day of the cure period, the Class Member will be deemed not have excluded himself or herself from the Settlement and will be bound by the Settlement.
- f. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Counsel for Defendants of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets remailed, and the number of Exclusion Forms received.
- g. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval Hearing. If any material changes occur after the date of the filing of Settlement Administrator's declaration of due diligence but before the Final Approval Hearing, the Settlement Administrator will supplement its declaration.
- h. If a Class Member submits both an Exclusion Form and written objection to the Settlement Administrator prior to the Response Deadline, the Settlement Administrator will first attempt to contact this Class Member to determine if they intended to submit only the Exclusion Form or written objection. If the Settlement Administrator is unable to contact the Class Member within ten (10) calendar days of receiving both the Exclusion Form and written objection or the Class Member fails to respond to the Settlement Administrator within ten (10) calendar days of being contacted, then only the Exclusion Form will be deemed valid. The Class Member's written objection will be invalid, and the Class Member will no longer be considered a member of the Class, will not receive his or her Individual Settlement Share, and will not be bound by the Released Claims.

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- 3. Objections to Settlement.** The Notice Packet will provide Class Members who wish to object to the Settlement may do so by submitting objections in writing, signed, and dated, to the Settlement Administrator, postmarked no later than the Response Deadline. Class Members who object to this Settlement or any of its terms may not also submit Exclusion Forms (*i.e.*, may not opt out). The postmark date of mailing shall be deemed the exclusive means for determining that an objection was timely served.
- a. Format.** For an objection to be valid, it must: (i) be signed by the objecting Class Member or his or her lawful representative; (ii) include the objecting Class Member's full name, address, telephone number, and the last four digits of the Class Member's Social Security Number, as well as the name and address of counsel, if any; (iii) include the words "Notice of Objection" or "Formal Objection;" (iv) state the case name and case number; (v) provide a concise, factual written statement of the Class Member's reasons for objecting; and (vi) include a statement indicating whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing.
 - b. Appearance at the Final Approval Hearing and Oral Objection.** Class Members may (but are not required to) appear at the Final Approval Hearing, either in person or through the objecting Class Member's own counsel, at the Class Member's own expense, and may orally object to the Settlement. Class Members' valid and timely written objections to the Settlement will still be considered even if the objector does not appear at the Final Approval Hearing. Class Members are permitted to make objections without a showing of good cause at the Final Approval Hearing, in person or through counsel, whether or not they submitted a written objection.
 - c.** A Class Member who objects to the Settlement will remain a Participating Class Member and, if the Court finally approves the Settlement Agreement, the objecting Class Member will be bound by the terms of the Settlement Agreement in the same way and to the same extent as those Participating Class Members who do not object to the Settlement Agreement.
 - d.** The Settlement Administrator shall send all objections to Class Counsel and Defense Counsel. Class Counsel will be responsible for filing the objections with the Court in advance of the Final Approval Hearing. Class Counsel and Defense Counsel will be permitted to respond in writing to any properly submitted objections no later than nine (9) court days before the Final Approval Hearing.

4. Request for Exclusion from the Settlement (“Opt Out”). The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator an Exclusion Form by the Response Deadline. The Exclusion Form shall unambiguously state that the Class Member wishes to exclude himself or herself from the Settlement and must also: (a) include the Class Member’s name, address, and the last four digits of the Class Member’s Social Security Number; (b) be addressed to the Settlement Administrator at the specified address; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline.

- a.** An Exclusion Form will not be valid if it is not timely submitted (*i.e.*, postmarked on or before the Response Deadline), not signed by the Class Member, and/or does not contain the name and address of the Class Member. The date of postmark on the return mailing envelope for the Exclusion Form shall be the exclusive means used to determine whether the Exclusion Form was timely submitted. Class Members who fail to submit valid and timely Exclusion Forms will automatically be included in the Settlement and will become Participating Class Members upon the expiration of the Response Deadline. Each Participating Class Member shall be bound by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement is finally approved by the Court and shall receive an Individual Settlement Share, regardless of whether the Participating Class Member submitted an objection.
- b.** Any Class Member who returns a valid and timely Exclusion Form will not participate in or be bound by the terms of the class portion of the Settlement or any Final Judgment entered if the Settlement is finally approved by the Court and will not have any right to object to, appeal, or comment thereon. Class Members who return valid and timely Exclusion Forms will not be entitled to any payment from the Net Settlement Amount. Nothing in this Settlement or Settlement Agreement will constitute or be construed as a waiver of any defense Defendants or the Released Parties have or could assert against anyone who timely submits an Exclusion Form.
- c. Confirmation of Authenticity.** If there is a question about the authenticity of a signed Exclusion Form, the Settlement Administrator may demand additional proof of the Class Member’s identity.

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- d. Report.** No later than fourteen (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notice Packets mailed to Class Members, the number of Notice Packets returned as undeliverable, the number of Notice Packets remailed to Class Members, the number of remailed Notice Packets returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid and timely Exclusion Forms, and the number of Class Members who returned invalid Exclusion Forms.
 - e. Defendants' Option to Terminate.** If ten percent (10%) or more of the Class Members exercise their rights to exclude themselves and opt out of the Settlement, Defendants may, at their sole discretion, unilaterally withdraw from and terminate the Settlement no later than five (5) court days prior to the date of the Final Approval Hearing. If Defendants withdraw, no party may use the fact that the Parties agreed to the Settlement for any reason. Defendants will be responsible for paying Administration Costs if they exercises their right to withdraw from the Settlement pursuant to this provision.
 - f. Eligible Aggrieved Employees May Not Opt Out of PAGA Settlement.** Notwithstanding the foregoing, the Parties agree there is no statutory or other right for any Eligible Aggrieved Employee to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement, which releases the PAGA claims as provided in Section I(DD) of this Agreement. An Eligible Aggrieved Employee who submits a valid and timely request for exclusion shall still receive his or her share of the PAGA Payment and shall release the PAGA claims as provided in Section I(DD) of this Agreement.
- 5. No Solicitation of Objections or Exclusion Forms.** Neither the Parties nor their counsel will solicit or otherwise encourage, directly or indirectly, any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal the Final Approval Order or Judgment.
- 6. Motion for Final Approval.**
- a.** At the earliest practicable time following the expiration of the Response Deadline, Class Counsel will file motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (i) Attorney Fee Award; (ii) Cost Award; (iii)

Administration Costs; (iv) Class Representative Enhancement Payment; and (v) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment), pursuant to which all Participating Class Members shall release all Released Claims. Plaintiff shall provide a courtesy draft of these papers to Defense Counsel at least seven (7) business days before filing the documents. Defense Counsel will not unreasonably withhold approval.

b. Declaration by Settlement Administrator. The Settlement Administrator shall submit a declaration in support of Plaintiff's Motion for Final Approval of this Settlement detailing the number of Notice Packets mailed and remailed to Class Members, number of undeliverable Notice Packets, number of valid and timely Exclusion Forms received, number of valid and timely written objections received, average amount of the Individual Settlement Share, Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Case for purposes of: (i) enforcing this Settlement Agreement; (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

7. Defendants' Legal Fees. Defendants are responsible for paying all Defendants' own legal fees, costs, and expenses incurred in this Case, in addition to and separate from payment of the Gross Settlement Amount.

L. Release of Claims by All Participating Class Members. As of the Effective Final Settlement Date and upon fulfillment of the payment obligations under Section III(H)(2) of this Agreement, all Participating Class Members will be bound by a release of all claims and causes of action falling under the definition of Released Claims occurring during the Class Period. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims.

M. Release of PAGA Claims by All Eligible Aggrieved Employees. As of the Effective Final Settlement Date and upon fulfillment of the payment obligations under Section III(H)(2) of this Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees, including Plaintiff, are hereby voluntarily and knowingly barred as a

matter of law from bringing any and all claims against the Released Parties seeking civil penalties under Labor Code section 2698, *et seq.* (PAGA), based on or arising out of the Labor Code violations alleged in Plaintiff's notice letter to the LWDA and the Complaint occurring during the PAGA Period. The release of the PAGA claims is effective regardless of whether the Eligible Aggrieved Employee submits a valid and timely Exclusion Form.

N. Plaintiff's General Release of Claims. As of the Effective Final Settlement Date and upon fulfillment of the payment obligations under Section III(H)(2) of this Agreement, and in exchange for the Class Representative Enhancement Payment to Plaintiff, in an amount not to exceed \$10,000, in recognition of her work and efforts in obtaining the benefits for the Class and undertaking the risk of paying litigation costs if this matter had not successfully resolved, Plaintiff hereby provides a general release of claims for herself and any spouse, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through January 27, 2022, known or unknown, suspected or unsuspected, asserted or that might have been asserted, whether in tort, contract, equity, or otherwise, arising out of Plaintiff's employment with Vaco and/or assignment with Nihon Kohden, payment of wages during that employment and/or assignment and the cessation of that employment and/or assignment, and/or violation of any federal, state or local statute, rule, ordinance or regulation. With respect to this General Release, Plaintiff stipulates and agrees, as of the Effective Final Settlement Date, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Civil Code section 1542, or any other similar provision under federal or state law, 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.

- O.** This Settlement will become final and effective only upon the occurrence of all the following events:
1. The Court enters an order granting preliminary approval of the Settlement;
 2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
 3. The Effective Final Settlement Date occurs;

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4. Defendants do not invoke their right to revoke the Settlement as described in Section III(K)(4)(e) (Defendants' Option to Terminate) herein.

P. Miscellaneous Terms.

1. **No Admission of Liability.** Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement, including, but not limited to admitting that it was the employer of any Class Member at any time. Additionally, Defendants reserve the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendants deny they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in this Case, or that but for the Settlement, a Class should be certified in the Case. This Agreement is entered solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants of liability or wrongdoing. This Settlement and the Parties' willingness to settle the Case will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
2. **No Effect on Employee Benefits.** The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendants' policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendants' benefit plans, policies or bonus programs. Defendants retain the right to modify the language of their benefit plans, policies, and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement.
3. **No Solicitation of Individual Settlements.** Defendants and Counsel for Defendants agree that until and unless the Court does not grant Final Approval of the Settlement and/or the Settlement Agreement becomes null and void, Defendants and Counsel for Defendants will not attempt to procure any individual settlements from the Class Members. Should this clause be violated, Plaintiff reserves the right to terminate the Settlement Agreement. Plaintiff and Class Counsel agree that until and unless the Court does not grant Final Approval of the Settlement and/or the Settlement

becomes null and void, Plaintiff and Class Counsel shall not attempt to procure from Class Members any Exclusion Forms. Should this clause be violated, Defendants reserve the right to terminate the Settlement.

- 4. Publicity.** Plaintiff and Class Counsel agree they have not and will not publish the Settlement Agreement. In response to any inquiries, Plaintiff will state that “the case was resolved and it was resolved confidentially.” Class Counsel shall not report the Settlement Agreement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Class or the Settlement Agreement on their website, and shall not contact any reporters or media regarding the Settlement. Despite this provision, Class Counsel can discuss the Settlement with Plaintiff and the Class Members and in any filings with the Court.
- 5. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering this Agreement, the Parties agree this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence.
- 6. Authorization to Enter This Settlement Agreement.** Class Counsel and Counsel for Defendants warrant and represent they are authorized by the Parties to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this 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 this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- 7. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The

descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

- 8. Deadlines Falling on Weekends or Holidays.** To the extent any deadline set forth in this Settlement Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.
- 9. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Case in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.
- 10. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument, signed by counsel for all Parties or their successors-in-interest and subject to Court approval.
- 11. Waiver of Certain Appeals.** The Parties agree to stipulate to class certification for purposes of implementing this Settlement only and agree to waive all appeals from the Court's final approval of the Settlement, unless the Court modifies the Settlement.
- 12. Notice of Settlement to LWDA.** Plaintiff hereby represents that at the same time she files the Motion for Preliminary Approval, Plaintiff will provide notice of this Agreement and proposed settlement to the LWDA as required by Labor Code section 2699(1)(2).
- 13. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 14. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that she has 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 rights herein released and discharged.
- 15. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

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16. Fair, Adequate, and Reasonable Settlement. The Parties and their counsel believe and warrant this Agreement reflects a fair, reasonable, and adequate settlement of the Case and have arrived at this Agreement through arm's-length negotiations, considering all relevant factors, current and potential. The Parties further agree this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or her or its counsel participated in the drafting of this Agreement.

17. No Unalleged Claims. Plaintiff and Class Counsel represent they, as of the date of execution of this Settlement, have no current intention of pursuing any claims against Defendants in any judicial, administrative, or arbitral forum, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Vaco and/or assignment with Nihon Kohden, and that Plaintiff's Counsel is not currently aware of any facts or legal theories upon which any claims or causes of action could be brought against Defendants, excepting those facts or legal theories alleged in the Complaint in this Action. Plaintiff and Plaintiff's Counsel further represent and agree they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendants. The Parties further acknowledge, understand and agree this representation is essential to the Agreement and that this Agreement would not have been entered were it not for this representation. Nothing in this paragraph will be construed as a restraint on the right of any counsel to practice.

18. No Tax or Legal Advice. The Parties understand and agree the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree if any taxing body determines additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.

19. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

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- 20. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. If a provision of this Agreement are found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 21. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any party on the basis that the party was the drafter or participated in the drafting.
- 22. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided the Parties' counsel exchange between themselves original signed counterparts. Facsimile or PDF signatures are acceptable. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 23. Class Size Escalator.** Defendants estimate the Class consists of about 1,823 weekly pay periods. If the final number of weekly pay periods increases by more than ten percent (10%) by the end of the Class Period (*i.e.*, 2,006), the liability period shall be reduced from the beginning of the Class Period so that there are no more than 2,006 weekly pay periods.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 12/28/2022

ANDREA MARQUEZ



Dated: 1/13/2023

NIHON KOHDEN AMERICA, INC.

DocuSigned by:



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Name: Kurt Stitcher

Title: General Counsel

1/13/2023 | 7:58 AM CST

Dated: _____

VACO LLC

DocuSigned by:



535E95BEC9C64F1...

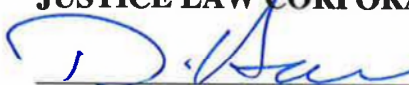
Name: Tracey Power

Title: CPO

APPROVED AS TO FORM

Dated: 12/29/22

JUSTICE LAW CORPORATION



Douglas Han, Esq.

Attorneys for Plaintiff Andrea Marquez, on behalf of herself and all others similarly situated

Dated: 1/13/2023

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