

STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**ARTICLE I****INTRODUCTION**

It is stipulated and agreed by and among the undersigned Parties, subject to the approval of the Court pursuant to section 382 of the California Code of Civil Procedure, that the Settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in the "Definitions" section or as defined elsewhere in this Stipulated Settlement Agreement and Release of Claims (hereafter "Agreement").

Plaintiff Julian Stites-Tracy ("Representative Plaintiff") and the putative Class Members, make this agreement with Defendant Driveline Retail Merchandising, Inc. ("Driveline" or "Defendant") Representative Plaintiff and Defendant collectively are referred to in this Agreement as "the Parties."

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay a non-reversionary all-in settlement in the total maximum amount of One Hundred Fifty Thousand Dollars (\$150,000.00) as provided in Section 5.06 below ("Gross Fund Value Amount") upon the terms and conditions of this Agreement and for the consideration set forth herein, including but not limited to a release of all claims by Representative Plaintiff and the Class Members as set forth herein.

ARTICLE II**RECITALS**

This Agreement is made in consideration of the following facts:

WHEREAS on January 7, 2020, Representative Plaintiff filed a complaint in Orange County Superior Court, asserting the following causes of action against Driveline on a class action and/or representative basis:

(1) Violations of California wage and hour laws, labor laws, regulations, and the Industrial Welfare Commission Wage Order, including Defendant's alleged failure:

1 (a) to pay wages including overtime,

2 (b) to provide meal periods for every work period exceeding
3 more than ten (10) hours per day and failure to pay an additional hour's
4 of pay or accurately pay an additional hours of pay in lieu of providing a
5 meal period;

6 (c) to provide rest breaks for every four hours or major fraction
7 thereof worked and failure to pay an additional hour's of pay or
8 accurately pay an additional hour's of pay in lieu of providing a rest
9 period;

10 (d) to pay all wages earned and owed upon separation from
11 Defendant's employ;

12 (e) to reimburse business expenses; and

13 (f) to provide accurate itemized wage statements.

14 WHEREAS, based upon a related class actions settlement, on November 17,
15 2020, Representative Plaintiff filed her first amended complaint in Orange County Superior
16 Court, asserting, only the following causes of action on a class action and/or representative
17 basis:

18 (1) Violation of the Fair Credit Reporting Act for Failure to Make Proper
19 Disclosures [15 U.S.C. § 1681b(b)(2)(A)(i);

20 (2) Violation of the Fair Credit Reporting Act for Failure to Obtain
21 Proper Authorization [15 U.S.C. § 1681b(b)(2)(A)(ii);

22 (3) Failure to Make Proper Disclosure and Obtain Proper Authorization
23 [California Civil Code § 1786 et seq., Investigative Consumer Reporting
24 Agencies Act];

25 (4) Failure to Make Proper Disclosure [California Civil Code § 1785 et
26 seq., Consumer Credit Reporting Agencies Act];
27
28

1 WHEREAS, the Parties engaged in informal discovery, exchanging
2 information, documents and reviewing and analyzing extensive data made available by
3 Defendant which enabled the parties to thoroughly evaluate Plaintiff's claims, the claims of
4 the putative class, Defendant's defenses, and the likely outcomes, risks and expense of
5 pursuing litigation;

6 WHEREAS, the Parties attended a mediation session with professional
7 mediator Kelly A. Knight, Esq. with Judicate West, and reached terms resulting in this
8 arm's-length Settlement;

9 WHEREAS, a bona fide dispute exists as to whether any amount of penalties
10 or damages are due from Defendant to any Class Member and/or to any allegedly-aggrieved
11 employees;

12 WHEREAS, the Parties desire to compromise and settle all issues and claims
13 that have been or could have been brought, based on the facts and allegations in the First
14 Amended Complaint, against Defendant or related persons in the Action, including all claims
15 brought on a putative class, collective and representative basis in the Action;

16 WHEREAS, based on the discovery exchanged as well as their own
17 independent investigation and evaluation, the Parties have considered the claims asserted by
18 Plaintiff, the defenses asserted by Defendant, the risks associated with the continued
19 prosecution of the Action, the cost of continued litigation through trial and appeals, and after
20 considering all the circumstances, the Parties have concluded that the proposed settlement set
21 forth in this Agreement is fair, adequate, and reasonable and confers substantial benefits
22 upon the Class Members;

23 WHEREAS, the Parties further agree that the Agreement, the fact of this
24 Settlement, any of the terms of this Agreement, and any documents filed in connection with
25 the Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as
26 an admission, finding, or evidence of: (i) any wrongdoing by any Released Parties, (ii) any
27 violation of any statute or law by Released Parties, (iii) any liability on the claims or
28 allegations in the Action on the part of any Released Parties, or (iv) the propriety of

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1 certifying a litigation class or collective (conditionally or otherwise) or any other civil or
2 administrative proceeding; and this Agreement shall not be used by any Person for any
3 purpose whatsoever in any administrative or legal proceeding, including but not limited to
4 arbitrations, other than a proceeding to enforce the terms of the Agreement;

5 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO,
6 AND AGREED, by Plaintiff for herself and on behalf of the Participating Class Members
7 and by Defendant, that, subject to the approval of the Court, the Action shall be settled,
8 compromised, and dismissed, on the merits and with prejudice, and the released Class
9 Claims, shall be finally and fully compromised, settled and dismissed as to the Released
10 Parties, in the manner and upon the terms and conditions hereafter set forth in this
11 Agreement.

12 **ARTICLE III**

13 **DEFINITIONS**

14 As used in the Agreement, the following terms have the meanings specified below:

15 j. "Action" means the civil action commenced by Plaintiff with the Complaint filed on
16 January 7, 2020 and the First Amended Class Action Complaint, filed November 18, 2020,
17 alleging the claims in Article III(e), was maintained in the California Superior Court, County
18 of Orange entitled *Julian Stites-Tracy v. Driveline Retail Merchandising, Inc.*, Case No. 30-
19 2020-01122295-CU-OE-CXC.

20 k. "Agreement" means this Stipulated Settlement Agreement and Release Of Claims,
21 including the Class Notice, as defined below, attached as Exhibit A.

22 l. "Claims Administrator" means the third-party administrator ILYM Group, Inc. as
23 approved by the court who will administer the settlement as set forth below.

24 m. "Claims Administration Costs" means all costs incurred by the Claims Administrator
25 in administration of the Settlement, including, but not limited to address verification
26 measures, mailing of notice to the Class, calculation of Individual Settlement Payments,
27 generation of Individual Settlement Payment checks, administration of uncashed checks,
28

1 generation of checks to Class Counsel for attorney's fees and costs, generation of the check
2 to the Representative Plaintiff for her Service Award, and generation and submission of all
3 tax-related documents, all pursuant to the terms of this Agreement.

4
5 e. "Class Claims" means all claims for penalties as alleged in the First Amended Complaint for
6 Fair Credit Reporting Act ("FCRA"), 15 USC §1681 et seq., the Consumer Credit Reporting
7 Agencies Act, Cal. Civ. Code §§ 1785 et seq., and the California Investigative Consumer Reporting
8 Agencies Act ("ICRAA")(Cal. Civ. Code § 1786 et seq.).and actually alleged or that could have
9 been alleged in the Action by Plaintiff, on behalf of herself and the California Class Members, based
10 on the facts asserted in the First Amended Complaint, including Defendant's alleged failure: (a) to
11 make proper disclosures and to obtain proper authorizations pursuant to the Fair Credit Reporting
12 Act; (b) to make proper disclosures and to obtain proper authorizations pursuant to the Investigative
13 Consumer Reporting Agencies Act; and (c) to make proper disclosures and to obtain proper
14 authorizations pursuant to the Consumer Credit Reporting Agencies Act.

15
16 f. "Class Counsel" means the attorneys for the Class and the Class Members, who are:
17 James R. Hawkins, Esq.
18 Gregory Mauro, Esq.
19 Michael Calvo, Esq.
20 James Hawkins APLC
21 9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: 949-387-7200

22 g. "Class Member(s)" means all current and former employees and prospective
23 employees who in the State of California for whom Driveline procured a background
24 screening consent form during the Class Period (which is estimated to consist of
25 approximately 2,054 class members).

26 h. "Class Notice" means the Notice of Proposed Class Action Settlement attached
27 hereto as Exhibit "A" or in substantially the same form as ultimately approved by the Court.

1 i. "Class Period" means the period from November 18, 2015 through the date the court
2 enters an order granting preliminary approval or 30 days after the motion for preliminary
3 approval is filed, whichever date is earlier.

4 j. "Complete and General Release by Named Plaintiff Only" means an irrevocable and
5 unconditional release given only by the named Representative Plaintiff, releasing Defendant
6 and the Released Parties from any and all charges, complaints, claims, causes of action,
7 debts, sums of money, controversies, agreements, promises, damages and liabilities of any
8 kind or nature whatsoever, both at law and equity, known or unknown, suspected or
9 unsuspected, arising from conduct occurring on or before the date Representative Plaintiff
10 signs this Settlement Agreement, including but not limited to a release of any and all rights
11 Plaintiff has to sue or bring any type of claim under (a) California state law; (b) Title VII of
12 the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (c) the Employment
13 Act of 1967, (d) the Civil Rights Act of 1991, (e) the Civil Rights Act of 1866 and 1870, (f)
14 42 U.S.C. § 1981, as amended, (g) Executive Order 11246, (h) the Americans with
15 Disabilities Act 42 U.S.C. § 12101, et. seq, as amended, (i) the Family and Medical Leave
16 Act, as amended, (j) the Equal Pay Act of 1963, as amended, (k) the Immigration and
17 Reform Control Act, as amended, (l) the Occupational Safety and Health Act, as amended,
18 (m) the Sarbanes-Oxley Act of 2002, as amended, (n) the Employment Retirement Income
19 Security Act of 1974, as amended (except vested benefits), (o) the Worker Adjustment and
20 Benefit Protection Act of 1990, as amended, (p) the Worker Adjustment and Retraining
21 Notification Act, as amended, (q) any federal, state or common law claim or cause of action
22 based on any alleged failure to pay wages, breach of contract, wrongful discharge,
23 constructive discharge, retaliation, defamation, slander, liable, intentional or negligent
24 infliction of emotional distress, misrepresentation, fraud, promissory estoppel, (r) any other
25 tort or negligence claim or obligations arising out of any of Defendant's employment
26 policies or practices, employee handbooks, and/or any statements by any employee or agent
27 of Defendant whether oral or written; and (s) for reinstatement, back pay, bonus, attorneys'
28 fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief,

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1 liquidated damages, emotional distress, personal injury, punitive damages, pain and
2 suffering, medical expenses, damage to reputation, damage for personal, emotional or
3 economic injury or damage of any kind. This provision is intended by the Parties to be all-
4 encompassing and to act as a full and total release of any claim, whether specifically
5 enumerated herein or not, that Representative Plaintiff might have or have had, that exists or
6 ever has existed on or prior to the date this Settlement Agreement is signed. This release
7 includes a 1542 Waiver. The Parties understand and agree that the word “claims” includes all
8 actions, group actions (including any pending or future collective, class, private attorney
9 general or representative actions for which Representative Plaintiff may otherwise qualify as
10 a putative class member or represented party), complaints and grievances that could
11 potentially be brought by Representative Plaintiff against the Released Parties.

12 k. “Defendant” shall mean Driveline Retail Merchandising, Inc., and all predecessor
13 entities, successor entities, and affiliate companies.

14 l. "Defense Counsel" means counsel for Defendant, who are:

15 Yvette Davis
16 HAIGHT BROWN & BONESTEEL LLP
17 2030 Main Street, Ste. 1525
18 Irvine, CA 92614
19 Telephone: (714) 426-4600
20 Facsimile: (714) 754-0826

21 Kathryn D. Terry
22 Lauren Barghols Hanna
23 PHILLIPS MURRAH P.C.
24 101 N. Robinson
25 Corporate Tower, 13th Fl.
26 Oklahoma City, OK 73102
27 Telephone: (405)235-4100
28 Facsimile: (405) 235-4133

23 m. “Final Effective Date” means the date on which the Settlement is approved and the
24 Court’s Final Order and Judgment becomes Final. The Court’s Final Order and Judgment
25 becomes final upon the later of: (i) if no Class Member timely and properly intervenes or
26 files a motion to vacate the Judgment under Code of Civil Procedure § 663, then the date the
27 Court enters an order granting Final Approval of the Settlement; (ii) if a Class Member
28 intervenes or files a motion to vacate the Judgment, then sixty-one (61) calendar days

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1 following the date the Court enters an order granting final approval, assuming no appeal is
2 filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including
3 any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval
4 of the Settlement.

5 n. "Final Fairness and Approval Hearing" means the hearing to determine whether the
6 proposed Agreement settling the Action should be finally approved as fair, reasonable, and
7 adequate; whether the proposed plan of allocation of the Net Fund Value Amount should be
8 approved; whether the Representative Plaintiff's Service Award should be approved; and
9 whether the applications of Class Counsel for attorney's fees and costs should be approved.

10 o. "Final Order" refers to the order of the Court granting final approval of this
11 Agreement as to the Final Settlement Class (defined below) and entering a judgment
12 approving this Agreement on substantially the terms provided herein or as the same may be
13 modified by subsequent written agreement of the Parties.

14 p. "Final Settlement Class" refers to the Representative Plaintiff and all Class Members
15 who do not timely and validly exclude themselves from the class in compliance with the
16 exclusion procedures set forth in Section 5.04.a of this Agreement.

17 q. "Gross Fund Value Amount" means the One Hundred Fifty Thousand Dollars
18 (\$150,000.00) to be paid by Defendant as provided by this Agreement to settle this Action.
19 This is an "all in" and non-reversionary number that includes, without limitation, all
20 monetary benefits and payments for the Final Settlement Class Members, the Service
21 Awards, the Class Counsel Award, the Settlement Administrator expenses, and all other
22 claims for interest, fees, and costs. In no event will Defendant pay more than the Gross Fund
23 Value Amount.

24 r. "Individual Settlement Payments" means the amounts of money from the Net Fund
25 Value Amount that shall be paid to the Participating Class Members. Individual Settlement
26 Payments shall be each Participating Class Member's share of the Net Fund Value Amount
27 (which share shall be determined by the calculations provided in this Agreement at Section
28 5.06.c.).

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1 s. "Judgment" refers to the judgment entered by the Court in conjunction with the Final
2 Order.

3 t. "Net Fund Value Amount" means the Gross Fund Value Amount of One Hundred
4 Fifty Thousand Dollars (\$150,000.00) less all of the following amounts approved by the
5 Court:

6 (1) Class Counsel's court-approved attorney's fees (not to exceed Fifty Thousand
7 Dollars and No Cents (\$50,000.00) to Plaintiffs' counsel;

8 (2) Class Counsel's court-approved collective litigation costs (not to exceed Twenty-
9 Five Thousand Dollars (\$25,000.00));

10 (3) the court-approved Service Award to be paid to the Representative Plaintiff (not to
11 exceed Seven Thousand Five Hundred Dollars (\$7,500.00)); and

12 (4) the Claims Administrator's court-approved fees in the anticipated amount of not
13 more than Fifteen Thousand Dollars (\$15,000.00). The Net Fund Value Amount is estimated
14 to be Fifty-Two Thousand Five Hundred Dollars and No Cents (\$52,500.00) plus any
15 residuals from amounts requested in this paragraph which are not ultimately distributed to
16 the respective Parties due to invoicing of a lesser amount by the Claims Administrator or
17 court approval of a lesser amount than requested.

18 u. "Non-Participating Class Member(s)" means those Class Members who submit to the
19 Claims Administrator a valid and timely written request to be excluded from the Class
20 pursuant to Section 5.04.a below.

21 v. "Participating Class Member(s)" means those Class Members who do not submit
22 valid requests for exclusion.

23 w. "Parties" means Representative Plaintiff and Defendant as defined herein.

24 x. "Released Parties" means Defendant's shareholders, officers, directors, insurers,
25 employees, administrators, fiduciaries, trustees, and agents.

26 y. "Representative Plaintiff" and/or "Stites-Tracy" means named Plaintiff Julian Stites-
27 Tracy.

z. "Service Award" means a monetary amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) for the Representative Plaintiff which, subject to Court approval, shall be paid pursuant to Section 5.06.b.3 of the Agreement, as provided below.

aa. "Settlement" means the disposition of this Action and all related claims effectuated by this Agreement.

ARTICLE IV

CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

4.1. Certification Of Class And Claims. Solely for the purposes of this reviewing this Settlement, the Parties stipulate and agree that the Court may certify a class consisting of "all current and former employees and prospective employees who in the State of California for whom Driveline procured a background screening consent form during the Class Period during the period from November 17, 2015 through the date the court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier.

4.2. Appointment Of Class Representative. Solely for the purposes of this Settlement, the Parties stipulate and agree Representative Plaintiff shall be appointed as representative of the Final Settlement Class.

4.3 Appointment Of Class Counsel. Solely for the purposes of this Settlement, the Parties stipulate and agree that Class Counsel shall be appointed as counsel for the Final Settlement Class.

4.4 Appointment Of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that the ILWYM Group, Inc. shall be appointed to serve as Settlement Administrator.

4.5 Conditional Nature Of Stipulation For Certification. Solely for the purposes of this Settlement, the Parties stipulate and agree to the certification of the Final Settlement Class. Should, for whatever reason, the Settlement not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Class

Members and/or the Class Claims should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly reserves its right to oppose claim or class certification in this and/or any other action should this Settlement not become effective.

4.6 Stay Of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

ARTICLE V

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

Because the Parties have stipulated to the certification of the Class for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, as set forth in Section IV, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court. If the Court does not grant either the Preliminary or Final Approval of the settlement, the fact that the Parties were willing to stipulate to class certification for the purposes of this Agreement shall have no bearing on, or be admissible in connection with, the issue of whether any class should be certified in a non-settlement context. If the Final Effective Date does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly reserves the right to challenge the propriety of class certification for any purpose if the settlement does not become final.

The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain Court approval and implement this Agreement. The procedure for obtaining Court approval of and implementing this Agreement shall be as follows.

Section 5.01: Motion for Conditional Class Certification and Preliminary Approval

Representative Plaintiff shall bring a motion before the Court for an order

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1 conditionally certifying the Class based on the preliminary approval of this Agreement,
2 including the Class Notice attached hereto as Exhibit "A." The date that the Court grants
3 preliminary approval of this Agreement shall be the "Preliminary Approval Date."

4 **Section 5.02: The Claims Administrator**

5 A court-appointed third-party Claims Administrator will serve to administer this
6 Settlement pursuant to the terms herein. The Claims Administrator will administer the
7 settlement by performing address verification for the Class Members, distributing the Class
8 Notice and Reminder Postcards, if necessary, performing skip traces, receiving and recording
9 completed Settlement Opt-Outs, adjudicating Class Members' disputes over wages earned
10 during the Class Period in the relevant positions as an hourly and/or non-exempt
11 merchandiser, providing Class Counsel and counsel for Defendant with weekly updates on
12 the status of Opt-Outs, and handling any potential inquiries about the calculation of the
13 Individual Settlement Amounts. The Claims Administrator shall provide the Parties with the
14 names of individuals who submitted timely Opt-Outs after the expiration of the claims period
15 for inclusion in the proposed final approval Order. The actions of the Claims Administrator
16 shall be governed by the terms of this Stipulation. The Parties, through their counsel, may
17 provide written information needed by the Claims Administrator pursuant to the Stipulation.

18 All costs of administering the Settlement, including but not limited to all costs and
19 fees associated with preparing, issuing, and mailing any and all notices to Class Members, all
20 costs and fees associated with computing, processing, reviewing, and mailing the Individual
21 Settlement Payments, all costs and fees associated with preparing any tax returns and any
22 other filings required by any governmental taxing authority or agency, all costs and fees
23 associated with preparing any other notices, reports, or filings to be prepared in the course of
24 administering disbursements from the Net Fund Value Amount, and any other costs and fees
25 incurred and/or charged by the Claims Administrator in connection with the execution of its
26 duties under this Agreement ("Claims Administration Costs"), anticipated to be not more
27 than Ten Thousand Dollars (\$10,000), shall be paid out of the Gross Fund Value Amount.
28

1 **Section 5.03: Notice to Class Members**

2 **a. Initial Identification of Class Members:** Within ten (10) calendar days
3 following entry of the Preliminary Approval Order, Defendant shall provide to the Claims
4 Administrator a confidential list in an Excel spreadsheet format containing the name and last
5 known address, telephone number, and social security number of each Class Member. This
6 information shall be treated as confidential.

7 **b. Mailing of Class Notice:** Promptly upon receipt of the Class Member
8 information from Defendant, the Claims Administrator shall attempt to obtain updated
9 addresses for Class Members from the U.S. Postal Service and Accurint. Within fourteen
10 (14) calendar days after receipt of the Class Member information from Defendant, or receipt
11 of any updated addresses from the U.S. Postal Service, whichever is later, the Claims
12 Administrator shall mail the Class Notice to all Class Members via first-class mail using the
13 updated address information. With respect to each Class Notice that is returned as
14 undeliverable, the Claims Administrator shall promptly attempt to determine a correct
15 address using an additional skip trace service such as Experian and shall re-send the Class
16 Notice via first-class mail to any new address thereby determined within 10 days of receiving
17 the notice that the Class Notice was undeliverable.

18 **c. Notification to Counsel:** No later than ten (10) days prior to the Final
19 Fairness and Approval Hearing, the Claims Administrator shall provide Defense Counsel and
20 Class Counsel with a declaration attesting to completion of the notice process, including any
21 attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices,
22 as well as the number of valid opt-outs that the Claims Administrator received. Upon
23 approval by the court, compliance with the procedures described in this Section 5.03.b shall
24 constitute due and sufficient notice to Class Members of this proposed Settlement and the
25 Final Fairness and Approval Hearing and shall satisfy the requirement of due process.
26 Nothing else shall be required of the Parties, Class Counsel, Defense Counsel, or the Claims
27 Administrator to satisfy the requirements of providing notice of the proposed Settlement and
28 the Final Fairness and Approval Hearing.

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1 **Section 5.04: Responses to Notice**

2 **a. Requests for Exclusion from Class**

3 For any Class Member other than the Representative Plaintiff to validly exclude
4 himself or herself from the Class and this Settlement (*i.e.*, to validly opt-out), a written
5 request for exclusion must be signed by the Class Member or his or her authorized
6 representative, and must be sent to the Claims Administrator, postmarked by no later than
7 thirty (30) days after the date the Claims Administrator initially mails the Class Notice to the
8 Class Members. For Notices re-mailed by the Claims Administrator pursuant to section
9 5.03.b, the written request for exclusion must be postmarked by no later than thirty (30) days
10 of the initial mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is
11 later. The Class Notice shall contain individualized estimated payments, set forth
12 instructions on how to opt-out and include the language to be used in a request for exclusion.
13 The date of the initial mailing (or re-mailing for Class Notices re-mailed) of the Class Notice
14 and the date the signed request for exclusion was postmarked, shall be conclusively
15 determined according to the records of the Claims Administrator. Any Class Member who
16 timely and validly requests exclusion from the Class and this Settlement shall become a Non-
17 Participating Class Member and shall not be entitled to any Individual Settlement Payment,
18 shall not be bound by the terms and conditions of this Agreement, and shall not have any
19 right to object, appeal, or comment thereon.

20 **b. Objections to Settlement**

21 For any Class Member to object to this Agreement, or any term of it, the person
22 making the objection must not submit a request for exclusion (*i.e.*, must not opt-out), and
23 must, by no later than thirty (30) days after the Class Notice was initially mailed to the Class
24 Members, file with the Court and serve on Class Counsel and Defense Counsel, a written
25 statement of the grounds of objection, signed by the objecting Class Member or his or her
26 attorney, along with all supporting papers. For Class Notices re-mailed by the Claims
27 Administrator pursuant to section 5.03.b, written statements of the grounds for objection
28 must be filed and served no later than thirty (30) days after the initial mailing of the Class

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1 Notice or twenty (20) days of the re-mailing, whichever is later. The date of mailing or re-
2 mailing of the Class Notice to the objecting Class Member shall be conclusively determined
3 according to the records of the Claims Administrator. The Court retains final authority with
4 respect to the consideration and admissibility of any Class Member objections.

5 Counsel for the Parties shall file any response to the objections submitted by objecting
6 Class Members at least ten (10) court days before the date of the Final Fairness and Approval
7 Hearing or ten (10) days after the receipt of the notice of objection, whichever is later.

8 **c. Failure to Object**

9 Any Class Member who fails to timely file and serve such a written statement of his
10 or her intention to object shall be foreclosed from making any objection to this settlement,
11 unless otherwise ordered by the Court.

12 **d. Failure to Timely Opt-Out**

13 Any Class Member who fails to submit a timely request for exclusion from the Class
14 automatically shall be deemed a member of the Final Settlement Class whose rights and
15 claims with respect to the issues raised in the Action are determined by the Court's Final
16 Order, and by the other rulings in the Action.

17 **e. Right of Defendant to Void Agreement**

18 If five (5%) or more of Class Members make a valid request to be excluded from the
19 Class as described in Section 5.04.a above and thus become Non-Participating Class
20 Members, Defendant shall have the right, but not the obligation, to void the Agreement. If
21 Defendant exercises that right to void the Agreement, then the Parties shall have no further
22 obligations under the Agreement, including any obligation by Defendant to pay the Gross
23 Fund Value Amount, or any amounts that otherwise would have been owed under this
24 Agreement, except that Defendant shall pay the Claims Administrator's reasonable fees and
25 expenses incurred as of the date that Defendant exercises their right to void the Agreement.
26 Defendant shall notify Class Counsel and the Court whether they are exercising the right to
27 void the Agreement no later than ten (10) calendar days after the Claims Administrator
28 notifies the Parties of the final total number of valid requests to be excluded.

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Section 5.05: Final Fairness and Approval Hearing

a. Final Approval Hearings

On the date set forth in the Order of Preliminary Approval and Class Notice, which shall be approximately one hundred and five (105) days after the initial mailing of the Notice of Proposed Class Action Settlement, or on such other reasonable date as set by the Court, a Final Fairness and Approval Hearing shall be held before the Court in order (1) to review this Agreement and determine whether the Court should give it final approval; and (2) to consider any timely objections made pursuant to Section 5.04.b above and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this Agreement and shall submit to the Court a proposed Final Order approving the Settlement and which shall be entered in the Action.

b. Vacating, Reversal, or Material Modification of Final Order and Judgment on Appeal or Review

If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such that there is a material modification to the Settlement and that court's decision is not completely reversed, and the Final Order and Judgment is not fully affirmed on review by a higher court, then Representative Plaintiff and Defendant shall each have the right, but not the obligation, to void the Settlement, which the Party must do by giving written notice to the other Parties, the final reviewing court, and the Court not later than ten (10) business days after the final reviewing court's decision vacating, reversing, or materially modifying the Final Order becomes final and non-appealable. If either Party exercises its right to void the Agreement under this section, then the Parties shall have no further obligations under the Agreement, including any obligation by Defendant to pay the Gross Fund Value Amount, or any amounts that otherwise would have been owed under this Agreement. The Party exercising its right to void the Agreement shall pay the Claims Administrator's reasonable fees and expenses incurred as of the date the Party exercises its right to void the Agreement. If the Parties mutually agree to void the Agreement, then the

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1 Claims Administrator's reasonable fees and expenses incurred as of the date the Parties
2 exercise their right to void the Agreement shall be split equally. A vacation, reversal, or
3 decrease of the Court's award of the Service Award or Class Counsel's fees or costs shall not
4 constitute a vacation, reversal, or material modification of the Final Order and Judgment
5 within the meaning of this paragraph.

6 **Section 5.06: Settlement Payment Procedures**

7 **a. Settlement Sum**

8 In exchange for the releases set forth in this Agreement, Defendant agrees to pay the
9 Gross Fund Value Amount of One Hundred Fifty Thousand Dollars (\$150,000.00), which is
10 the total and all-inclusive maximum amount Defendant shall be obligated to pay under the
11 Settlement embodied by this Agreement. The Settlement Sum includes Class Counsel's
12 attorney's fees of not more than Fifty Thousand Dollars and No Cents (\$50,000.00) and
13 litigation costs not to exceed Twenty-Five Thousand Dollars (\$25,000.00), a Service Award
14 for Representative Plaintiff of not more than Seven Thousand Five Hundred Dollars
15 (\$7,500.00), and the Claims Administration Costs anticipated to be not more than Fifteen
16 Thousand Dollars (\$15,000.00).

17 The Net Fund Value Amount is estimated to be Fifty-Two Thousand Five Hundred
18 Dollars and No Cents (\$52,500.00) plus any residuals from amounts requested in this
19 paragraph which are not ultimately distributed to the respective Parties due to invoicing of a
20 lesser amount.

21 **b. Allocation of Settlement Amount:** In full and complete settlement of the
22 Action and subject to this Settlement being approved by the Court, Defendant shall pay an
23 aggregate sum not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00), (the
24 "Gross Fund Value Amount"). The Gross Fund Value Amount of \$150,000.00 shall be paid
25 to the Claims Administrator no later than Fifteen (15) calendar days after the Final Effective
26 Date. If the Court does not grant final approval upon the material terms of the settlement
27 (other than modification of the requested attorney's fees, costs or class representative service
28 award) or if five (5%) or more to the putative class members opt-out as set forth in Section

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1 5.04(e) and the Defendant elects to void the settlement, Defendant shall have no further
2 obligation under this Agreement. If the Court grants final approval of the settlement, the
3 settlement funds shall be disbursed as follows:

4 **1. Reasonable attorney's fees and litigation expenses:** Class Counsel
5 have stated they shall request that the Court award them reasonable attorney's fees in an
6 amount up to Fifty Thousand Dollars and No Cents (\$50,000.00) and collective litigation
7 costs in an amount up to Twenty-Five Thousand Dollars (\$25,000.00). Defendant has agreed
8 neither to oppose nor adversely comment on the fees and litigation costs request. The award
9 of reasonable attorney's fees and litigation costs granted by the Court shall be paid out of the
10 Gross Fund Value Amount within twenty calendar days of the Final Effective Date in
11 accordance with Section 5.06.d.2-3, below. Class Counsel may elect to have the Settlement
12 Administrator, directly or indirectly, disperse all or part of its attorney's fees paid to Class
13 Counsel in periodic payments, through a structured settlement. Class Counsel will bear any
14 and all costs, fees, and expenses of administration for any periodic payments of such
15 attorney's fees and shall be fully responsible for any taxes, costs, liabilities, attorneys' fees,
16 and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to,
17 or incurred in connection with any such periodic payments, including, without limitation,
18 any such issues, claims and/or disputes brought by the state or federal government
19 concerning the payment of taxes thereon. Class Counsel shall indemnify, defend, and hold
20 Defendant harmless for any and all taxes, costs, liabilities, attorneys' fees, and/or penalties
21 resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in
22 connection with any such periodic payments.

23 **2. Reasonable expenses of the Claims Administrator:** The Claims
24 Administrator shall be paid out of the Gross Fund Value Amount and such payment shall not
25 constitute payment to any Participating Class Member(s). The Claims Administration Costs,
26 expected not to exceed Fifteen Thousand Dollars (\$15,000.00), shall be paid out of the
27 settlement funds within thirty calendar days after the Final Effective Date in accordance with
28 Section 5.06.d.1, below.

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1
2 **3. Reasonable Service Award to the Representative Plaintiff:**

3 Subject to Court approval, the Representative Plaintiff shall make a separate
4 application for up to Seven Thousand Five Hundred Dollars (\$7,500.00) as a Service Award.
5 The Service Award shall be paid by check made payable to the Representative Plaintiff,
6 which shall be delivered by the Claims Administrator to Class Counsel within thirty (30)
7 calendar days after the Final Effective Date. The Service Award shall be paid out of the
8 Gross Fund Value Amount and shall not constitute payment(s) to any Participating Class
9 Member(s).

10 It is the intent of the Parties that the Service Award represent payment to
11 Representative Plaintiff for the additional risks undertaken in prosecuting this action and her
12 service to the Class Members, and not wages, thus, the Claims Administrator shall not
13 withhold any taxes from the Service Award. The Service Award shall be reported on a Form
14 1099, which shall be provided by the Claims Administrator to the Representative Plaintiff
15 and to the pertinent taxing authorities as required by law. Although it is the contemplation of
16 the Parties that the Service Award does not represent wages, the Internal Revenue Service,
17 the California Franchise Tax Board, or some other taxing authority may take the position that
18 some or all of the Service Award constitutes wages for income tax and withholding
19 purposes. The Representative Plaintiff agrees to assume the responsibility of remitting to the
20 Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing
21 authority the amounts required by law, if any, to be withheld by Defendant from the Service
22 Award paid under this Agreement and any liability assessed against Defendant for failure to
23 withhold the required amount, if any.

24 **4. Allocation to Participating Class Members:** The amount remaining
25 from the Gross Fund Value Amount after deducting the court-awarded reasonable attorney's
26 fees and litigation costs, reasonable Claims Administration Costs, and reasonable Service
27 Award payment (the "Net Fund Value Amount") shall be distributed to members of the Class
28 in accordance with the formula set forth below in Section 5.06.c. Final Settlement Class

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members are not eligible to receive any compensation other than the Individual Settlement Payments discussed below.

c. Individual Settlement Payments: The Individual Settlement Payments shall be calculated as follows:

1. Calculation: Each Class Member of the Final Settlement Class who does not Opt-Out shall be eligible to receive his/her Individual Settlement Payment, which shall be based on information contained in Defendant's pertinent payroll records, and calculated as follows:

i) The Settlement Share will be calculated by dividing the Net Settlement Amount by each Participating Class Member, on an equal per capita basis.

2. Dispute Resolution: The Claims Administrator shall have the initial responsibility of resolving all disputes that arise during the claims administration process. In the event the Claims Administrator cannot resolve a dispute based on a review of the available information, the Claims Administrator shall request a conference call between the Claims Administrator, Class Counsel, and Defense Counsel to discuss and resolve the dispute. After such call, the Claims Administrator shall resolve the dispute, and such resolution shall be final and binding on the Class Member. In advance of the conference call, the Claims Administrator shall fax or email copies of all available information to all counsel.

3. Fair Formula: The Parties hereby agree that the formula for allocating payments to Participating Class Members as provided herein is reasonable and designed to provide a fair settlement to the Participating Class Members.

4. Allocation of Net Fund Value Amount Payments and Taxes: All Individual Settlement Payments made to Participating Class Members under this Agreement shall be allocated as penalties and interest, which shall not be subject to tax withholding, but Participating Class Members will receive a 1099 for those payments. Defendant shall not make as part of this Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, bonuses, 403(b), or profit-sharing plans

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1 related to monies paid as a result of this Agreement.

2 The Parties understand and agree that Defendant is not providing tax or legal advice,
3 or making representations regarding tax obligations or consequences, if any, related to this
4 Agreement, and that the members of the Final Settlement Class will assume any such tax
5 obligations or consequences that may arise from this Agreement, and that Final Settlement
6 Class Members shall not seek any indemnification from Defendant in this regard. The
7 Parties agree that, in the event that any taxing body determines that additional taxes are due
8 from any Final Settlement Class Member, such Class Member assumes all responsibility for
9 the payment of any such taxes.

10 **d. Timing of Settlement Payments:** As set forth in Section 5.06.b. above, no
11 later than fifteen (15) calendar days following the Final Effective Date, Defendant shall remit
12 the full Gross Fund Value Amount to the Claims Administrator via wire transfer (or other
13 method reasonably calculated to be received by the Claims Administrator within fifteen (15)
14 calendar days after the Final Effective Date) for the purposes of making the payments
15 described herein. Payments from the Gross Settlement Fund shall fund the settlement and
16 meet the obligations of Section 5.06.b and be paid by the Claims Administrator within the
17 time frames set forth below in sections 5.06.d.1-5.

18 Payments of the following from the Gross Fund Value Amount shall be made in
19 accordance with the following subparagraphs:

20 **1. Claims Administrator:** The Claims Administrator shall be paid the
21 Claims Administration costs from the Gross Fund Value, expected to be not more than
22 Fifteen Thousand Dollars (\$15,000), thirty calendar days after the Final Effective Date.

23 **2. Class Counsel's Fees:** The amounts approved by the Court for Class
24 Counsel's fees shall be paid by the Claims Administrator within twenty (20) calendar days
25 after the Final Effective Date and the Claims Administrator shall pay the total attorney's fee
26 award to Class Counsel.

1 **3. Class Counsel's Costs:** The amount approved by the Court for Class
2 Counsel's costs shall be paid by the Claims Administrator within twenty (20) calendar days
3 after the Final Effective Date.

4 **4. Class Representative's Service Award:** The amount approved by the
5 Court for the Class Representative's Service Award shall be paid by the Claims
6 Administrator to Class Counsel within twenty (20) calendar days after the Final Effective
7 Date.

8 **5. Individual Settlement Payments:** Within fifteen (15) days of the last
9 date for Opt-Outs or Objections to be timely submitted in accordance with Section 5.04.a and
10 5.04.b, above, the Claims Administrator shall provide to the Parties a written statement of all
11 Individual Settlement Payments to be paid to all Participating Class Members and all
12 required payroll taxes. The Claims Administrator will distribute the Individual Settlement
13 Payments to all Participating Class Members within thirty (30) calendar days of the Final
14 Effective Date. The Claims Administrator shall issue to each Participating Class Member a
15 check in the amount of his or her Individual Settlement Payment, as described in Section
16 5.06.c.1 (less applicable taxes and withholdings) via first-class mail. Uncashed checks not
17 negotiated within 180 days of their issuance are void. All Final Settlement Class Members
18 shall be bound by this Agreement and the release herein even if the Class Member does not
19 cash the settlement check issued to him or her comprising his or her Individual Settlement
20 Payment. If any Settlement Class Member has not cashed his or her Settlement Payment
21 check within ninety (90) days of issuance, the Settlement Administrator shall mail that Class
22 Member a postcard reminding him/her of the deadline to cash such check and providing
23 information as to how to obtain a reissued check in the event the check was lost, stolen or
24 misplaced. Any checks issued to Class Members shall remain valid and negotiable for one
25 hundred twenty (120) days from the date of issuance. After all settlement funds have been
26 distributed and all checks issued to Settlement Class Members have either been cashed or
27 have remained uncashed and gone stale, the Settlement Administrator shall handle in
28 accordance with Code of Civil Procedure § 384(b) (as amended on January 1, 2019). The

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1 unpaid residue, plus any interest that accrued thereon, shall be paid by the Settlement
2 Administrator to a mutually agreed upon neutral *cy pres* recipient, which will be a nonprofit
3 organization or foundation that supports projects that will benefit the class or similarly
4 situated persons, subject to Court approval.

5 **e. Residuals**

6 If any amount of the Gross Fund Value Amount remains unallocated as a result of
7 modification to the requested attorney's fees, costs, Class Representative Service Award or
8 Claims Administration Costs, this amount shall become part of the Net Fund Value Amount
9 and be distributed pursuant to Section 5.06.c.

10 **f. Circular 230 Disclaimer**

11 Each party to this agreement (for purposes of this section, the "acknowledging party"
12 and each party to this agreement other than the acknowledging party, an "other party")
13 acknowledges and agrees that (1) no provision of this agreement, and no written
14 communication or disclosure between or among the parties or their attorneys and other
15 advisers, is or was intended to be, nor shall any such communication or disclosure constitute
16 or be construed or be relied upon as, tax advice within the meaning of united states treasury
17 department circular 230 (31 cfr part 10, as amended); (2) the acknowledging party (a) has
18 relied exclusively upon his, her, or its own, independent legal and tax counsel for advice
19 (including tax advice) in connection with this agreement, (b) has not entered into this
20 agreement based upon the recommendation of any other party or any attorney or advisor to
21 any other party, and (c) is not entitled to rely upon any communication or disclosure by any
22 attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
23 acknowledging party; and (3) no attorney or adviser to any other party has imposed any
24 limitation that protects the confidentiality of any such attorney's or adviser's tax strategies
25 (regardless of whether such limitation is legally binding) upon disclosure by the
26 acknowledging party of the tax treatment or tax structure of any transaction, including any
27 transaction contemplated by this agreement.
28

ARTICLE VI

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 6.01: No Admission

Defendant denies that Defendant has engaged in any unlawful activity, that Defendant failed to comply with the law in any respect, that Defendant has any liability to anyone based upon the claims asserted in the Action, and Defendant asserts that, but for this Settlement, a class should not be certified in this Action. This Agreement is entered into solely for the purpose of compromising highly-disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant.

Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time, energy and resources of Defendant have been spent and, unless this Settlement is agreed to, will continue to be devoted to the defense of the Claims asserted by the Class. Defendant has also taken into account the risks of further litigation in reaching this decision. Defendant has, therefore, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Claims as set forth in the Action.

As to the claims and allegations in this Action, Defendant denies and continues to deny each of those claims and contentions alleged by Representative Plaintiff and the Class in the Action. Defendant has repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

Section 6.02: Non-Evidentiary Use

Whether or not the settlement becomes final, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against

any of the Released Parties in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding, except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that a Class Member has resolved any of his/her claims released through this Agreement.

Section 6.03: Nullification

The Parties have agreed to the certification of the Class for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason fail to certify a class for settlement, or (b) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the amount of attorney's fees, costs and Service Awards awarded), or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in this Action or any other action, and in any of those events, Defendant expressly reserves the right to oppose any motion for class certification.

Invalidation of any material portion of this Agreement, except for the amount of attorney's fees, costs and Service Award, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

ARTICLE VII

RELEASES

Section 7.01: Releases by Class Members

On the Final Effective Date, the Final Settlement Class shall be bound by this Agreement.

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1 **Section 7.02: Release of All Claims Relating To The Action**

2 Upon the court's final approval of the class settlement and entry of Final Order and
3 Judgment, each member of the Final Settlement Class shall be deemed to have released and
4 discharged each Defendant and all of its former and present parents, and affiliates, and their
5 officers, directors, employees, partners, shareholders, attorneys, and agents, and any other
6 successors, assigns or legal representatives from any and all claims alleged through this
7 Litigation, or that could have been alleged based on the facts therein, including claims for (a)
8 failure to make proper disclosures and to obtain proper authorizations pursuant to the Fair
9 Credit Reporting Act; (b) failure to make proper disclosures and to obtain proper
10 authorizations pursuant to the Investigative Consumer Reporting Agencies Act; and (c)
11 failure to make proper disclosures and to obtain proper authorizations pursuant to the
12 Consumer Credit Reporting Agencies Act (the "Litigation"), based on the facts or claims
13 alleged in the First Amended Complaint in the action, including statutory, constitutional,
14 contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees,
15 litigation costs, restitution, and equitable relief in their positions as Settlement Class
16 Members during the Class Period related to the claims asserted in the First Amended
17 Complaint. This release is not intended to release any Class Member claims for wage and
18 hour claims.

19 **Section 7.03: 1542 Release By Plaintiff Julian Stites-Tracy**

20 In addition to the Settlement Class Members' Released Class Claims described above,
21 in exchange for the consideration recited in this Agreement, including but not limited to the
22 court-approved Class Representative Service Award, Stites-Tracy enters into a Complete and
23 General Release which releases, acquits, and discharges any covenants not to sue any of the
24 Releasees for any claim, whether known or unknown, which Stites-Tracy has ever had, or
25 hereafter may claim to have, arising on or before the date that she signs this Agreement,
26 including without limitation to, any claims relating to or arising out of any aspect of her
27 employment, or the termination of her employment, with Defendant, any claims for unpaid
28 compensation, wages, reimbursement for business expenses, penalties, or waiting time

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1 penalties under the California Labor Code, the California Business and Professions Code, or
2 any federal, state, county or city law or ordinance regarding wages or compensation; any
3 claims for employee benefits, including without limitation, any claims under the Employee
4 Retirement Income Security Act of 1974; any claims of employment discrimination on any
5 basis, including without limitation, any claims under Title VII of the Civil Rights Act of
6 1964, the Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the
7 Americans with Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the
8 California Government Code, or any other federal, state, county or city law or ordinance
9 regarding employment discrimination. Stites-Tracy acknowledges and agrees that the
10 foregoing general release is given in exchange for the consideration provided to her under
11 this Agreement by Defendant. However, this release shall not apply to claims for workers'
12 compensation benefits, unemployment insurance benefits, pension or retirement benefits, or
13 any other claim or right that as a matter of law cannot be waived or released.

14 Stites-Tracy expressly waives any rights or benefits available to her under the
15 provisions of Section 1542 of the California Civil Code, which provides as follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
17 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
18 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
19 AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
20 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
21 PARTY.

22 Stites-Tracy understands fully the statutory language of Civil Code section 1542 and,
23 with this understanding, nevertheless elects to, and does, assume all risks for claims that
24 have arisen, whether known or unknown, which she ever had, or hereafter may claim to
25 have, arising on or before the date of her signature to this Agreement, and specifically
26 waives all rights she may have under California Civil Code section 1542.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01: Amendments or Modification

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

Section 8.02: Representations and Warranties of Defendant's Records

Defendant represent and warrant that the documents provided to Class Counsel during and after mediation that constituted a material condition to this Settlement are substantially accurate to the best of their knowledge.

Section 8.03: Assignment

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

Section 8.04: Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

Section 8.05: Entire Agreement

This Agreement, including the Exhibit referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto with respect of the subject matter contained herein. In case of any conflict between text contained in Articles I through VI of this Agreement and text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through VI) shall be controlling. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this

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1 Agreement other than those expressly set forth or referred to herein. This Agreement
2 supersedes all prior agreements and understandings among the Parties hereto with respect to
3 the settlement of the Action including correspondence between Class Counsel and Defense
4 Counsel and the Memorandum of Understanding signed by the Parties on August 13, 2019.
5 No rights hereunder may be waived except in writing.

6 **Section 8.06: Counterparts and Fax Signatures**

7 This Agreement, and any amendments hereto, may be executed in any number of
8 counterparts and any Party and/or their respective counsel hereto may execute any such
9 counterpart, each of which when executed and delivered shall be deemed to be an original
10 and all of which counterparts taken together shall constitute one instrument. It shall not be
11 necessary in making proof of this Agreement or any counterpart hereof to produce or account
12 for any of the other counterparts. A fax or electronic signature on this Agreement shall be as
13 valid as an original signature.

14 **Section 8.07: Meet and Confer Regarding Disputes**

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

19 **Section 8.08: Agreement Binding on Successors**

20 This Agreement shall be binding upon, and inure to the benefit of, the successors in
21 interest of each of the Parties.

22 **Section 8.09: Cooperation in Drafting**

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

26 **Section 8.10: Fair Settlement**

27 Representative Plaintiff, Defendant, Class Counsel, and Defense Counsel have arrived
28 at this Agreement through arm's-length negotiation and believe that this Agreement reflects

1 a fair, reasonable, and adequate settlement of the Action considering all relevant factors,
2 current and potential, and believe the Agreement is consistent with public policy and fully
3 complies with applicable provisions of law.

4 **Section 8.11: Headings**

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

8 **Section 8.12: Notice**

9 All notices, demands, or other communications given under this Agreement shall be
10 in writing and deemed to have been duly given as of the third business day after mailing by
11 first-class United States mail, addressed as follows:

12 *To Plaintiff and the Class:*

13 James R. Hawkins, Esq.
14 Gregory Mauro, Esq.
15 Michael Calvo, Esq.
16 James Hawkins APLC
17 9880 Research Drive, Suite 200
18 Irvine, CA 92618
19 Telephone: 949-387-7200
20 Facsimile: 949-387-0267

21 *To Defendant:*

22 Yvette Davis
23 HAIGHT BROWN & BONESTEEL LLP
24 2030 Main Street, Ste. 1525
25 Irvine, CA 92614
26 Telephone: (714) 426-4600
27 Facsimile: (714) 754-0826

28 Kathryn D. Terry
Lauren Barghols Hanna
PHILLIPS MURRAH P.C.
101 N. Robinson
Corporate Tower, 13th Fl.
Oklahoma City, OK 73102
Telephone: (405)235-4100
Facsimile: (405) 235-4133

Section 8.13: Enforcement and Continuing Jurisdiction of the Court

1 To the extent consistent with class action procedure, this Agreement shall be
2 enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The
3 Court shall retain continuing jurisdiction over this Action and over all Parties and Class
4 Members, to the fullest extent to enforce and effectuate the terms and intent of this
5 Agreement.

6 **Section 8.14: Mutual Full Cooperation**

7 The Parties agree to fully cooperate with each other to accomplish the terms of this
8 Agreement, including but not limited to execution of such documents, and to take such other
9 action as may reasonably be necessary to implement the terms of this Agreement. The
10 Parties to this Agreement shall use their best efforts, including all efforts contemplated by
11 this Agreement, to effectuate this Agreement and the terms set forth herein. In the event the
12 Parties are unable to reach agreement on the form or content of any document needed to
13 implement the Settlement, or on any supplemental provisions that may become necessary to
14 effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court,
15 after conferral as described above.

16 **Section 8.15: Authorization to Act**

17 Class Counsel warrant and represent that they are authorized by the Representative
18 Plaintiff, and Defense Counsel warrant that they are authorized by Defendant, to take all
19 appropriate action required to effectuate the terms of this Agreement, except for signing the
20 documents, including but not limited to this Agreement, that are required to be signed by the
21 Parties.

22 **Section 8.16: No Reliance on Representations**

23 The Parties have made such investigation of the facts and the law pertaining to the
24 matters described herein and to this Agreement as they deem necessary, and have not relied,
25 and do not rely, on any statement, promise, or representation of fact or law, made by any of
26 the other Parties, or any of their agents, employees, attorneys, or representatives, with regard
27 to any of their rights or asserted rights, or with regard to the advisability of making and
28 executing this Agreement, or with respect to any such matters. No representations,

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warranties, or inducements have been made to any Party concerning this Agreement other than those expressly set forth or referred to herein.

Section 8.17: No Collateral Attack

This Agreement shall not be subject to collateral attack by any Class Member or any recipient of the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall include but not be limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of his or her Individual Settlement Payment.

Section 8.18: No Public Comment/Non-Disparagement Clause

Representative Plaintiff and Class Counsel will not make any public disclosure of the settlement terms until after the settlement is preliminarily approved by the Court. Class Counsel will take all steps necessary to ensure Representative Plaintiff is aware of, and will encourage her to adhere to, the restriction against any public disclosure of the settlement terms until after the settlement is preliminarily approved by the Court. None of these prohibitions on public comment shall prohibit Class Counsel's communications with the Court as necessary to finalize the settlement.

Representative Plaintiff and Defendant represent and agree that they have not and will not directly or indirectly disparage, encourage, assist, or induce others to disparage the other Party. For the purposes of this Agreement, "disparage" shall include making or publishing any statement or other content, whether in written, oral, electronic, digital or other form, truthful or otherwise, which may reasonably be expected to adversely affect the business, public image, reputation or goodwill of the other Party, including, without limitation, their operations, employees, directors or related persons, and their past, present or future products or services and the facts relating to Representative Plaintiff's past employment.

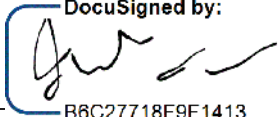
Section 8.19: Interim Stay of Proceedings

The Parties agree to the Court staying and holding all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement Hearing to be conducted by the Court.

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EXECUTION BY PARTIES AND COUNSEL

1/13/2023
Dated January ____, 2023 
Julian Stites-Tracy, Representative Plaintiff

Dated January 12, 2023 
By: Lori Bennett
For Defendant Driveline Retail Merchandising, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated January 13, 2023 
James R. Hawkins, Esq.
Gregory Mauro, Esq.
Michael Calvo, Esq.
James Hawkins APLC
Attorneys for Representative Plaintiff
Dated January 12, 2023 
Yvette Davis, Esq.
HAIGHT BROWN & BONESTEEL LLP
Attorneys for Defendant

TABLE OF EXHIBITS

Exhibit A Notice of Proposed Class Action Settlement