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themselves and all others similarly situated and aggrieved

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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

BETOEL GOMEZ and UBALDO ARIAS
MENDEZ, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

v.

PALLET RECOVERY SERVICE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: STK-CV-UOE-2021-0008693

[Assigned for all purposes to the Hon.
Thomas S. Clark in Dept. 17]

**CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

ACTION FILED: September 13, 2021

TRIAL DATE: None set

1 This Class Action and Representative Action Settlement Agreement and Release of Claims
2 (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff
3 BETOEL GOMEZ (“Gomez”) and UBALDO ARIAS MENDEZ (“Mendez” and with Gomez,
4 “Plaintiffs”), as individuals and on behalf of all others similarly situated, on one hand; and
5 defendant PALLET RECOVERY SERVICE, INC. (“Defendant”), on the other hand, in the
6 lawsuit entitled *Betoel Gomez et al. v. Pallet Recovery Service, Inc., et al.*, filed in San Joaquin
7 County Superior Court, Case Nos. STK-CV-UOE-2021-0008639 (the “Action”). Plaintiff and
8 Defendant shall be, at times, collectively referred to as the “Parties”. This Agreement is intended
9 by the Parties to fully, finally and forever resolve the claims as set forth herein, based upon and
10 subject to the terms and conditions of this Agreement.

11 **1. DEFINITIONS**

12
13 **A. “Action”** means the consolidated actions entitled *Betoel Gomez et al. v. Pallet*
14 *Recovery Service, Inc., et al.*, Case Nos. STK-CV-UOE-2021-0008693 and STK-CV-UOE-
15 0010719 as consolidated on May 13, 2022, initiated on September 13, 2021 and pending in the
16 Superior Court of the State of California, County of San Joaquin.

17 **B. “Aggrieved Employees”** means Class Members working for Defendant as non-
18 exempt, hourly-paid employees during the PAGA Period in the State of California.

19 **C. “Class Counsel”** means David D. Bibiyan, Jeffrey D. Klein, and Vedang J. Patel
20 of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
21 “Plaintiff’s Counsel.”

22 **D. “Class, Settlement Class, Class Member or Settlement Class Member”** means all
23 individuals employed by Defendant in the State of California in non-exempt positions at any time
24 during the “Class Period”).

25 **E. “Class Period”** means the period from September 13, 2017 through June 7, 2023.

26 **F. “Class Notice”** means and refers to the notice sent to Class Members after
27 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
28 Agreement.

1 **G.** “Class Participants” or “Participating Class Members” shall mean any and all
2 Class Members who do not timely opt-out of the Class Settlement.

3 **H.** “Class Representatives” or “Plaintiffs” shall mean Betoel Gomez and Ubaldo
4 Arias Mendez.

5 **I.** “Class Settlement” shall mean the settlement embodied in this Settlement
6 Agreement, which is subject to Court Approval.

7 **J.** “**Court**” means the Superior Court of the State of California for the County of
8 San Joaquin.

9 **K.** “**Final Approval Date**” means the later of: (1) the date the Court signs an Order
10 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
11 objector, 60 days from the date of the Final Approval and Judgment; or (3) to the extent any
12 appeals have been filed, the date on which they have been resolved or exhausted.

13 **L.** “**Defendant**” means Pallet Recovery Service, Inc.

14 **M.** ““Defense Counsel” shall mean Raquel A. Hatfield of Henderson Hatfield, APC.

15 **N.** “**Employer Taxes**” means employer-funded taxes and contributions imposed on
16 the wage portions of the Individual Settlement Payments under the Federal Insurance
17 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
18 and contributions required of employers, such as for unemployment insurance.

19 **O.** “**General Release**” means the broader release of claims by Plaintiffs, which is in
20 addition to Plaintiffs’ limited release of claims as Participating Class Members.

21 **P.** “**Gross Settlement Amount**” means a non-reversionary fund in the sum of One
22 Million Dollars and Zero Cents (\$1,000,000.00),¹ which shall be paid by Defendant, from which
23 all payments for the Individual Settlement Payments to Participating Class Members, the Court-
24 approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses to Class
25 Counsel, Settlement Administration Costs, the Service Award, the PAGA Payment and the
26 LWDA Payment shall be paid. It expressly excludes Employer Taxes, which shall be paid by
27 Defendant separate, apart and in addition to the Gross Settlement Amount.

28 _____
¹ As the same may be increased in accordance with Paragraph 17 below.

1 **Q. “Individual Settlement Payment”** means the amount which is ultimately
2 distributed to each Class Participant.

3 **R. “LWDA Payment”** means the payment to the State of California Labor and
4 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
5 amount allocated toward penalties under the PAGA, all of which is to be paid from the Gross
6 Settlement Amount. The Parties have agreed that Fifty Thousand Dollars and Zero Cents
7 (\$50,000.00) shall be allocated toward PAGA penalties, of which Thirty-Seven Thousand Five
8 Hundred Dollars and Zero Cents (\$37,500.00) will be paid to the LWDA (*i.e.*, the LWDA
9 Payment) and Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) will be paid
10 to Aggrieved Employees on a *pro rata* basis based on the Pay Periods worked for Defendant as
11 a non-exempt, hourly-paid employee in California in the PAGA Period (*i.e.* the PAGA Payment).

12 **S. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
13 that is available for distribution to the Participating Class Members after deductions for the Court-
14 approved allocations for Settlement Administration Costs, a Service Award to Plaintiffs, an
15 award of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the
16 LWDA Payment and the PAGA Payment.

17 **T. “PAGA Payment”** is the 25% portion of the Fifty Thousand Dollars and Zero
18 Cents (\$50,000.00) that is allocated toward PAGA penalties (Twelve Thousand Five Hundred
19 Dollars and Zero Cents (\$12,500.00)) that will be paid to Aggrieved Employees on a *pro rata*
20 basis based on the Pay Periods worked as non-exempt, hourly-paid employees in California in
21 the PAGA Period, which would be in addition to their Individual Settlement Payment if they are
22 Participating Class Members, as well.

23 **S. “PAGA Period”** means the period from September 8, 2020 through June 7, 2023.

24 **T. “Pay Periods”** means the number of pay periods that a Settlement Class Member
25 was employed by the Defendant in a non-exempt, hourly position during the Class Period in
26 California, based on hire dates, re-hire dates (as applicable), and termination dates (as
27 applicable).
28

1 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
2 Settlement Amount that a Participating Class Member is eligible to receive based on the number
3 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
4 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
5 may be entitled if he or she is also an Aggrieved Employee.

6 **V. “Preliminary Approval Date”** means the date on which the Court enters an Order
7 granting preliminary approval of the Settlement.

8 **W. “Released Parties”** shall mean Defendant and all of its current, former and future
9 parents, subsidiaries, dbas, divisions, related entities, joint ventures and affiliated entities, and
10 each of their respective current, former and future owners, officers, directors, shareholders,
11 stockholders, executives, partners, employees, co-employers, joint employers, investors,
12 members, principles, subsidiaries, affiliates, insurers, reinsurers, managers, agents, heirs,
13 spouses, associates, representatives, administrators, fiduciaries, trustees, accountants, auditors,
14 company-sponsored employee benefit plans of any nature, predecessors, successors, assigns,
15 attorneys, including, but not limited to, Matthew Haugrud, Lisa Kilcoyne and John Kilcoyne,
16 individually and in their representative capacities.

17 **X. “Response Deadline”** means the deadline for Settlement Class Members to mail
18 any Requests for Exclusion, Objections or Workweek Disputes to the Settlement Administrator,
19 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
20 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
21 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing
22 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
23 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
24 shall be the exclusive means for determining whether a Request for Exclusion, Objection or
25 Workweek Dispute was submitted by the Response Deadline.

26 **Y. “Request for Exclusion”** means a written request to be excluded from the
27 Settlement Class pursuant to Paragraph 9(C) below.

28 **Z. “Service Award”** means monetary amounts to be paid to Plaintiff Gomez and

1 Plaintiff Mendez each of up to Seven Thousand Five Hundred Dollars and Zero Cents
2 (\$7,500.00), totaling Fifteen Thousand Dollars and Zero Cents (\$15,000.00), which, subject to
3 Court approval, will be paid out of the Gross Settlement Amount.

4 **AA. "Settlement Administration Costs"** means all costs incurred by the Settlement
5 Administrator in administration of the Settlement, including, but not limited to, translating the
6 Class Notice to Spanish, distribution of the Class Notice to the Settlement Class in English and
7 Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual
8 PAGA Payments and Participating Individual Settlement Shares, as well as associated taxes and
9 withholdings, providing declarations, generating Individual Settlement Payment checks and
10 related tax reporting forms, doing administrative work related to unclaimed checks, transmitting
11 payment to Class Counsel for the Court-approved amounts for attorneys' fees and reimbursement
12 of litigation costs and expenses, to Plaintiff for her Service Award and to the LWDA for the
13 LWDA Payment, providing weekly reports of opt-outs, objections and related information, and
14 any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to
15 the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed
16 \$12,650.00. If the actual amount of the Settlement Administration Costs is less than \$12,650.00
17 the difference between \$12,650.00 and the actual Settlement Administration Costs shall be a part
18 of the Net Settlement Amount. If the Settlement Administration Costs exceed \$12,650.00, then
19 such excess will be paid solely from the Gross Settlement Amount and Defendant will not be
20 responsible for paying any additional funds in order to pay these additional costs.

21 **BB. "Settlement Administrator"** means the Third-Party Administrator mutually
22 agreed upon by the Parties that will be responsible for the administration of the Settlement
23 including, without limitation, translating the Class Notice in Spanish, distribution of the
24 Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount
25 and related matters under this Agreement.

26 **CC. "Settlement Class," "Settlement Class Members" or "Class Members"** means
27 all current and former non-exempt, hourly-paid employees who worked in California for
28 Defendant at any time during the Class Period.

1 **DD.** “**Workweeks**” means the number of weeks that a Settlement Class Member was
2 employed by the Defendant in a non-exempt, hourly position during the Class Period in
3 California, based on hire dates, re-hire dates (as applicable), and termination dates (as
4 applicable).

5 **2. BACKGROUND**

6 **A.** On September 8, 2021, Plaintiffs filed with the LWDA and served on Defendant
7 a notice under Labor Code section 2699.3 stating Plaintiffs intended to serve as a proxy of the
8 LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code
9 violations (“PAGA Notice”).

10 **B.** On September 13, 2021, Plaintiff filed a putative wage-and-hour class action in
11 the San Joaquin County Superior Court, Case No. STK-CV-UOE-2021-0008639, alleging that,
12 during the Class Period, Defendant, as it pertains to Class Members: (1) failed to pay overtime
13 wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in
14 lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to pay
15 all wages due upon termination; (6) failed to provide accurate wage statements; (7) failed to
16 indemnify; and (8) engaged in unfair competition (the “Class Action”).

17 **C.** On November 19, 2021, after sixty-five (65) days had passed since Plaintiff filed
18 and served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor
19 Code violations, Plaintiff filed a representative action seeking PAGA civil penalties against
20 Defendant for Labor Code violations alleged in the PAGA Notice in the San Joaquin County
21 Superior Court of California, Case No. STK-CV-UOE-2021-0010719 (the “PAGA Action”)

22 **D.** On May 16, 2022 the San Joaquin County Superior Court consolidated Case No.
23 STK-CV-UOE-2021-0008639 with Case No. STK-CV-UOE-2021-0010719, combining the
24 PAGA Action with the Class Action, with the earlier filed Class Action, Case No. STK-CV-
25 UOE-2021-0008639, as lead.

26 **E.** Prior to mediation, Defendant agreed to informally produce the following: (1) time
27 and payroll records for 100% of the estimated 362 current and former non-exempt employees
28 working for Defendant in California through the date of mediation; (2) relevant wage and hour

1 policy documents and employee handbooks in effect during the Class Period; (3) Class data
2 points, including the total number of terminated/separated Class Members in the waiting time
3 penalty period (September 13, 2018 through the date of mediation) and the number of aggrieved
4 employees (current and former), and number of pay periods in the wage statement/PAGA Period
5 (September 8, 2020 through the date of mediation); (4) Plaintiffs' personnel records and
6 employment files.

7 **F.** On June 5, 2023, the Parties participated in a full-day mediation before Nikki Tolt,
8 Esquire, a well-regarded mediator experienced in mediating complex labor and employment
9 matters. With the aid of the mediator's evaluation, the Parties reached the Settlement to resolve
10 the Action.

11 **G.** Class Counsel have conducted significant investigation of the law and facts
12 relating to the claims asserted in the Action and in the PAGA Notice, and have concluded that
13 the Settlement set forth herein is fair, reasonable, adequate and in the best interests of the
14 Settlement Class, taking into account the sharply contested issues involved, the expense and time
15 necessary to litigate the Action through trial and any appeals, the risks and costs of further
16 litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation,
17 the information learned through informal discovery regarding Plaintiff's allegations, and the
18 substantial benefits to be received by Settlement Class Members.

19 **H.** Defendant has concluded that, because of the substantial expense of defending
20 against the Action, the length of time necessary to resolve the issues presented herein, the
21 inconvenience involved and the concomitant disruption to its business operations, it is in its best
22 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
23 claims asserted against them in the Action and in the PAGA Notice. However, Defendant
24 nevertheless desires to settle the Action for the purpose of avoiding the burden, expense and
25 uncertainty of continuing litigation, and for the purpose of putting to rest the controversies
26 engendered by the Action.

27 **I.** This Agreement is intended to and does effectuate the full, final and complete
28 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all

1 PAGA Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California
2 and Aggrieved Employees.

3 **3. JURISDICTION**

4 The Court has jurisdiction over the Parties and the subject matter of the Action. The
5 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
6 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
7 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
8 pursuant to California Rules of Court, Rule 3.769, subdivision (h).

9 **4. STIPULATION OF CLASS CERTIFICATION**

10 The Parties stipulate to the certification of the Settlement Class under this Agreement for
11 purposes of settlement only.

12 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

13 After full execution of this Agreement, Plaintiffs will move for an order granting
14 preliminary approval of the Settlement, approving and directing the mailing of the proposed
15 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A,”** conditionally
16 certifying the Settlement Class for settlement purposes only, and approving the deadlines
17 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes and
18 Objections. If and when the Court preliminarily approves the Settlement, and after administration
19 of the Class Notice in a manner consistent with the Court’s Preliminary Approval Order,
20 Plaintiffs will move for an order finally approving the Settlement and seek entry of a Judgment
21 in line with this Settlement. The Parties may both respond to any Objections lodged to final
22 approval of the Settlement up to five (5) court days before the Final Approval Hearing.

23 **6. STATEMENT OF NO ADMISSION**

24 Defendant denies any wrongdoing of any sort and further deny any liability to Plaintiff
25 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
26 PAGA Notice. This Agreement shall not be deemed an admission by Defendant of any claims or
27 allegations asserted in the Action or in the PAGA Notice. Except as set forth elsewhere herein,
28 in the event that this Agreement is not approved by the Court or any appellate court, is terminated,

1 or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived, limited or
2 affected in any way any claims, rights or remedies, or defenses in the Action or in the PAGA
3 Notice, and Defendant will not be deemed to have waived, limited or affected in any way any of
4 their objections or defenses in the Action and in the PAGA Notice. The Parties shall be restored
5 to their respective positions in the Action prior to the entry of this Settlement.

6 **7. RELEASE OF CLAIMS**

7 **A. Release by All Participating Class Members.**

8 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
9 of Judgment and payment by Defendant to the Settlement Administrator of the full Gross
10 Settlement Amount and Employers Taxes necessary to effectuate the Settlement, Plaintiffs and
11 all Participating Class Members release all claims against the Released Parties asserted in the
12 complaint filed in the Class Action, and any claims that could have been asserted based on the
13 factual allegations in the complaint filed in the Class Action, including: (1) all claims for failure
14 to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure
15 to provide meal periods or compensation in lieu thereof; (4) all claims for failure to provide rest
16 periods or compensation in lieu thereof; (5) all claims for failure to pay all wages due upon
17 termination; (6) all claims for failure to provide accurate wage statements; (7) all claims for
18 failure to timely pay wages during employment; (8) all claims for failure to indemnify; and (9)
19 all claims asserted through California Business & Professions Code section 17200, *et seq.* arising
20 out of the Labor Code violations referenced in the Operative Complaint (the “Class Released
21 Claims”).

22 **B. Release by All Aggrieved Employees**

23 For Aggrieved Employees and, to the extent permitted by law, the State of California, the
24 release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notice
25 and in the complaint filed in the PAGA Action, or that could have been based on the factual
26 allegations asserted in the PAGA Notice and in the complaint filed in the PAGA Action for
27 PAGA civil penalties, including, pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
28 1197.1 and 2699, violations of Labor Code sections 200, 201, 202, 203, 204, 226, 432, 510, 512,

1 1174, 1194, 1197, 1198.5, 2802, 2810.3 and 2810.5 (the “PAGA Released Claims”). The Class
2 Released Claims and PAGA Released Claims shall be referred to herein as the “Released
3 Claims”.

4 **C. Claims Not Released**

5 The releases above expressly exclude all other claims, including claims for vested
6 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
7 compensation, and any other claims outside of the Class Released Claims of Participating Class
8 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
9 Employees (and, to the extent permitted by law, the State of California) arising outside of the
10 PAGA Period.

11 **D. General Release**

12 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
13 of Judgment and payment by Defendant to the Settlement Administrator selected of the full Gross
14 Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in addition to
15 the Released Claims, the Named Plaintiffs make the additional following General Release:
16 Named Plaintiffs release the Released Parties from all claims, demands, rights, liabilities and
17 causes of action of every nature and description whatsoever, known or unknown, asserted or that
18 might have been asserted, whether in tort, contract, or for violation of any state or federal statute,
19 rule, law or regulation arising out of, relating to, or in connection with any act or omission of the
20 Released Parties through the date of full execution of this Agreement in connection with
21 Plaintiffs’ employment with Defendant or termination/separation thereof, except for any and all
22 other claims that may not be released as a matter of law through this Agreement. To the extent
23 of the General Release provided herein, Named Plaintiffs stipulate and agree that, upon entry of
24 an Order granting Final Approval of the Settlement, entry of Judgment and payment by
25 Defendant to the Settlement Administrator selected of the full Gross Settlement Amount and
26 Employers’ Taxes necessary to effectuate the Settlement, they shall have expressly waived and
27 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
28 1542 of the California Civil Code, 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.

8. SETTLEMENT ADMINISTRATOR

A. Plaintiffs and Defendant, through their respective counsel, have selected ILYM Group, Inc. to administer the Settlement, which includes, but is not limited to, translating the Class Notice to Spanish, distributing and responding to inquiries about the Class Notice, and calculating all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement Administrator, currently estimated to be \$12,650.00 will be paid from the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is less than \$12,650.00, the difference between \$12,650.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$12,650.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for paying any additional funds in order to pay these additional costs.

9. NOTICE, WORKWEEK DISPUTE, OBJECTION AND EXCLUSION PROCESS

A. Notice to the Settlement Class Members

(1) Within seven (7) calendar days after the Preliminary Approval Date, Defendant's Counsel shall provide the Settlement Administrator with information with respect to each Settlement Class Member, including his or her: (1) name; (2) last known address(es) currently in Defendant's possession, custody or control; (3) last known telephone number(s) currently in Defendant's possession, custody or control; (4) last known Social Security Number(s) in Defendant's possession, custody or control; and (5) the dates of employment (*i.e.*, hire dates and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member ("Class List"). The Settlement Administrator shall perform an address search using the United States

1 Postal Service National Change of Address (“NCOA”) database and update the addresses
2 contained on the Class List with the newly-found addresses, if any. Within seven (7) calendar
3 days or soon thereafter of receiving the Class List from Defendant, the Settlement Administrator
4 shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-
5 class regular U.S. Mail using the most current mailing address information available. The
6 Settlement Administrator shall maintain the Class List and digital copies of all the Settlement
7 Administrator’s records evidencing the giving of notice to any Settlement Class Member for at
8 least four (4) years from the Final Approval Date.

9 (2) The Class Notice will set forth:

- 10 (a) the Settlement Class Member’s estimated Individual
11 Settlement Payment and Individual PAGA Payment,
12 and the basis for each;
- 13 (b) the information required by California Rule of Court,
14 Rule 3.766, subdivision (d);
- 15 (c) the material terms of the Settlement;
- 16 (d) the proposed Settlement Administration Costs;
- 17 (e) the definition of the Settlement Class;
- 18 (f) a statement that the Court has preliminarily approved
19 the Settlement;
- 20 (g) how the Settlement Class Member can obtain
21 additional information, including contact information
22 for Class Counsel;
- 23 (h) information regarding opt-out and objection
24 procedures;
- 25 (i) the date and location of the Final Approval Hearing;
26 and
- 27 (j) that the Settlement Class Member must notify the
28 Settlement Administrator no later than the Response

1 Deadline if the Settlement Class Member disputes the
2 accuracy of the number of Workweeks worked as set
3 forth on his or her Class Notice (“Workweek Dispute”).
4 If a Settlement Class Member fails to timely dispute the
5 number of Workweeks attributed to him or her in
6 conformity with the instructions in the Class Notice,
7 then he or she shall be deemed to have waived any
8 objection to its accuracy and any claim to any
9 additional settlement payment based on different data.

10 (3) If a Class Notice from the initial notice mailing is returned as
11 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
12 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
13 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
14 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
15 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
16 Member within three (3) calendar days. Further, any Class Notices that are returned to the
17 Settlement Administrator with a forwarding address before the Response Deadline shall be
18 promptly re-mailed to the forwarding address affixed thereto.

19 (4) No later than seven (7) calendar days from the Response Deadline, the
20 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
21 completion of the notice process, including the number of attempts to obtain valid mailing
22 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
23 and copies of all Requests for Exclusion and Objections received by the Settlement
24 Administrator.

25 **B. Objections**

26 Only Participating Class Members may object to the Settlement. In order for any
27 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
28 do so by mailing a written objection to the Settlement Administrator at the address or phone

number provided on the Class Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendant's counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the Objection, along with whatever legal authority, if any, the Objector asserts in support of the Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member will remain a member of the Settlement Class and if the Court approves this Agreement, the Settlement Class Member will be bound by the terms of the Settlement in the same way and to the same extent as a Settlement Class Member who does not object. The date of mailing of the Class Notice to the objecting Settlement Class Member shall be conclusively determined according to the records of the Settlement Administrator. Settlement Class Members need not object in writing to be heard at the Final Approval Hearing; they may object or comment in person at the hearing at their own expense. Class Counsel and Defendant's Counsel may respond to any objection lodged with the Court up to five (5) court days before the Final Approval Hearing.

C. Requesting Exclusion

Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the Settlement by mailing a written request to be excluded from the Settlement ("Request for Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline. To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last four (4) digits of the Class Member's Social Security Number; (3) the Class Member's signature; and (4) the following statement: "Please exclude me from the Settlement Class in the *Betoel Gomez et al. v. Pallet Recovery Service, Inc., et al.* matter" or any statement of similar meaning standing for the proposition that the Class Member does not wish to participate in the Settlement. The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to

1 Class Counsel and Defendant's Counsel and shall report the Requests for Exclusions that it
2 receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing.
3 Any Settlement Class Member who requests exclusion using this procedure will not be entitled
4 to receive any payment from the Settlement and will not be bound by the Settlement Agreement
5 or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class
6 Member who does not opt out of the Settlement by submitting a timely and valid Request for
7 Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released
8 Claims, as well as any Judgment that may be entered by the Court if Final Approval of the
9 Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion
10 and an objection. If a Settlement Class Member submits an Objection and a Request for
11 Exclusion, the Request for Exclusion will control and the Objection will be overruled. Settlement
12 Class Members who worked during the PAGA Period as Aggrieved Employees that submit a
13 valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their
14 Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

15 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

16 Each Settlement Class Member may dispute the number of Workweeks attributed to him
17 or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to
18 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
19 Response Deadline. The Settlement Administrator shall immediately provide copies of all
20 disputes to Class Counsel and counsel for Defendant and shall immediately attempt to resolve all
21 such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendant
22 and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the
23 dispute.

24 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
25 **PAGA PAYMENTS**

26 Individual Settlement Payments will be calculated and distributed to Participating Class
27 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
28

Members' respective number of Workweeks worked during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Pay Periods worked during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

A. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement Administrator will determine the total number of Pay Periods worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Pay Periods"), as well as the aggregate number of Pay Periods worked by all Aggrieved Employees during the PAGA Period ("PAGA Pay Periods").

B. To determine each Settlement Class Member's Individual Settlement Share, the Settlement Administrator will use the following formula: Individual Settlement Share = (Settlement Class Member's Workweeks worked ÷ Class Workweeks) × Net Settlement Amount.

C. To determine each Participating Class Member's Participating Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Workweeks worked by all Participating Class Members during the Class Period ("Participating Class Workweeks") and use the following formula: Individual Settlement Share = (Participating Class Member's Workweeks worked ÷ Participating Class Workweeks) × Net Settlement Amount.

D. The net amount of the Participating Individual Settlement Share is to be paid out to Participating Class Members by way of check and is referred to as "Individual Settlement Payment(s)".

E. To determine each Aggrieved Employee's Individual PAGA Payment, the

1 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
2 PAGA Payment = (Aggrieved Employee's Pay Periods worked ÷ PAGA Pay Periods) x
3 \$12,500.00 (the PAGA Payment).

4 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
5 to Participating Class Members and/or Aggrieved Employees by way of check. When a
6 Participating Class Member is also an Aggrieved Employee, one check may be issued that
7 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

8 **11. DISTRIBUTION OF PAYMENTS**

9 **A. Distribution of Individual Settlement Payments**

10 Participating Class Members will receive an Individual Settlement Payment and
11 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
12 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
13 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)
14 calendar days after expiration of the 180-day period, checks for such payments shall be
15 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
16 abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid
17 Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
18 Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street,
19 Suite 600, San Francisco, California 94104, the *cy pres* recipient, for use in San Joaquin
20 County. The Settlement Administrator shall prepare a report regarding the distribution plan
21 pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court
22 by Class Counsel along with a proposed amended judgment that is consistent with the
23 provisions of Code of Civil Procedure section 384.

24 **B. Funding of Settlement**

25 Defendant shall make a total of twenty-four (24) payments totaling the Gross Settlement
26 Amount, and separately pay the Employer Taxes, to the Settlement Administrator for deposit in
27 an interest-bearing qualified settlement account ("QSF") with an FDIC insured banking
28 institution, for distribution in accordance with this Settlement Agreement and the Court's orders

1 and subject to the conditions described herein. Defendant shall make an initial payment no later
2 than July 1, 2024 of Fifty Thousand Dollars and Zero Cents (\$50,000.00) ("Initial Payment").
3 Thereafter, and no later than the first of each month Defendant shall make equal monthly
4 payments ("Monthly Payment), until the remaining \$950,000.00 is fully funded. As of execution
5 of this Agreement, the Parties estimate the Monthly Payment will be \$39,583.33, unless increased
6 pursuant to paragraph 17 of this Agreement. As part of the twelfth (12th) monthly payment,
7 Defendant shall also pay Employer Taxes on the first 12 payments, which shall be determined
8 by the Settlement Administrator. Furthermore, as part of the final and twenty-fourth (24th)
9 payment, Defendant shall include the remaining Employer Taxes, which shall be determined by
10 the Settlement Administrator. Furthermore, the Gross Settlement Amount and Employer Taxes
11 are personally guaranteed by Lisa Kilcoyne, John Kilcoyne III and Matthew Ray Haugrud, the
12 owners of Defendant ("Owner"). Defendant and Owner are jointly and severally liable for
13 payment of the Gross Settlement Amount and Employer Taxes.

14 In the event that Defendant fails to make any payment as required by the terms of this
15 Settlement Agreement, Class Counsel shall provide notice of failure to make payment to
16 Defendant's Counsel via email at raquel@hendersonhatfield.com and provide Defendant seven
17 (7) calendar days to provide to the Settlement Administrator the missed payment. If Defendant
18 fails to make the payment within seven (7) calendar days of Class Counsel's notice, then
19 Defendant shall pay the entire Gross Settlement Amount within one (1) week of Class Counsel's
20 notice of failure to make payment. Acceptance of a late payment by Class Counsel and/or the
21 Settlement Administrator shall not constitute a waiver, nor should it in any way prejudice any
22 party's rights to receive and demand timely payments thereafter

23 **C. Time for Distribution**

24 Within seven (7) calendar days after payment of the initial one half (1/2) of the Gross
25 Settlement Amount and Employer Taxes by Defendant, or as soon thereafter as practicable, the
26 Settlement Administrator shall distribute half of all payments due from the QSA for: (1) the
27 Service Award to Plaintiff, as specified in this Agreement and approved by the Court; (2) the
28 Attorneys' Fees and Cost Award to be paid to Class Counsel, as specified in this Agreement and

1 approved by the Court; (3) the Settlement Administrator Costs, as specified in this Agreement
2 and approved the Court; (4) the LWDA Payment, as specified in this Agreement and approved
3 by the Court; (5) Individual PAGA Payments to Aggrieved Employees, as specified in this
4 Agreement and approved by the Court; and (6) Individual Settlement Payments to Participating
5 Class Members, less applicable taxes and withholdings, as specified in this Agreement and
6 approved by the Court. Within seven (7) calendar days after payment of the second half (1/2) of
7 the Gross Settlement Amount, and Employer Taxes by Defendant, or soon thereafter as
8 practicable, the Settlement Administrator shall distribute the remaining half of all payments due
9 from the QSA. All interest accrued shall be for the benefit of the Class Members and distributed
10 on a *pro rata* basis to Participating Class Members based on the number of Workweeks worked
11 by them in the Class Period.

12 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

13 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
14 fees of up to thirty five percent (35%) of the Gross Settlement Amount, which, unless escalated
15 pursuant to Paragraph 17 of this Agreement, amounts to Three Hundred Fifty Thousand Dollars
16 and Zero Cents (\$350,000.00). Class Counsel shall further apply for, and Defendant shall not
17 oppose, an application or motion by Class Counsel for reimbursement of actual costs associated
18 with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount
19 up to Thirty Thousand Dollars and Zero Cents (\$30,000.00). Awards of attorneys' fees and costs
20 shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and costs
21 necessary to prosecute, settle and obtain Final Approval of the settlement in Action. The "future"
22 aspect of the amounts stated herein includes, without limitation, all time and expenses expended
23 by Class Counsel (including any appeals therein). There will be no additional charge of any kind
24 to either the Settlement Class Members or request for additional consideration from Defendant
25 for such work unless, Defendant materially breaches this Agreement, including any term
26 regarding funding, and further efforts are necessary from Class Counsel to remedy said breach,
27 including, without limitation, moving the Court to enforce the Agreement. Should the Court
28 approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the

1 amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement
2 Amount.

3 **13. SERVICE AWARD TO PLAINTIFFS**

4 Named Plaintiffs Gomez and Mendez each shall seek, and Defendant shall not oppose, a
5 Service Award in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents
6 (\$7,500.00) to Plaintiff Gomez and Plaintiff Mendez each, totaling of Fifteen Thousand Dollars
7 and Zero Cents (\$15,000.00), for participation in and assistance with the Action. Any Service
8 Award and additional consideration awarded and/or paid to each plaintiff shall be paid from the
9 Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves the
10 Service Awards in less than the amounts sought herein, then the unapproved portion(s) shall be
11 a part of the Net Settlement Amount.

12 **14. TAXATION AND ALLOCATION**

13 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
14 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
15 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
16 agree that the employees' share of taxes and withholdings with respect to the wage portion of the
17 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
18 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
19 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
20 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
21 be made pursuant to applicable state and/or local withholding codes or regulations.

22 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
23 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
24 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
25 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
26 set forth in this Section may be modified in a manner to bring Defendant into compliance with
27 any such changes.

28 c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to

1 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of
2 payroll taxes as described above.

3 d. Neither Counsel for Plaintiffs nor Defendant intend anything contained in this
4 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
5 be relied upon as such within the meaning of United States Treasury Department Circular 230
6 (31 C.F.R. Part 10, as amended) or otherwise.

7 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

8 The Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the
9 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
10 (75%) of the amount allocated toward PAGA (\$37,500.00) will be paid to the LWDA and twenty-
11 five percent (25%) (\$12,500.00) will be distributed to Aggrieved Employees on a *pro rata* basis
12 based upon their respective Pay Periods worked as Aggrieved Employees during the PAGA
13 Period.

14 **16. COURT APPROVAL**

15 This Agreement is contingent upon an order by the Court granting Final Approval of the
16 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
17 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
18 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
19 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
20 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
21 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
22 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
23 the Settlement Agreement being voided or not approved, and which control in such an event.

24 **17. INCREASE IN WORKWEEKS**

25 Defendant represents that there are 20,068 Workweeks during the Class Period. In the
26 event the number of Workweeks increases by more than 10% or 2,009 Workweeks during the
27 Class Period, then either, at Defendant's election: (1) the Gross Settlement Amount shall be
28 increased proportionally by the Workweeks in the Class Period in excess of 20,068 Workweeks

multiplied by the Workweek Value; or (2) the Class Period shall end on the date the number of Workweeks reaches 20,068. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$1,000,000.00) by 20,068 Workweeks. The Parties agree that the Workweek Value amounts to \$49.83 per Workweek ($\$1,000,000.00 / 20,068 \text{ Workweeks}$). Thus, for example, should there be 21,071 Workweeks worked by Class Members in the Class Period, and Defendant elects option (1) above, then the Gross Settlement Amount shall be increased by \$96,271.56 ($(21,071 \text{ Workweeks} - 20,068 \text{ Workweeks}) \times \$49.83 \text{ per Workweek}$). Defendant shall make its election under this paragraph no later than seven (7) calendar days of being informed by the Settlement Administrator the number of workweeks has exceeded 21,071 Workweeks.

18. NOTICE OF JUDGMENT

In addition to any duties set out herein, the Settlement Administrator shall provide notice of the Final Judgment entered in the Action by posting the same on its website for a period of no less than four (4) years.

19. MISCELLANEOUS PROVISIONS

A. Interpretation of the Agreement

This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. 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 into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of San Joaquin, and Plaintiffs and Defendant hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,

1 and each of them, participated in the negotiation and drafting of this Agreement and had available
2 to them the advice and assistance of independent counsel. As such, neither Plaintiffs nor
3 Defendant may claim that any ambiguity in this Agreement should be construed against the other.
4 The Agreement may be modified only by a writing signed by counsel for the Parties and approved
5 by the Court.

6 **B. Further Cooperation**

7 The Parties and their respective attorneys shall proceed diligently to prepare and execute
8 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
9 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
10 will not take any action inconsistent with this Agreement, including, without limitation,
11 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
12 Party has taken actions inconsistent with the Settlement, including, without limitation,
13 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
14 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
15 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
16 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
17 opt-outs and/or objections.

18 **C. Counterparts**

19 The Agreement may be executed in one or more actual or non-original counterparts, all
20 of which will be considered one and the same instrument and all of which will be considered
21 duplicate originals.

22 **D. Authority**

23 Each individual signing below warrants that he or she has the authority to execute this
24 Agreement on behalf of the Party for whom or which that individual signs.

25 **E. No Third-Party Beneficiaries**

26 Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California,
27 Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-
28 party beneficiaries.

F. Deadlines Falling on Weekends or Holidays

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

G. Jurisdiction of the Court

Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments 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 Settlement Agreement and all orders and judgments entered in connection therewith.

H. Severability

In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

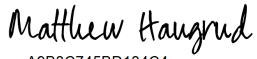
Dated: _____, 2024

BETOEL GOMEZ
Plaintiff and Class Representative

Dated: _____, 2024

UBALDO ARIAS MENDEZ
Plaintiff and Class Representative

Dated: 5/24/2024
_____, 2024

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PALLET RECOVERY SERVICE, INC
Defendant
By: Matthew Haugrud
Its: President

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AGREED AS TO FORM:

Dated: _____, 2024

Dated: 5/24/2024, 2024

DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiffs BETOEL GOMEZ and
UBALDO AIRAS MENDEZ

DocuSigned by:
RAQUEL A. HATFIELD
EF45G7060E47407...

RAQUEL A. HATFIELD
Counsel for Defendant PALLET RECOVERY
SERVICE, INC

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