

SETTLEMENT AGREEMENT AND RELEASE

Plaintiff Junior Aguilar and Defendants American-Paragon Protective Services, LLC (“APPS”), and American Eagle Protective Services Corp. (“AEPS”)(APPS and AEPS are collectively referred to as the “Defendants”) (collectively the “Parties”) hereby enter into this Settlement Agreement and Release (the “Agreement”) to resolve the wage and hour claims of Plaintiff and Collective Action Members (as defined below).

RECITALS

- A. WHEREAS, on March 20, 2020, Plaintiff filed a Collective Action Complaint under the Fair Labor Standards Act in the Northern District of California alleging unpaid minimum wages and unpaid overtime on behalf of Security Officers (“SOs”) and armed Security Police Officers (“SPOs”) entitled *Junior Aguilar v. American-Paragon Protective Services, LLC, American Eagle Protective Services Corp., et. al.* (Case No. 5:20-cv-01982-SVK);
- B. WHEREAS, on June 2, 2021, the Parties’ dispute commenced in Arbitration in JAMS (JAMS Ref. No.: 1110026768) before Hon. Robert A. Baines (Ret.) as Arbitrator (the “Arbitrator”), with the arbitration to be conducted in accordance with the JAMS Employment Arbitration Rules & Procedures;
- C. WHEREAS, on April 4, 2022, the Arbitrator granted Plaintiff’s Motion for Conditional Certification, conditionally certifying, for notice and opt-in purposes, a class of all SOs and SPOs employed by APPS for work at the NASA Ames facility in Mountain View on or after April 1, 2019;
- D. WHEREAS, on July 20, 2022, the Parties participated in a full-day mediation session with the assistance of experienced wage and hour class and collective action mediator Michael J. Loeb. Thereafter, the Parties agreed to the mediator’s proposal on July 29, 2022;
- E. WHEREAS, based upon their analysis and their evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that the claims, if not settled now, might result in a recovery less favorable to Plaintiff and collective members, and that might not occur for several years, Plaintiff’s Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that the Agreement is in the best interests of Plaintiff and collective members;
- F. WHEREAS, APPS and AEPS have denied and continue to deny all allegations made by Plaintiff, have denied and continue to deny that SOs and SPOs were denied wages or overtime pay under all applicable law, including the Fair Labor Standards Act, that Defendants are liable or owe damages or penalties to anyone with respect to the alleged facts or causes of action subject to this Agreement, and that the claims subject to this

Agreement are appropriate for class or collective treatment, except for the purposes of settlement only. Nonetheless, without admitting or conceding any liability or damages whatsoever, Defendants have agreed to settle the disputed issues on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing litigation these claims; and

- G. NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1. **Agreement** means this Settlement Agreement and Release.
- 1.2. **Application for Final Approval** means documents and materials to be filed with the Court pursuant to Section 5, seeking final approval of the settlement, attorneys' fees and expenses, and Service Award.
- 1.3. **Opt-In** means the date that is sixty (60) days from the date of the initial mailing of Notices, except for Collective Action Members to whom Notice was re-mailed, for whom the Opt-In Deadline shall be the later of the sixty (60) days from the initial mailing or thirty (30) days from the date of re-mailing, whichever is later. The Opt-In Deadline is the date by which any Putative Collective Member who wishes to qualify as a Participating Collective Member must timely file a Claim Form.
- 1.4. **Claim Form** means the form that Putative Collective Members must return by the Opt-In Deadline to become Participating Collective Members. The Claim Form is subject to approval by the Court. A copy of the Claim Form will be attached to the Notices.
- 1.5. **Class Counsel** means Frontier Law Center.
- 1.6. **Collective Action List** means a list of all Collective Action Members, including their names, last known addresses, last known telephone numbers, last known personal email addresses, social security numbers, and dates of employment with APPS as an SO and/or SPO.
- 1.7. **Collective Action Members** means, collectively, all SOs and SPOs employed by Defendants for work at the NASA Ames facility in Mountain View on or after April 1, 2019.
- 1.8. **Court** means the United States District Court – Northern District of California.

- 1.9. **Days** means calendar days.
- 1.10. **Defendants' Counsel** means Jackson Lewis P.C.
- 1.11. **Eligible Workweek** means each calendar week worked by a Class Member during the relevant class period. (See definition of "Shares" below for calculation of awards).
- 1.12. **Employer Payroll Taxes** means all taxes and withholdings an employer is required to make pursuant to federal, state, and/or local law arising out of or based upon the payment of employment compensation in this Litigation, including but not limited to FICA, FUTA, and SUTA obligations. Defendants shall pay Employer Payroll Taxes in addition to the Total Settlement Amount in Accordance with the terms of this Agreement.
- 1.13. **Fairness Hearing** means the hearing before the Court relating to the application for Final Approval.
- 1.14. **Final Approval Order** means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement, authorizing distribution of the Settlement Checks, Service Award, and attorneys' fees and costs.
- 1.15. **FLSA Collective Period** means April 1, 2019 through the date of preliminary approval.
- 1.16. **Litigation** means the case *Junior Aguilar v. American-Paragon Protective Services, LLC, American Eagle Protective Services Corp., et. al.* (Case No. 5:20-cv-01982-SVK) filed in the Northern District of California.
- 1.17. **Named Plaintiff** means Junior Aguilar.
- 1.18. **Net Fund** means the Total Settlement Amount less (1) the Settlement Administrator's fees and cost; 2) Court-approved attorney's fees and costs for Class Counsel; and (3) Court-approved Service Award.
- 1.19. **Notice or Notices** means the Court-approved Notice of Proposed Collective Action Settlement, as authorized in the Preliminary Approval Order, substantially in the form of Exhibit 1.
- 1.20. **Operative Complaint** means the Complaint filed in the Litigation.

- 1.21. Opt-in Statement** is a written, signed statement that an individual Collective Member has decided to opt in and be included in this settlement.
- 1.22. Participating Collective Action Members** means all Collective Action Members who timely submit Claim Forms before the Opt-In Deadline.
- 1.23. Preliminary Approval Order** means the Order entered by the Court: (i) certifying each sub-class solely for the purpose of effectuating the Agreement; (ii) conditionally certifying the Fair Labor Standards Act (“FLSA”) Collective pursuant to 29 U.S.C. § 216(b) solely for the purpose of effectuating the Agreement; (iii) preliminarily approving the terms and conditions of this Agreement; (iv) appointing Class Counsel as defined above; (v) directing the manner and timing of providing Notice to the Collective Action Members; and (vi) setting dates to effectuate the terms of this Agreement, including the Opt-In Deadline and the date of the Fairness Hearing.
- 1.24. Qualified Settlement Fund or QSF** means the account established by the Settlement Administrator for the Total Settlement Amount paid by Defendants. The QSF will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s Orders for Preliminary Approval and Final Approval. Interest, if any, earned on the QSF shall become part of the Net Fund.
- 1.25. Released Collective Claims** means all claims raised or that could have been raised based on the facts alleged in the Complaint by Plaintiff, including all claims of unpaid minimum wages and unpaid overtime allegedly owed to Plaintiff and Collective Action Members, as set forth in Section 10 “RELEASE”.
- 1.26. Releasees** means APPS and AEPS, their respective affiliates, subsidiaries, predecessors, successors, and assigns, and all other related entities, including but not limited to American Eagle Protective Services, as well as all of their incumbent and former officers, directors, owners, members, managers, shareholders, investors, agents, attorneys, employees, fiduciaries, successors, assigns, and representatives, in their individual and/or representative capacities.
- 1.27. Reminder** means the body of the text set forth in Exhibit 3 hereto, which the Settlement Administrator shall send via e-mail and First Class United States Mail postcard to Putative Collective Members who have not returned a Claim Form thirty (30) days after the initial dissemination of the Notice.
- 1.28. Settlement Administrator** means the qualified administrator selected pursuant to Section 3 to disseminate the Notice, administer the calculation, allocation, and distribution of the QSF, and perform the administrative duties set forth in Section 3.

- 1.29. Settlement Checks** means checks issued to Participating Collective Members for their share of the Net Settlement Fund, calculated in accordance with this Agreement.
- 1.30. Service Award** means awards the Court approves to be paid to Named Plaintiff Junior Aguilar of up to seven thousand and five hundred dollars (\$7,500.00) from the Total Settlement Award in recognition for his services as Class Representative. (See Section 9.2)
- 1.31. Service Award Recipient** means Named Plaintiff Junior Aguilar.
- 1.32. Share** is portion of workweeks that will be used to determine amounts owed to putative Collective Action Members based on their position. Eligible SO awards will be calculated as 1 share for each workweek worked. Eligible SPO awards will be calculated as 1.3 shares for each workweek worked.
- 1.33. Total Settlement Amount** refers to one hundred seventy-five thousand dollars (\$175,000.00), the maximum amount Defendants have agreed to pay (other than Employer Payroll Taxes as set forth herein), subject to Sections 5 and 9.

2. APPLICATION FOR PRELIMINARY APPROVAL

- A. Timing.** Within seven (7) days after the execution of this Agreement, Class Counsel shall file a motion for preliminary settlement approval with the Arbitrator (“Preliminary Approval Motion”).
- B. Content.** The Preliminary Approval Motion shall include: (1) the proposed Notices and Claim Forms attached hereto as Exhibits 1 and 2; (2) a proposed Preliminary Approval Order; (3) an executed version of this Agreement; and (4) the necessary documents, memorandum, affidavits, and exhibits for purposes of certifying a Collective for settlement purposes only, and preliminarily approving the Agreement. The Preliminary Approval Motion also will seek the setting of the Opt-In Date for Putative Collective Members to submit Claim Forms and/or to object, and for a Fairness Hearing for Final Approval of the settlement before the Court at the earliest practicable date.

3. SETTLEMENT ADMINISTRATOR

- A. Retention.** Class Counsel has selected Phoenix Class Action Administration Solutions to serve as settlement administrator, with Defendants’ approval.

- B. Settlement Administration Costs.** The Settlement Administrator's costs and expenses, not to exceed \$5,750, shall be paid from the Total Settlement Amount. If the Agreement is terminated, then whichever party terminated the Agreement under Section 6 of this Agreement shall be responsible for paying the Settlement Administrator's costs and expenses.
- C. Responsibilities of the Settlement Administrator.** The Settlement Administrator shall be responsible for: disseminating the Notices, Claim Forms, and reminders, as provided herein; performing a skip trace up to two (2) times and resending, within one day of receipt, any Notice and Claim Form returned without forwarding information and resending to those with new forwarding information; responding to requests or communications made by the Parties; preparing, monitoring, and maintaining a website where Collective Action Members can review additional information regarding the settlement and submit a Claim Form; preparing, monitoring, and maintaining a telephone number with phone answerers; promptly furnishing to counsel for the Parties copies of any Objections and Opt-In Statements that the Settlement Administrator receives; receiving, retaining, and reviewing submitted Claim Forms; providing counsel for the Parties with copies of all submitted Claim Forms; keeping track of Opt-In Statements, Objections, or otherwise, including maintaining the original mailing envelope in which the request was mailed; providing Class Counsel with a list of the names, addresses, and contact information for Participating Collective Action Members who do not opt-in before the expiration of the Opt-In Deadline; distributing the Settlement Checks to Participating Collective Members, preparing, sending, and/or wire transferring Class Counsel's approved attorneys' fees and costs; mailing Service Awards in accordance with this Agreement and the Final Approval Order; referring to Class Counsel and Defendants' counsel all inquiries by Collective Action Members regarding matters not within the Settlement Administrator's duties specified herein; responding to inquiries of Class Counsel and Defendants' Counsel consistent with the Settlement Administrator's duties specified herein; promptly apprising counsel for the Parties of the activities of the Settlement Administrator; maintaining adequate records of its activities, including the dates of the mailing of Notices and mailing and receipt of Claim Forms, returned mail and other communications and attempted written or electronic communications with Collective Action Members, confirming in writing to Class Counsel and Defendants' Counsel its completion of the administration of the Agreement; timely responding to communications from the Parties and their counsel; calculating the settlement amounts; reporting on the status of the settlement to the Parties on a weekly basis; notifying counsel for all Parties of all timely and untimely submissions; providing a compliance affidavit in connection with the Application for Final Approval; providing Defendants' Counsel with a

redacted photocopy of each endorsed settlement check; locating Collective Action Members, including calling Collective Action Members, if necessary; establishing and administering the QSF; calculating and paying, as provided herein, all appropriate taxes and complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; and such other tasks as set forth herein, or as the Parties mutually agree.

- D. Access to the Settlement Administrator.** The Parties will have equal access to the Settlement Administrator throughout the claims administration period. Defendants shall provide the Settlement Administrator with the information necessary to calculate the estimated settlement amounts and Settlement Checks for the Participating Collective Action Members and both Parties shall reasonably assist the Settlement Administrator in locating Collective Action Members.

4. NOTICE AND CLAIM FORMS TO COLLECTIVE ACTION MEMBERS

- A. Collective List.** Within seven (7) days of the date of the Preliminary Approval Order, Defendants' Counsel shall provide the Settlement Administrator with the Collective Action Member List.
- B. Notice Content.** The Notices will include a description of the claims and this Agreement, the Settlement allocation calculation method, and the opportunity to object or to participate by filing a Claim Form and/or by cashing or otherwise negotiating a Settlement Check, and/or appear at the Fairness Hearing, as applicable.
- C. Notice Distribution.** Within twenty-one (21) days of the Preliminary Approval Date, the Settlement Administrator shall send to all Collective Action Members via First Class United States Mail and e-mail, the Notice and Claim Form. The Settlement Administrator will also send a text message advising Collective Action Members of the settlement.
- D. Skip Trace and Re-mailing.** The Settlement Administrator will use all commercially reasonable means to confirm Collective Action Members' addresses and obtain new addresses as necessary. In the event that a Notice and Claim Form mailed to a Class Member or Putative Collective Member is returned as undeliverable, the Settlement Administrator shall attempt to obtain the correct address of such person, including up to two (2) skip traces, and shall attempt a re-mailing provided it obtains a more recent address. The Settlement Administrator shall also mail and/or email a Notice and Claim Form to any Class Member or Putative Collective Member who contacts the Settlement Administrator or Class Counsel during the time

period between the initial mailing of the Notice and the Opt-In Deadline and requests a Notice and Claim Form.

- E. **Reminder.** The Settlement Administrator shall send the reminder attached hereto as Exhibit 3 via e-mail and First Class United States Mail postcard to each Putative Collective Member who has who has not returned a Claim Form thirty (30) days after the initial dissemination of the Notice. The Settlement Administrator will also send a reminder text on that same day which directs Putative Collective Members to the settlement website.

- F. **Effective Claim Forms for Participating Collective Members.** To be effective for the purposes of becoming a Participating Collective Member, a Claim Form must be post-marked, faxed, emailed, submitted/completed online, or otherwise received by the Settlement Administrator by the Opt-In Deadline and include a signature in the designated area. To the extent a mailed Claim Form does not bear a post-mark, the Claim Form will be deemed timely if the Settlement Administrator receives it within three (3) days of the Opt-In Deadline. Putative Collective Members who were unable to file the Claim Form by the Opt-In Deadline due to good cause, such as change of address, military service, hospitalization, or other extraordinary circumstances, as determined by the Settlement Administrator, shall have until three (3) days before the Fairness Hearing in which to return their Claim Form and become a Participating Collective Member.

- G. Collective Action Members who choose to opt-in to the settlement as set forth in this Agreement must mail via First Class United States Mail, a written, signed statement to the Settlement Administrator that states he or she is opting in to the Settlement, and include his or her name, address, telephone number, and a statement indicating his or her intention to opt-in, such as: "I opt into the APPS and AEPS wage and hour settlement." ("Opt-in Statement"). To be effective, an Opt-In Statement must be post-marked or otherwise received by the Opt-In Deadline.

- H. The Settlement Administrator will stamp the received date on the original of each Opt-in Statement that it receives and shall serve copies of each Opt-in Statement on Class Counsel and Defendants' Counsel not later than three (3) days after receipt. The Settlement Administrator shall provide all Opt-in Statements in its compliance affidavit to be filed with the Application for Final Approval. The Settlement Administrator will retain the stamped originals of all Opt-in Statements and originals of all envelopes accompanying Opt-in Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.

5. FAIRNESS HEARING AND APPLICATION FOR FINAL APPROVAL

- A. After the Opt-In Deadline, in accordance with the schedule set by the Arbitrator in the Preliminary Approval Order and in advance of the Fairness Hearing, Class Counsel shall file supporting documents and materials for Final Approval of the Settlement (“Application for Final Approval”). The Application for Final Approval will be filed in the District Court, styled as a “Joint Petition for Confirmation of Arbitration Award and Entry of Order in the District Court” and will include a compliance affidavit from the Settlement Administrator; an application for attorneys’ fees, costs, and Service Award; supporting affidavits and documents from Class Counsel regarding the fairness, adequacy, and reasonableness of the Settlement or any aspect related to this Agreement; and a proposed Final Approval Order/Judgment.
- B. At the Fairness Hearing and through the Application for Final Approval, the Parties shall request that the Court, among other things: (1) finally certify the Collective for purposes of settlement only; (2) approve the Settlement and this Agreement as fair, reasonable, adequate, and binding on all Participating Collective Members; (3) order the Settlement Administrator to distribute Settlement Checks to the Participating Collective Members; (4) order Service Awards, attorneys’ fees and costs, Settlement Administrator fees and Costs, to be paid from the QSF; (5) order dismissal with prejudice of all Released Class Claims and Released Collective Claims; (6) order entry of the Final Approval Award in accordance with this Agreement; and (7) retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated hereby.

6. TERMINATION OF AGREEMENT

- A. **Grounds for Settlement Termination.** Either Party may terminate the Agreement if the Court declines to enter the Preliminary Approval Order or Final Approval Order, except if the Court declines to enter the Preliminary Approval Order or Final Approval Order due solely to the amount of attorneys’ fees sought by Class Counsel. This Agreement is not contingent upon approval by the Court of Class Counsel’s application for attorneys’ fees, and if the Court approves the settlement payment amount allocated to the Collective Action Members as set forth in this Agreement, but not the application for attorneys’ fees, (i) the Agreement may not be terminated, and (ii) any Court-required reduction of the attorneys’ fees will be reallocated to Collective Action Members as part of the Net Fund.

Defendants will not oppose (a) an application for attorneys' fees of up to one-third of the Total Settlement Amount, plus litigation costs not to exceed \$22,000, to be paid out of the Total Settlement Amount, and/or (b) a motion for reconsideration of such application.

B. Procedures for Termination. To terminate this Agreement, the terminating Party shall give written notice to the other Party via email and overnight mail.

C. Effect of Termination. Termination shall have the following effects:

1. The Agreement shall be terminated as to the affected Parties and shall have no force or effect.
2. Defendants shall have no obligation to make any payments to any party, Participating Class Member, Participating Collective Member, or Class Counsel. The party responsible for termination of the Agreement under Section 6 shall be responsible for (i) the costs and fees associated with the Settlement Administrator subsequent to the signing of this Agreement, and (ii) the costs and expenses of the Settlement Administrator associated with the mailing of termination notice to Collective Action Members informing them of the settlement termination, if any.
3. If the Court does not grant Final Approval, the Settlement Administrator will provide a Court-approved notice to Participating Collective Members that the Agreement did not receive Final Approval and that, as a result, no payments will be made to Participating Collective Members under the Agreement. Such notice shall be sent by the Settlement Administrator via email and First Class United States Mail.
4. The Parties may jointly or individually seek reconsideration of a ruling by the Court declining to enter the Preliminary Approval Order or Final Approval Order in the form submitted by the Parties, or seek approval of a renegotiated settlement.
5. Litigation will resume as if no settlement had been attempted and the Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in prior to the entering of this Agreement, including the Parties' previous tolling agreement. Defendants retain the right to contest whether the claims should be maintained as a class or collective action, and to contest the merits of the claims being asserted. The Preliminary Approval Order approving the settlement and certifying the class for settlement purposes only shall be null and void and the

case may be certified only if Plaintiff are granted class or collective certification after full briefing on a motion for such certification, or if the Parties agree otherwise.

9. SETTLEMENT TERMS

9.1. Settlement Amount

- A. Total Settlement Amount.** Defendants agrees to pay a Total Settlement Amount of one hundred seventy-five thousand dollars (\$175,000.00), subject to Section 5. Defendants shall pay Employer Payroll Taxes separate from, and in addition to, the Total Settlement Amount.
- B. Funding.** Within fifteen (15) business days of the Final Approval Order, Defendants will fund the Total Settlement Amount by placing the amount into the QSF.

9.2. Attorneys' Fees, Expenses and Costs

- A.** At the Fairness Hearing and through the Application for Final Approval Class Counsel will petition the Court for an award of attorneys' fees of up to one-third of the Total Settlement Amount, plus reimbursement of their actual litigation expenses and costs up to \$22,000 to be paid from the QSF. Defendants will not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court.
- B.** The substance of Class Counsel's application for attorneys' fees and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Class Counsel's application for fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Application for Final Approval. Any amount not approved by the Court will become part of the Net Fund to be distributed to Participating Collective Members.
- C.** Payment to Class Counsel of Court-approved fees and costs from the Total Settlement Amount shall be made seven (7) days after the settlement has been fully funded pursuant to Section 9.1.

9.2 Service Award

- A.** In return for services rendered to the Collective Action Members, Named Plaintiff will apply to the Court to receive up to \$7,500 as Service Award from the Total Settlement Amount.
- B.** The application for Service Award is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of the Court's ruling

on the application for Service Awards will not terminate this Agreement or otherwise affect the Court's ruling on the Application for Final Approval, Final Approval Order, or the fairness or reasonableness of this Agreement. Defendants will not oppose Named Plaintiff's application for Service Awards. Any amount not approved by the Court will become part of the Net Fund to be distributed to Participating Collective Members.

- C. A mutual general release as set forth in Section 10 will be executed by Defendants and Service Award Recipient.
- D. Payment to Service Award Recipients of Court-approved Service Awards from the Total Settlement Amount shall be made seven (7) days after the settlement has been fully funded pursuant to Section 9.1.

9.5 Collective Action Members Payments

- A. **Allocation.** Collective Action Members estimated proportionate share of the Net Settlement Fund shall be determined by the Settlement Administrator pursuant to the following formula:
 - 1. Participating Class Member SOs will receive one (1) point for each Eligible Workweek worked during the FLSA Collective Period;
 - 2. Participating Collective Action Members SPOs will receive one and three tenths (1.3) points for each Eligible Workweek worked in a relevant class period;
 - 3. Each Eligible Workweek shall receive a point allocation pursuant to 9.5(A)(1) or 9.5(A)(2) (but not both), and shall not be double counted. For example, if a Collective Action Member has some Eligible Workweeks as an SO during the relevant class period and some Eligible Workweeks as an SPO during the relevant class period, that individual will receive point share allocations for their job position during the relevant time period only;
 - 4. To calculate each Collective Member's proportionate share:
 - a) Add all points for all Participating Collective Action Members together to obtain the "Denominator";
 - b) Divide the number of points for each Participating Collective Action Member by the Denominator to obtain each Participating Collective Member "Portion of the Net Fund";
 - c) Multiply each Participating Collective Action Member Portion of the Net Settlement Fund by the Net Settlement Fund to determine each Class Member's Net Amount.

- d) For each Participating Collective Action Member, their Net Amount will be the amount of their Settlement Check.

B. The calculation of Eligible Workweeks and Shares shall be based on Defendants' business records in accordance with this Agreement. If a Class Member disputes Defendants' records and/or the calculation of his or her Settlement Payment, he or she must note his or her dispute on the Claim Form and provide written documentation supporting his or her contention in connection with submitting the Claim Form. Defendants' records are presumed to be correct unless the Class Member proves otherwise with documentary evidence. The Settlement Administrator will evaluate the information the Class Member provides and will make the final decision as to any dispute.

C. Timing of Payments. Fourteen (14) days after the settlement has been fully funded pursuant to Section 9, the Settlement Administrator will mail Settlement Checks to Collective Action Members.

D. Check Cashing Period. Collective Action Members will have one hundred and twenty (120) days of the date checks are issued by the Settlement Administrator to cash, deposit, or otherwise negotiate their checks.

9.6 Tax Characterization of Payments

A. For tax purposes, 50% of payments to Participating Collective Members pursuant to Section 9.5 shall be treated as W-2 wage payments and 50% of such payments shall be treated as 1099 non-wage income as liquidated damages, statutory penalties, and interest.

B. Payments treated as W-2 wages shall be made net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service ("IRS") and the payee under the payee's name and social security number on an IRS Form W-2. Payments treated as liquidated damages, statutory penalties, and interest shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee's name and social security number on an IRS Form 1099. Payments of attorneys' fees and costs pursuant to Section 9.2 shall be made without withholding. Class Counsel will receive a Form 1099 for this payment. Payment of the Service Award pursuant to Section 9.2 will be reported as deemed appropriate by the Settlement Administrator.

C. The employee portion of all applicable income taxes for the wage payments and any tax responsibility for the non-wage payments shall be the sole responsibility of the Class Member.

- D. Defendants and the Settlement Administrator shall exchange such information as is necessary for the Settlement Administrator to make proper tax withholdings and comply with tax reporting obligations as described in Section 9.

10. RELEASE

10.1 Release of Claims

- A. By operation of the entry of the Final Approval Order, except as to such rights or claims as may be created by this Agreement, each Participating Collective Member, on his or her behalf and on behalf of his or her respective current, former and future heirs, spouses, executors, administrators, agents, and attorneys, forever and fully releases the Releasees from the Released Collective Claims.
- B. By operation of the entry of the Final Approval Order, except as to such rights or claims as may be created by this Agreement, each Participating Collective Member and each Participating Class Member who timely and validly submits a Claim Form and/or cashes or otherwise negotiates a Settlement Check, on his or her behalf, and on behalf of his or her respective current, former and future heirs, spouses, executors, administrators, agents, and attorneys, forever and fully releases the Releasees from the Released Collective Claims.
- C. In addition to the waiver and release contained in Sections 11.1(A)-(C) above, and in consideration for the Service Award, if approved and paid under Section 10.3 above, Plaintiff, his heirs, executors, administrators, successors and assigns, voluntarily releases and forever discharges Defendants and Releasees of and from any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, judgments, obligations, union grievances, claims, charges, complaints, appeals and demands whatsoever, in law or equity, which they may have against Releasees as of the date of execution of this Agreement, whether known or unknown, asserted or unasserted, including, but not limited to, any alleged violation of: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*; the Civil Rights Act of 1991, Pub. L. No. 102-166, Sections 1981 through 1988 of Title 42 of the United States Code, 42 U.S.C. §§ 1981-1988; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*; the Immigration Reform and Control Act, as amended; the Workers Adjustment Retraining Notification Act, as amended; the Family and Medical Leave Act; the California Fair Employment and Housing Act; the California Family Rights Act; the California Labor Code;; any other federal, state, city

or local human rights, civil rights, wage-hour, wage-payment, pension, employee benefits, labor or other laws, rules, regulations and/or guidelines, constitutions or ordinances; any contract (whether oral or written, express or implied) or tort laws; any claim arising under the common law; any other claim for unpaid wages, employment discrimination, retaliation, wrongful termination, constructive discharge, pain and suffering, mental anguish, intentional and/or negligent infliction of emotional distress; any claim for costs, fees, or other expenses, including attorneys' fees or any other action against Releasees, based upon any conduct occurring up to and including the date of Plaintiff's execution of this Agreement.

- D.** Waiver of California Civil Code section 1542. To effect a full and complete general release as described above, Plaintiff expressly waives and relinquish all rights and benefits of section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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.

- 10.2 Denial of Liability.** Defendants have agreed to the terms of this Agreement without in any way acknowledging any fault or liability, and with the understanding that terms have been reached because this settlement will avoid the further expense and disruption of Defendants' business due to the pendency and expense of litigation. Nothing in this Agreement shall be deemed or used as an admission of liability by Defendants, nor as an admission that a class should be certified for any purpose in this case other than settlement purposes.

11. INTERPRETATION AND ENFORCEMENT

- 11.1 Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. Each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 11.2 No Assignment.** Class Counsel and Plaintiff represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the claims, or any related action.
- 11.3 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and

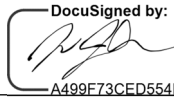
contemporaneous negotiations and understandings between the Parties regarding the subject matter of the agreement shall be deemed merged into this Agreement, except that the Parties' separate tolling agreement remains in full force and effect and is not merged with this Agreement.

- 11.4 Binding Effect.** This Agreement shall be binding upon the Parties; and Defendants' successors and/or assigns will be bound by this Agreement as well.
- 11.5 Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 11.6 Captions.** The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 11.7 Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- 11.8 Continuing Jurisdiction.** The Parties shall request the federal Court to retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby. The Parties shall not petition the Court to modify the terms of the Agreement.
- 11.9 Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 11.10 When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution and approval by the Court. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 11.11 Signatures.** This Agreement is valid and binding only if signed by the Parties and their authorized representatives.

- 11.12 Facsimile, Electronic, and Email Signatures.** Any Party may execute this Agreement by signing or causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile, email, or other electronic means to counsel for the other party. Any signature made and transmitted by facsimile, email, or other electronic means for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.
- 11.13 Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

Dated: 05/04/23 | 6:43 PDT


JUNIOR AGUILAR

DocuSigned by:

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Plaintiff Junior Aguilar

Dated: 05/31/2023

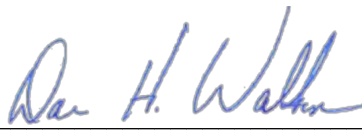
AMERICAN-PARAGON PROTECTIVE SERVICES, LLC.

By: 

Dan H. Walker, President & CEO

Dated: 05/31/2023

AMERICAN EAGLE PROTECTIVE SERVICES
CORP.

By: 

Dan H. Walker, President & CEO