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County of Monterey
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By: Wendy Lopez, Deputy

Jonathan P. LaCour, Esq. (SBN: 285098)
Lisa Noveck, Esq. (SBN: 316660)
Jameson Evans, Esq. (SBN: 340954)
EMPLOYEES FIRST LABOR LAW P.C.
1 S. Fair Oaks Ave., Suite 200
Pasadena, California 91105
Telephone: (310) 853-3461
Facsimile: (949) 743-5442
Email: jonathanl@pierrelacour.com
lisan@pierrelacour.com
jamesone@pierrelacour.com

Attorneys for Plaintiff, JOSEPH KIM and JESUS OLIVEROS ORTIZ
on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY

JOSEPH KIM, an individual, and JESUS
OLIVEROS ORTIZ, an individual, on behalf of
themselves and all others similarly situated,

Plaintiff,

v.

INCOTEC INTEGRATED COATING AND
SEED TECHNOLOGY, INC., a California
Corporation, CRODA, INC., a New Jersey
Corporation, and DOES 1 through 20, inclusive,

Defendants.

Case No.: 21CV001342

Assigned to the Hon. Carrie M. Panetta, Dept. 14

**DECLARATION OF JONATHAN LACOUR,
ESQ. IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

1 **DECLARATION OF JONATHAN LACOUR, ESQ.**

2 I, Jonathan LaCour, Esq., declare:

3 I am an attorney duly licensed to practice before all courts of the State of California and I am the
4 Managing Attorney at Employees First Labor Law, P.C., attorney of record for Plaintiffs Joseph Kim and
5 Jesus Oliveros Ortiz (“Plaintiff”) in the above-entitled case. The facts set forth in this declaration are
6 within my personal knowledge and, if called as a witness, I could and would competently testify as
7 follows.

8 1. Attached hereto as Exhibit “A” is a true and correct copy of the fully executed Joint
9 Stipulation of Class Action Settlement and Release (“Settlement Agreement”). The parties’ Settlement
10 Agreement is incorporated hereto by reference, and all defined terms herein shall have the same meaning
11 as set forth in the Settlement Agreement.

12 2. I have been actively engaged in this litigation from its inception, as have several other
13 attorneys and staff members in our firm. Employees First Labor Law P.C. has fully and actively
14 participated in every aspect of the litigation process including, but not limited to, conducting legal
15 research; conducting a thorough case investigation; participating in case strategy and analysis; drafting,
16 reviewing, and revising pleadings, motions, and the mediation brief; preparing for mediation and
17 settlement negotiations; negotiating the settlement; and participating in court appearances and motion
18 practice.

19 **Summary of Settlement Terms**

20 3. The motion for which this declaration is offered in support seeks preliminary approval of
21 a class action settlement negotiated and entered into at arm’s length by the parties herein.

22 4. Under the terms of the Settlement Agreement, the parties have agreed that all class action
23 claims brought on behalf of the approximately 41 non-exempt employees who worked for Defendants
24 Incotec Integrated Coating and Seed Technology and Croda, Inc. in California at any time during the
25 period of August 28, 2019 through the date the Court orders final approval of this class settlement shall
26 be fully and finally resolved for a Gross Settlement Amount of \$150,000.00. The Settlement Agreement
27 calls for the following deductions to be made with the resulting number being a pre-tax Net Settlement
28 Amount of approximately \$56,563.04 to be distributed to all Class Members who do not opt out:

- 1 • Up to 35% of the Gross Settlement Amount (\$52,500) to Plaintiff’s counsel for attorneys’
- 2 fees;
- 3 • \$5,936.96 to Plaintiff’s counsel for litigation costs and expenses; and
- 4 • Up to \$10,000 to CPT Group, Inc. for settlement administration costs.

5 **Clark/Kullar Analysis**

6 5. The Settlement Agreement should be approved in light of two California appellate
7 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v. Foot*
8 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

9 6. According to *Clark* and *Kullar*, when deciding whether a class-action settlement is fair,
10 adequate, and reasonable, a court can consider several recognized factors that are set forth in cases like
11 *Dunk v. Ford Motors Co.* (1996) 48 Cal.App.4th 1794, 1801. Those factors that a trial court may consider
12 during the approval process include (1) the extent of discovery completed and the stage of the proceedings;
13 (2) the strength of Plaintiff’s case in light of the settlement amount; (3) the risk, expense, complexity, and
14 likely duration of further litigation, as well as the risk of maintaining class action status through trial; (4)
15 the experience and views of counsel; and (5) the reaction of class members to the proposed settlement.
16 See *Clark, supra*, 175 Cal.App.4th at 799.

17 **1. The Extent of Discovery Completed and the Stage of Proceedings**

18 7. Before filing this lawsuit, Class Counsel investigated and researched the facts and
19 circumstances underlying the pertinent issues and applicable law. This required thorough discussions and
20 interviews between Class Counsel and Plaintiff and research into the various legal issues involved in the
21 case, namely, the current state of the law as it applied to various defenses, and meal period and rest break
22 law. Class Counsel also engaged in extensive factual investigation into the organization and operations of
23 Defendants in California. After conducting their initial investigation, Class Counsel determined that
24 Plaintiff’s claims were well suited for class action adjudication owing to what appeared to be a common
25 course of conduct affecting a similarly situated group of employees.

26 8. On April 23, 2021 Plaintiffs Joseph Kim and Jesus Oliveros Ortiz filed a lawsuit against
27 Defendants, and on November 30, 2023, Plaintiffs filed a first-amended class action complaint with claims
28 arising out of the California Labor Code in the California Superior Court for the County of Monterey,

1 entitled *Kim v. Incotec Integrated Coating and Seed Technology, Inc.*, Case No. 21CV001342 (the “Kim
2 Action”). The Kim Action is currently pending before the Honorable Carrie M. Panetta in Department 14
3 of the Monterey Superior Court.

4 9. The parties engaged in formal and informal discovery to assess the validity of Plaintiff’s
5 claims.

6 10. On July 26, 2023, the Parties participated in mediation before the Honorable S. James Otero
7 (the “Mediator”). The settlement discussions were conducted at arms’-length, and the Settlement is the
8 result of an informed and detailed analysis of Defendants’ potential exposure in relation to the costs and
9 risks associated with continued litigation. While the Parties could not initially resolve the Actions during
10 the full-day mediation, the Parties reached an agreement to settle the Kim Action that was fully executed
11 on January 29, 2024. The settlement discussions were conducted at arm’s-length. The settlement is the
12 result of an informed and detailed analysis of the risks facing all parties in litigating this case, including
13 but not limited to, careful consideration of the legal and factual obstacles to Plaintiff’s prospects of
14 obtaining class certification and succeeding on the merits, and Defendants’ defenses, as well as
15 Defendants’ potential exposure and the additional costs of litigating the Action. Based on their
16 investigation and evaluation of this case, Plaintiff’s counsel has concluded that the Settlement described
17 in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement
18 Class in light of all known facts and circumstances, defenses asserted by Defendants, adverse findings
19 regarding liability, and numerous potential appellate issues.

20 11. Class Counsel has actively litigated this case since the filing of the initial complaint. Class
21 Counsel has vigorously prosecuted this case and Defendants have vigorously contested it during the entire
22 course of this litigation. This discovery and investigation has included, among other things, (a) the
23 exchange of informal discovery; (b) inspection and analysis of time punches; (c) inspection and analysis
24 of documents; (d) in-depth analysis of potential class-wide damages; (e) significant research into the law
25 concerning Defendants’ defenses; and (f) extensive research of the applicable law with respect to the
26 claims asserted in the actions and the potential defenses thereto. This information enabled Class Counsel
27 to run damage models based on the analyzed data in light of countervailing interpretations of California
28

1 law. This is in stark contrast with *Kullar*, where it was unclear whether Plaintiff had even so much as
2 reviewed any documents. *Kullar, supra*, 168 Cal.App.4th at 129.

3 12. Based on their investigation and evaluation of this case, Plaintiff's counsel has concluded
4 that the Settlement described in the Settlement Agreement is fair, reasonable, and adequate and is in the
5 best interest of the Settlement Class in light of all known facts and circumstances, defenses asserted by
6 Defendants, adverse findings regarding liability, and numerous potential appellate issues.

7 **2. The Strength of Plaintiff's Case in Light of the Settlement Amount**

8 13. Under the terms of the Settlement Agreement, Defendants agree to pay a Gross Settlement
9 Amount of \$150,000.00.

10 14. Plaintiff and the Class Members were employed by Defendants in non-exempt positions in
11 the state of California. The crux of this case is that Defendants committed a series of wage and hour
12 violations against Plaintiff and Class Members: specifically, that under Defendants' policies and practices
13 1) Plaintiff and Class Members were denied meal and rest breaks and did not receive compensatory
14 premiums and 2) that Plaintiff and Class Members also did not receive all wages that they earned while
15 working for Defendants. Accordingly, Plaintiff contends that class certification would have been relatively
16 straightforward because such wage and hour violations were the result of Defendants' policies and
17 practices applied across all non-exempt employees comprising the Class in this matter.

18 15. Per Plaintiff's calculations based on the data Defendants provided, the total number of
19 Workweeks worked by all 41 Class Members during the Class Period is 10,335. The total number of
20 Workweeks worked by all Aggrieved Employees during the PAGA Period is 2,067.

21 16. The proposed Settlement provides for a Net Settlement Amount of \$56,563.04, which
22 means that each Class Member is anticipated to recover approximately \$5.47 per Workweek (\$56,563.04
23 Net Settlement Amount / 10,335 Workweeks), or \$1,379.59 per Class Member (\$56,563.04 Net
24 Settlement Amount / 41 Class Members). This represents an excellent recovery in light of the inherent
25 risks in proceeding in class action litigation.

26 17. Indeed, in addition to weighing the merits of the case against the potential risks and delays
27 of trial and even the possibility of resulting appeal, the conclusion to be drawn from the foregoing is that
28 neither liability nor damages were clear-cut, which is why the parties elected to settle this matter. Class

1 Counsel had to apply appropriate discounts in light of the real defenses to the merits in this case because
2 they posed real risks to being able to recover anything. Thus, this settlement, like most others, was the
3 product of compromise.

4 18. While there are considerable risks associated with class certification, a class action trial,
5 and resulting appeals, Class Counsel stood (and stands) reading and willing to take this case all the way
6 to the jury trial phase. That said, when presented with a six-figure settlement that will benefit a group of
7 employees in the very near future, the risk of later potentially recovering nothing, many years later, must
8 be candidly recognized and evaluated. For those reasons, Class Counsel is confident this proposed
9 settlement is in the best interests of the class. In sum, the settlement amount is fair and reasonable in light
10 of the strengths and weaknesses of Plaintiff's case.

11 **3. The Risk, Expense, and Likely Duration of Further Litigation, as well as the Risk of**
12 **Maintaining Class Status Through Trial**

13 19. The next *Clark/Kullar* factor, identified in the heading above, recognize that settlements
14 take into consideration the risks and expenses posed by further litigation and, in the class action context,
15 the risk of losing certification at any time. Consequently, it is appropriate that the trial court should keep
16 these considerations in mind when judging the adequacy of class action settlements.

17 20. Further litigation of this case posed real risks for a number of reasons. First there were the
18 risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in the previous
19 section. In that section, it was observed that almost every cause of action was subject to some unique
20 indeterminacy of its own.

21 21. The risks Class Counsel must consider in the face of a large, proposed settlement do not
22 end after certification. After a case is certified, that order is usually subject to decertification at later stages
23 in the litigation, and defense counsel routinely attack certified cases by filing numerous de-certification
24 motions, whether meritorious or not. The parties would need to prepare for a class action trial. There
25 would be voluminous expert discovery, and the parties would present competing trial plans to the Court
26 for consideration in managing a class-wide trial, with Defendants likely arguing throughout the process
27 that any class-action trial is inappropriate, which Plaintiff would vigorously contest throughout. A class-
28 wide jury trial would likely last several weeks at minimum, and involve party, class-member, expert and

1 percipient witness testimony. As with all jury trials, there is considerable risk for either party, and that risk
2 is amplified for both sides when the case involves over 41 absent class members.

3 22. Were Plaintiff to succeed in keeping the case certified and prevailing at a class action jury
4 trial, in a case of this magnitude, the resulting money judgment would likely be subject to appeals, where,
5 again, both sides would face considerable risk – for Plaintiff his hard-fought jury verdict could be
6 overturned, as could a favorable ruling for the defense. In addition, money judgments must be bonded,
7 and interest accrues during the pendency of appeal. The Settlement Class members still would not have
8 yet received any money during the appeal process, and Class Counsel could have to spend an appreciable
9 amount of time defending its trial court judgment in possibly several rounds of appeal.

10 23. Finally, it is usually preferable to reach an early resolution of a dispute because, in addition
11 to what has already been said, such resolutions save time and money that would otherwise go to litigation.
12 Most cases settle sooner or later. If this case ended up settling after further litigation, the settlement amount
13 would have taken into account the additional costs incurred, and there might have been less money
14 available for Settlement Class members after all was said and done. This is not just an abstract contention.
15 The parties were moving into the phase of this litigation where they would have had to depose even more
16 witnesses, such as additional managers, supervisors, and employees in order to establish liability for trial.
17 Discovery disputes would have certainly arisen. In contrast, the settlement provides real benefits for Class
18 Members here and now. The benefits are not insignificant for anyone, especially given the current
19 economic climate. Consequently, the risk and expense of further litigation outweighed any benefit that
20 might have been gained otherwise.

21 **4. Experience and Views of Counsel**

22 24. Class Counsel is well qualified because of our experience, knowledge, and resources to act
23 as counsel and represent Plaintiff and the Class in this action. Class Counsel has represented employees
24 in numerous representative action lawsuits involving wage-and-hour violations in California. A
25 substantial percentage of the firm’s practice is devoted to litigating wage-and-hour violations, and the
26 many of these cases are class or PAGA actions.

27 25. Employees First Labor Law, P.C. is actively involved in both class action and complex
28 litigation matters on an ongoing basis. Our firm deals extensively with employment law matters that

1 involve the analysis and ultimately presentation of wage and hour claims across large bodies of employees.
2 In addition to the present case, our firm served as counsel for many other representative wage-and-hour
3 lawsuits pending in various jurisdictions throughout California, including class-actions, PAGA cases, and
4 cases involving both of these types of representative claims.

5 26. Some examples of the recently tried or settled class and PAGA cases where Employees
6 First Labor Law, P.C. has served as counsel and prosecuted are the following: *Amy Piana v. LoanDepot.com,*
7 *LLC*, Orange County Case No. 30-2017-00913164-CU-OE-CXC; *Robert Hernandez Lopez Jr. v. Karhay, LLC,*
8 *Riverside County Case No. CVRI2102600;* *Jamie Sarinana v. Opticolor, Inc.,* Orange County Case No. 30-
9 2018-01010815-CU-OE-CJC, *Abraham Duran v. Second Street Promenade, LLC et al.,* Los Angeles
10 County Case No. 19STCV43696, *Victor DeGuzman v. First Direct Lending, LLC,* Orange County Case
11 No. 30-2018-00988428-CU-OE-CJC, *Brandon Chia v. RTI Systems PS,* Los Angeles County Case No.
12 20STCV16336, *Brian Bejarano v. Boulevard Nightlife Group, LLC et al.,* Los Angeles County Case No.
13 19STCV08303, *Claudio Fernandez et al. v. OC Auto Exchange, Inc.,* Los Angeles County Case No.
14 BC664860, *Alice Sadoyan et al. v. Platinum Black, Inc. et al.,* Los Angeles County Case No.
15 19STCV43793, *Albert Connie et al. v. Jerome Moss et al.,* Los Angeles County Case No. 20STCV26107,
16 *Emilio Leon et al. v. Bedabox, LLC et al.,* Central District of California Case No. 5:20-cv-02291 SP,
17 *Marcus Schubert v. Blizzard Entertainment, Inc.,* Orange County Case No. 30-2020-01172466-CU-OE-
18 CXC, *Marni Martin v. CalCare Hospice, Inc. et al.,* San Bernardino County Case No. CIVDS2011617,
19 *Alex Holdridge v. Complete Solar, Inc. et al.,* Los Angeles County Case No. 20STCV22344, *Brian Nelson*
20 *v. Great Western Sales, Inc.,* Orange County Case No. 30-2021-01196131-CU-OE-CXC, *Karla Munoz v.*
21 *Elite Chiropractic & Wellness Center et al.,* Los Angeles County Case No. 19STCV44328, *Monica Munoz*
22 *v. Ross Aviation Operations, LLC,* Riverside County Case No. PSC2003508, *Nicholas Marin v. Bendpak,*
23 *Inc.,* Ventura County Case No. 56-2019-00528355-CU-OE-VTA, *Sungmin Kim v. Veyo, LLC,* County of
24 San Diego Case No. 37-2020-00033184-CU-OE-CTL; and *Julia Lim et al. v. Looking Toward the Future, Inc.*
25 *et al.,* Los Angeles County Case No. 19STCV37114.

26 27. Class Counsel’s experience is helpful in assessing the reasonableness of settlements such
27 as the one at issue here; and from this experience Class Counsel concludes that this lawsuit could not have
28 been settled on better terms than provided under the present settlement agreement.

1 overseeing the notification to the Class Members, communicating with Class Members regarding the
2 proposed Settlement, administering the settlement if it is preliminarily approved, obtaining final judgment
3 of the action, and addressing any appeals or further proceedings that may occur.

4 33. Class Counsel took this case on a contingent-fee basis against a business represented by a
5 very reputable defense law firm. When we take contingency cases, we must pay careful attention to the
6 economics involved. Accordingly, when we take contingency cases, we anticipate that we shall, if
7 successful, receive a fee that exceeds our normal hourly rate; otherwise, the risk is often too great to bear.
8 Even when we work long hours, the number of hours in a day is limited. Because of this, when we take
9 on one particular matter, we are unable to take on other matters. When Class Counsel became involved in
10 this case, we realized the time commitment that it would entail, and we were forced to turn down matters
11 that we otherwise could have handled. We were forced to do so because of the thorough factual
12 investigation and development this case required. In sum, this case claimed a significant portion of Class
13 Counsel's time and attention throughout its pendency.

14 34. The parties heavily litigated this case from its inception. This included inspection and
15 analysis of documents; in-depth analysis of potential class-wide damages; preparing for class certification;
16 and extensive research of the applicable law with respect to the claims asserted in the actions and the
17 potential defenses thereto. Plaintiff and Class Counsel put in significant time and resources and did
18 everything at every stage of this case to try and obtain the best result for the proposed class.

19 35. The requested fee is reasonable for the services provided to Class Members and for the
20 benefits they will receive. Indeed, even with a modest multiplier under the lodestar theory (*see Bihun v.*
21 *AT&T Information System* (1993) 13 Cal.App.4th 976, 997), Class Counsel's fees would still be justified.

22 36. Attached hereto as Exhibit "B" is a true and correct copy of a quote that my office received
23 from CPT Group to act as Settlement Administrator in this matter.

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1 I declare under penalty of perjury pursuant to the laws of the state of California that the
2 foregoing is true and correct. Executed this 6th day of March, 2024 in Pasadena, California.

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5 _____
6 *Jonathan LaCour, Esq.*
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EXHIBIT A

1 Jonathan P. LaCour, Esq. (SBN: 285098)
 Lisa Noveck, Esq. (SBN: 316660)
 2 Jameson Evans, Esq. (SBN: 340954)
 Amanda M. Thompson, Esq. (SBN: 347005)
 3 **EMPLOYEES FIRST LABOR LAW P.C.**
 4 1 S Fair Oaks Ave. Suite 200
 Pasadena, California 91105
 5 Telephone: (310) 853-3461
 Facsimile: (949) 743-5442
 6 Email: jonathanl@pierrelacour.com
 lisan@pierrelacour.com
 7 jamesone@pierrelacour.com
 amandat@pierrelacour.com
 8 Attorneys for Plaintiff, JOSEPH KIM and JESUS OLIVEROS ORTIZ

9 *Defendants' Counsel Listed on Next Page*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **COUNTY OF MONTEREY**

13 JOSEPH KIM, an individual, and JESUS
 OLIVEROS ORTIZ, an individual, on behalf
 14 of themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 INCOTEC INTEGRATED COATING AND
 SEED TECHNOLOGY, INC., a California
 18 Corporation, CRODA INC., a Delaware
 Corporation, and DOES 1 through 20,
 19 inclusive,

20 Defendants.

Case No. 21CV001342

*Assigned for all purposes to the Honorable
Carrie M. Panetta, Dept. 14*

21 **JOINT STIPULATION OF CLASS ACTION**
AND PAGA SETTLEMENT

22 Complaint Filed: April 23, 2021
 23 Trial Date: Not Yet Set
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 25
 26
 27
 28

1 JASON E. MURTAGH (SBN 294830)

2 jason.murtagh@bipc.com

3 BUCHANAN INGERSOLL & ROONEY LLP

4 One America Plaza

5 600 West Broadway, Suite 1100

6 San Diego, CA 92101

7 Telephone: 619 239 8700

8 Fax: 619 702 3898

9 MELISSA M. WEBER (admitted *pro hac vice*)]

10 melissa.weber@bipc.com

11 BUCHANAN INGERSOLL & ROONEY, P.C.

12 Two Liberty Place

13 50 S. 16th Street, Suite 3200

14 Philadelphia, PA 19102

15 Telephone: 215 665 5339

16 Attorneys for Defendants

17 INCOTEC INTEGRATED COATING AND SEED TECHNOLOGY, INC. and

18 CRODA INC.

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

6 This Agreement is made by and between Named Plaintiffs Joseph Kim and Jesus Oliveros
7 Ortiz (referred to herein as “Plaintiffs” or “Named Plaintiffs”), the Class Members, and all
8 Aggrieved Employees, on the one hand, and Defendants Incotec Integrated Coating and Seed
9 Technology, Inc. and Croda, Inc. (“Defendants”), on the other hand. Plaintiffs and Defendants
10 collectively are referred to in this Agreement as “the Parties.”

11 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
12 concluded by agreement of Defendants to pay the settlement amount of One Hundred and Fifty
13 Thousand Dollars and Zero Cents (\$150,000.00) as provided in Section 4.06(a) below (“Gross
14 Settlement Amount”) pursuant to the terms and conditions of this Agreement and for the
15 consideration set forth herein.

16 **ARTICLE I**

17 **DEFINITIONS**

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

20 a. “Action” means the lawsuit initially commenced by Plaintiffs on April 23, 2021, in
21 the Superior Court of the State of California, County of Monterey alleging individual and PAGA
22 claims against Defendants, captioned *Joseph Kim, an individual, and Jesus Oliveros Ortiz, an*
23 *individual, on behalf of themselves and on behalf of all others similarly situated v. Incotec Integrated*
24 *Coating and Seed Technology, Inc., a California corporation, and Croda Inc., a New Jersey*
25 *Corporation, and DOES 1 through 20, inclusive*, Case No. 21CV001342, as amended to include
26 class claims solely for purposes of this Agreement and settlement.

27 b. “Additional Signatory” means any other individual who has expressed to Plaintiffs’
28 counsel any interest in filing claims against Defendants.

1 c. "Agreement" means this Joint Stipulation of Settlement.¹

2 d. "Aggrieved Employees" means all current and former non-exempt individuals
3 employed by Defendants in California at any time between February 1, 2020 through the PAGA
4 Approval Date,

5 e. "Class" means all current and former non-exempt employees employed by the
6 Released Parties in California at any time between August 28, 2019 through the date of final approval
7 of the class settlement.

8 f. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

9 **EMPLOYEES FIRST LABOR LAW P.C.**
10 Jonathan P. LaCour, Esq. (SBN: 285098)
11 Lisa Noveck, Esq. (SBN: 316660)
12 Jameson Evans, Esq. (SBN: 340954)
13 Amanda M. Thompson, Esq. (SBN: 347005)
14 1 S Fair Oaks Ave. Suite 200
Pasadena, California 91105
Telephone: (310) 853-3461
Facsimile: (949) 743-5442

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

19 b. "Class Member" means a member of the Class, as either a Participating Class Member
20 or Non-Participating Class Member (including a Non-Participating Class Member who qualified as
21 an Aggrieved Employee).

22 c. "Class Period" means the period of time from August 28, 2019 through the Final
23 Approval Date.

24 d. "Class Representative" means Plaintiff Jesus Oliveros Ortiz

25 e. "Court" means the Superior Court of the State of California, County of Monterey.

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28 ¹ The Exhibits attached to this Agreement are incorporated herein by reference and made a part hereof.

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

7 g. "Defendants" means Defendant Incotec Integrated Coating and Seed Technology,
8 Inc., a California corporation, and Croda Inc., a Delaware Corporation

9 h. "Defense Counsel" means counsel for Defendants:

10 BUCHANAN INGERSOLL & ROONEY LLP
11 Jason E. Murtagh
12 One America Plaza
13 600 West Broadway, Suite 1100
14 San Diego, CA 92101
15 Phone: (619) 239-8700

16 BUCHANAN INGERSOLL & ROONEY, P.C.
17 Melissa M. Weber (admitted pro hac vice)]
18 Two Liberty Place
19 50 S. 16th Street, Suite 3200
20 Philadelphia, PA 19102
21 Telephone: (215) 665 - 5339

22 i. "Disposition" means the method by which the Court approves the terms of the
23 Settlement and retains jurisdiction over its enforcement, implementation, construction,
24 administration, and interpretation.

25 j. "Final Approval Date" means the date on which the Superior Court enters an order
26 approving settlement of the Class Claims after it conducts a final approval hearing on the Class
27 Settlement, as contemplated in Rule 3.769(h) of the California Rules of Court.

28 k. "Final Fairness and Approval Hearing" means the Court's hearing on the Motion for
Final Approval of the Settlement to conduct an inquiry into the fairness of the Settlement as set forth
in this Agreement and to determine whether to approve finally and implement the terms of this
Agreement and enter the Judgment.

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

4 m. “Gross Settlement Amount” means One Hundred Fifty Thousand Dollars (\$150,000)
5 to be paid by Defendants as provided by this Agreement to settle this Action. All payments to the
6 Class, Aggrieved Employees, LWDA, Settlement Administration Costs, Class Counsel’s attorneys’
7 fees and costs, pursuant to Section 4.07(a) below, shall be paid out of the Gross Settlement Amount.
8 The employer’s share of payroll taxes arising from the payments made under this settlement shall be
9 paid by Defendants separate from and in addition to the Gross Settlement Amount.

10 n. “Individual Class Settlement Payment(s)” means each Participating Class Member’s
11 respective share of the Net Settlement Amount. Individual Class Settlement Payments will be
12 determined by the calculations provided in this Agreement.

13 o. “Individual PAGA Settlement Payment(s)” means each Aggrieved Employee’s
14 respective share of the PAGA Payment. Individual PAGA Settlement Payments will be determined
15 by the calculations provided in this Agreement.

16 p. “LWDA” means the State of California Labor and Workforce Development Agency.

17 q. “LWDA Payment” means 75% of the Twenty-Five Thousand Dollars (\$25,000)
18 allocated to the settlement of PAGA claims which, subject to Court approval, will be paid to the
19 LWDA pursuant to Section 4.06(d) of this Agreement, as provided for below.

20 r. “Motion for Final Approval” means Plaintiffs’ submission of a written motion,
21 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
22 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
23 to enter a Final Order in this Action as required by Rule 3.769 of the California Rules of Court.

24 s. “Motion for Conditional Class Certification and Preliminary Approval” means
25 Plaintiff’s submission of a written motion, including any evidence as may be required for the Court
26 to grant preliminary approval of the Settlement as required by Rule 3.769 of the California Rules of
27 Court.

28 t. “Named Plaintiffs” means Joseph Kim and Jesus Oliveros Ortiz.

1 u. “Net Settlement Amount” means the Gross Settlement Amount less Court-approved
2 Settlement Administration Costs, Class Counsel’s attorneys’ fees and costs, and the PAGA
3 Settlement Amount, pursuant to Section 4.06(a)-(f) below. The Parties have agreed that 20% of the
4 Net Settlement Amount shall be allocated to wages, with the remaining 80% allocated to penalties
5 and interest.

6 v. “Non-Participating Class Member” means any Class Member who submits to the
7 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
8 to Section 4.04(b) below.

9 w. “Notice Packet” means collectively and in a form substantially similar to, the Notice
10 of Class Action Settlement attached hereto as **Exhibit A**, Dispute Form as **Exhibit B**, and the
11 Exclusion Form attached hereto as **Exhibit C**, all subject to Court approval.

12 x. “PAGA” means the California Private Attorneys General Act of 2004, which is
13 codified in California Labor Code §§ 2698 *et seq.*

14 y. “PAGA Approval Date” means the date on which the Superior Court enters an order
15 approving settlement of the Plaintiffs’ PAGA claims.

16 z. “PAGA Payment” means 25% of the Twenty-Five Thousand Dollars and Zero Cents
17 (\$25,000) allocated to the settlement of PAGA claims which, subject to Court approval, will be paid
18 to the Aggrieved Employees pursuant to Section 4.06(d) of this Agreement, as provided for below.

19 aa. “PAGA Period” means the period of time from February 3, 2020 through PAGA
20 Approval Date.

21 bb. “PAGA Qualifying Workweeks” means the number of weeks that Aggrieved
22 Employees worked for the Released Parties as non-exempt employees during the PAGA Period.

23 cc. “PAGA Representative” means Jesus Oliveros Ortiz.

24 dd. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount
25 allocated to the resolution of Aggrieved Employees’ claims arising under PAGA. The Parties have
26 agreed that the PAGA Settlement Amount is Twenty-Five Thousand Dollars (\$25,000), subject to
27

28

1 Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment,
2 and the remaining 25% is the PAGA Payment and will be distributed to Aggrieved Employees.

3 ee. "Participating Class Member" means a Class Member who does not timely exclude
4 himself or herself from the Settlement and will therefore receive his or her share of the Net Settlement
5 Amount automatically without the need to return a claim form. Each Participating Class Member
6 will be paid his or her Individual Class Settlement Payment.

7 ff. "Preliminary Approval Date" means the date on which the Superior Court enters an
8 order granting preliminary approval of the settlement of the Class Claims.

9 gg. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
10 Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1 *et seq.*, that is established by the Settlement
11 Administrator for the benefit of Participating Class Members.

12 hh. "Class Qualifying Workweeks" means the number of weeks that Class Members
13 worked for the Released Parties as non-exempt employees during the Class Period.

14 ii. "Released Parties" means Defendant Incotec Integrated Coating and Seed
15 Technology, Inc., its sole shareholder and parent, Incotec Group, B.V., and Croda Inc., their ultimate
16 parent, Croda International Plc, and Defendant Croda Inc.'s sole shareholder and parent, Croda
17 Investments Inc., and each of their successors, assigns, predecessors, subsidiaries, divisions, related
18 companies and insurers, and their current and former employees, attorneys, officers, directors, and
19 agents thereof, both individually and in their business capacities, and their employee benefit plans
20 and programs and the trustees, administrators, fiduciaries, and insurers of such plans and programs,
21 both individually and in their business capacities.

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

1 kk. "Settlement Administration Costs" means all costs incurred by the Settlement
2 Administrator in administration of the Settlement, including, but not limited to: mailing of notice to
3 the Class; calculation of Individual Class Settlement Payments and Individual PAGA Settlement
4 Payments; generation of Individual Class Settlement Payment and Individual PAGA Settlement
5 Payment checks and related tax reporting forms; administration of unclaimed checks; and generation
6 of checks to Class Counsel for attorneys' fees and costs, and to the LWDA for the LWDA Payment.
7 The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

8 ll. "Settlement Administrator" means CPT Group, Inc., which the Parties have agreed
9 will be responsible for the administration of the Individual Class Settlement Payments and Individual
10 PAGA Settlement Payments to be made by Defendants from the Gross Settlement Amount and
11 related matters under this Agreement.

12
13 **ARTICLE II**

14 **RECITALS**

15 a. On April 23, 2021, Plaintiffs Joseph Kim and Jesus Oliveros Ortiz commenced this
16 Action by filing a Complaint against Defendants in the Superior Court of the State of California,
17 County of Monterey. Plaintiffs' Complaint asserted the following causes of action:

- 18 1. Unfair business practices in violation of California Business and
19 Professions Code § 17200;
- 20 2. Retaliation in violation of Labor Code §1102.5;
- 21 3. Wrongful Termination in violation of public policy;
- 22 4. Wrongful Constructive Termination in violation of public policy;
- 23 5. Retaliation in violation of Labor Code § 98.6;
- 24 6. Failure to pay minimum wages in violation of Labor Code §§ 1194,
25 1194.2, 1197, and Industrial Welfare Commission Wage Order 5;
- 26 7. Failure to furnish wage statements under Labor Code §§ 226 and 226.3;
- 27 8. Failure to provide meal and rest period compensation under Labor Code
28 §§ 226.7;

- 1 9. Failure to pay wages in a timely manner under Labor Code § 204;
- 2 10. Failure to pay overtime compensation under Labor Code § 1194;
- 3 11. Waiting time penalties under Labor Code §§ 201, 202, and 203; and
- 4 12. Civil penalties under the Private Attorney General Act Labor Code §§
- 5 2698 *et. Seq.*

6 b. On June 9, 2021, Plaintiffs dismissed causes of action enumerated at nos. 1 through
7 11 in paragraph (a) of this Article.

8 c. On _____, Plaintiff filed a First Amended Complaint for settlement
9 purposes removing four causes of action, adding a cause of action, and adding Class claims. The
10 First Amended Complaint is the operative complaint in the Action (the “Operative Complaint”) and
11 asserts the following causes of action:

- 12 1. Failure to pay minimum wages in violation of Labor Code §§ 1194,
- 13 1194.2, 1197, and Industrial Welfare Commission Wage Order 5;
- 14 2. Failure to furnish wage statements under Labor Code §§ 226 and 226.3;
- 15 3. Failure to Maintain Payroll Records under Labor Code §§ 1174 and
- 16 1174.5;
- 17 4. Failure to provide meal and rest period compensation under Labor Code
- 18 §§ 226.7;
- 19 5. Failure to pay wages in a timely manner under Labor Code § 204;
- 20 6. Failure to pay overtime compensation under Labor Code § 1194;
- 21 7. Waiting time penalties under Labor Code §§ 201, 202, and 203;
- 22 8. Unfair business practices in violation of California Business and
- 23 Professions Code § 17200; and
- 24 9. Civil penalties under the Private Attorney General Act Labor Code §§
- 25 2698 *et. seq.*

26 d. Defendants deny the allegations in the Operative Complaint, deny any failure to
27 comply with the laws identified in the Operative Complaint, and deny any and all liability for the
28 causes of action alleged.

1 e. On July 26, 2023, the Parties participated in an all-day mediation presided over by the
2 Honorable S. James Otero (ret.), a retired District Court judge from the United States District Court
3 – Central District of California who also sat by designation on the Court of Appeals for the Ninth
4 Circuit and served as trial court judge on the Superior Court of California, County of Los Angeles
5 and who is a respected mediator of wage-and-hour representative and class actions. At the mediation,
6 each side, represented by its respective counsel, agreed to settle the Action based upon a mediator’s
7 proposal.

8 f. Plaintiffs’ counsel has obtained sufficient documents and information to sufficiently
9 investigate the claims such that Plaintiffs’ investigation was sufficient to satisfy the criteria for court
10 approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar*
11 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

12 f. This Agreement represents a compromise and settlement of highly-disputed claims.
13 Nothing in this Agreement is intended or will be construed as an admission by Defendants that the
14 claims in the Action have merit or that Defendants bear any liability to Plaintiffs, Class Members, or
15 Aggrieved Employees on those claims or any other claims, or as an admission by Plaintiffs that
16 Defendants’ defenses in the Action have merit.

17 **ARTICLE III**

18 **CONTINGENT NATURE OF THE AGREEMENT**

19 **Section 3.01: Stipulation of Class Certification for Settlement Purposes**

20 Because the Parties have stipulated to the certification of the Class with respect to all causes
21 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and
22 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional
23 basis. This Agreement is contingent upon the approval and certification by the Court. If the Date of
24 Finality does not occur, the fact that the Parties were willing to stipulate for the purposes of this
25 Agreement to a Class shall have no bearing on, nor be admissible in connection with, the issue of
26 certification of the Class with respect to all causes of action alleged in the Action. Defendants do
27 not consent to certification of the Class for any purpose other than to effectuate settlement of the
28 Action. If the Date of Finality does not occur, or if Disposition of this Action is not effectuated, any

1 certification of the Class as to Defendants will be vacated and Named Plaintiffs, Defendants, and the
2 Class will be returned to their positions with respect to the Action as if the Agreement had not been
3 entered into. In the event that the Date of Finality does not occur: (a) any Court orders preliminarily
4 or finally approving certification of any class contemplated by this Agreement shall be null, void,
5 and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the
6 settlement reflected in this Agreement, the fact that Defendants did not oppose the certification of a
7 Class under this Agreement, or that the Court preliminarily approved the certification of the Class,
8 shall not be used or cited thereafter by any person or entity, including in any manner whatsoever,
9 including without limitation any contested proceeding relating to the certification of any class. If the
10 Date of Finality does not occur, this Agreement shall be deemed null and void, shall be of no force
11 or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

12 The Parties and their respective counsel shall take all steps that may be requested by the Court
13 relating to the approval and implementation of this Agreement and shall otherwise use their
14 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
15 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
16 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
17 resolution, the Parties agree to seek the assistance of mediator the Hon. James Otero to resolve the
18 dispute.

19 **ARTICLE IV**

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

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

23 **Section 4.01: Motion for Conditional Class Certification and Preliminary Approval**

24 Named Plaintiffs will bring a motion before the Court for an order conditionally certifying
25 the Class to include all claims, which were pled in the Action, or which could have been pled based
26 on the facts alleged in the Operative Complaint, based on the preliminary approval of this Agreement.
27 The date that the Court grants preliminary approval of this Agreement will be the "Preliminary
28 Approval Date."

1 **Section 4.02: The Settlement Administrator**

2 The Parties have chosen CPT Group, Inc (“CPT”), to act as the Settlement Administrator.
3 CPT will be responsible for performing the duties specified in this Agreement and any other duties
4 incidental to such obligations. These duties shall include, without limitation: (1) preparing, printing,
5 distributing the Notice Packets to the Class Members as directed by the Court; (2) responding to
6 inquiries from the Class Members about the Notice Packet; (3) receiving and reporting the objections
7 and requests for exclusion on a weekly basis; (4) calculating the Net Settlement Amount and the
8 Individual Class Settlement Payments; (5) calculating the LWDA Payment, PAGA Payment, and
9 Individual PAGA Settlement Payments (6) processing and mailing payments to the Participating
10 Class Members, Aggrieved Employees, Class Counsel, and the LWDA; (6) distributing tax forms,
11 processing and mailing tax payments, if any, to the appropriate state and federal authorities; (7)
12 calculating and timely paying any and all payroll taxes from the wages portion of the Gross
13 Settlement Amount to the appropriate tax authorities, as required under this Agreement and
14 applicable law; (8) establishing and maintaining the QSF; (9) arranging for and remitting funds from
15 any uncashed settlement payments to the designated recipient, as determined by the Court; (10)
16 handling inquiries about the calculation of Individual Class Settlement Payments and Individual
17 PAGA Settlement Payments; and (12) other tasks as the Parties mutually agree or the Court orders
18 the Settlement Administrator to perform. The Settlement Administrator shall expressly agree to all
19 of the terms and conditions of this Agreement.

20 All costs of administering the Settlement, including, but not limited to, all costs and fees
21 associated with preparing, issuing and mailing any and all notices to Class Members and/or
22 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
23 and mailing the Individual Class Settlement Payments and Individual PAGA Settlement Payments,
24 all costs and fees associated with preparing any tax returns and any other filings required by any
25 governmental taxing authority or agency, all costs and fees associated with preparing any other
26 checks, notices, reports, or filings to be prepared in the course of administering disbursements from
27 the Net Settlement Amount, and any other costs and fees incurred and/or charged by the Settlement
28 Administrator in connection with the execution of its duties under this Agreement (“Settlement

1 Administration Costs”), shall be paid to the Settlement Administrator from the Gross Settlement
2 Amount.

3 The Settlement Administrator shall keep the Parties timely apprised of the performance of all
4 Settlement Administrator responsibilities. The Settlement Administrator shall establish a settlement
5 payment center address, telephone number, and email address to receive Class Members’ inquiries
6 about the Notice of Class Action Settlement, requests to be excluded from the Settlement, and
7 settlement payments. In addition, the Settlement Administrator shall establish a static website and,
8 on the website, post this stipulation, any preliminary approval order, and the Final Order. Posting of
9 the Final Order on such website shall constitute notice of judgment to the Settlement Class, as
10 required by California Rule of Court 3.771(b).

11 **Section 4.03: Notice to Class Members**

12 No later than thirty (30) days after the Preliminary Approval Date, Defendants will provide
13 the Settlement Administrator with a “Class List” in electronic format based on its business records,
14 identifying the names of the Class Members; their last known home addresses; Social Security
15 numbers or, as applicable, other taxpayer identification number; their dates of employment and
16 weeks worked during the Class Period.

17 Within ten (10) business days of receiving a Class List from Defendants, the Settlement
18 Administrator will send Class Members, by first-class mail, at their last known address, the Court-
19 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
20 Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate
21 share of the Net Settlement Amount. Class Members will have thirty (30) days from the date of
22 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
23 Settlement Administrator will check all Class Member addresses against the National Change of
24 Address database and shall update any addresses before mailing. The Settlement Administrator will
25 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
26 Notice Packet was undeliverable. If a Class Member’s notice is re-mailed, the Class Member shall
27 have fifteen (15) calendar days from the re-mailing, or forty-five (45) calendar days from the date of
28 the initial mailing, whichever is later, in which to postmark objections or requests for exclusion.

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

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

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

15 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
16 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
17 Member's Individual Class Settlement Payment. The Settlement Administrator will hold the Class
18 Member's Individual Class Settlement Payment during the check cashing period on behalf of the
19 Class Member. If at the conclusion of the check cashing period the Class Member's Notice Packet
20 and Individual Class Settlement Payment remain undeliverable and/or unclaimed and uncashed, the
21 Settlement Administrator will distribute the funds from unclaimed/uncashed checks in accordance
22 with the procedures set forth in Section 4.07(g) below.

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

28

1 **Section 4.04: Responses to Notice**

2 **a. Class Member Disputes**

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

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

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

27 Any Class Member who fails to timely submit a request for exclusion shall automatically be
28 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are

1 determined by the Court's Final Order Approving Settlement of Class Action, and by the other
2 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action
3 and/or released in this Agreement will be extinguished.

4 **c. Objections to Settlement**

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

16 **d. Encouragement of Class Members**

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

21 **e. Termination for Lack of Sufficient Participation**

22 Within sixty (60) days after mailing notice, the Settlement Administrator shall inform the
23 Parties of the percentage of Class Members who have opted out of the Class Settlement. If ten percent
24 (10%) or more of the potential Class Members makes a valid request to be excluded from the Class,
25 Defendants shall have the option, but not the obligation, to void the Agreement within thirty (30)
26 days of receiving such notice. If Defendants exercise that right to void the Agreement, then the
27 Parties will have no further obligations under the Agreement, including any obligation by Defendants
28 to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under

1 this Agreement. Defendants shall meet and confer with Class Counsel prior to exercising their right
2 to rescind the Agreement under this provision, and shall notify Class Counsel, via email, and the
3 Court whether they are exercising their right to void the Agreement.

4 **Section 4.05: Final Fairness and Approval Hearing**

5 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
6 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement
7 and determine whether the Court should give it final approval, and (2) consider any objections made
8 and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the
9 Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a
10 Proposed Final Order Approving Settlement of Class Action.

11 **Section 4.06: Settlement Payment Procedures**

12 **a. Funding of the Settlement Amount**

13 In exchange for the Released Claims set forth in this Agreement, Defendants agree to pay the
14 Gross Settlement Amount in the amount of One Hundred Fifty Thousand Dollars (\$150,000). The
15 Gross Settlement Amount includes all Individual Class Settlement Payments, all Individual PAGA
16 Settlement Payments, all Settlement Administration Costs, Class Counsel's attorney's fees and costs,
17 and PAGA Settlement Amount.

18 Within sixty (60) days of the Date of Finality, Defendants shall transfer the Gross Settlement
19 Amount plus Defendants' share of employer-side payroll taxes, as set forth herein, into a QSF
20 established by the Settlement Administrator either directly or by sending the funds to the Settlement
21 Administrator to be deposited and distributed. The Settlement Administrator will use these funds to
22 fund payment of the Individual Settlement Payments to Participating Class Members, Class
23 Counsel's attorneys' fees and costs, the LWDA Payment, and the Settlement Administration Costs.

24 Within ten (10) court days after receiving Defendants' final payment, funding the Gross
25 Settlement Amount in full, the Settlement Administrator will pay the Individual Class Settlement
26 Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA
27 Payment, Individual PAGA Settlement Payments to Aggrieved Employees, and the employer and
28 employee tax withholdings applicable to the Net Settlement Amount allocated to wages. Prior to this

1 distribution, the Settlement Administrator will perform a search based on the National Change of
2 Address Database to update and correct for any known or identifiable address changes.

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

4 Class Counsel shall make a request for an award of attorneys' fees which shall not exceed
5 thirty-five (35) percent of the Gross Settlement Amount. Defendants take no position with respect
6 to Class Counsel's application for this amount.

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

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

15 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
16 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Ten
17 Thousand Dollars and Zero Cents (\$10,000).

18 **d. Payment to the Labor and Workforce Development Agency and Aggrieved
19 Employees**

20 In consideration of claims made under PAGA, Class Counsel will request that the Court
21 approve allocation of Twenty-Five Thousand Dollars (\$25,000) of the Gross Settlement Amount to
22 these claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
23 Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be the
24 PAGA Payment for distribution to the Aggrieved Employees as described herein. To calculate the
25 minimum amount each Aggrieved Employee will receive based on their individual PAGA Qualifying
26 Workweeks, the PAGA Payment will be divided by the total number of PAGA Qualifying
27 Workweeks by all Aggrieved Employees during the PAGA Period and then allocated on a pro rata
28 basis, except the following Aggrieved Employees who entered into separate settlement agreements

1 releasing Released Parties and waiving participation in or distribution from a
2 collective/representative/class action shall be excluded from the calculation and distribution: Jesus
3 Oliveros Ortiz, Joseph Kim, Ninfa Gonzales, Jon Hall, Mario Haro, Daniel Herrera, Fernando
4 Herrera, Santos Jimenez, Fernando Negron, and Ismael Perez. PAGA Qualifying Workweeks will
5 be rounded up to the next whole integer. Each Aggrieved Employee receiving an Individual PAGA
6 Settlement Payment will be advised of the approximate Individual PAGA Settlement Payment
7 amount in his or her Notice Packet. After final approval by the Court, the PAGA Payment will be
8 distributed to Aggrieved Employees (those who did not exclude themselves and those who were
9 identified in this paragraph) on a pro rata basis based on the individual PAGA Qualifying Workweeks
10 worked during the PAGA Period by each Aggrieved Employee. The entire PAGA Settlement
11 Amount will be paid out of the Gross Settlement Amount. The Court's adjustment, if any, of the
12 amount allocated to PAGA claim in the Action will not invalidate this Agreement.

13 **e. Payment of Individual Settlement Payments to Participating Class Members**

14 The Parties agree that the Net Settlement Amount shall be used to fund Individual Class
15 Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between
16 all Participating Class Members in proportion to the number of individual Class Qualifying
17 Workweeks for each Class Member. To calculate the minimum amount each Class Member will
18 receive based on their individual Class Qualifying Workweeks, the Net Settlement Amount will be
19 divided by the total number of Class Qualifying Workweeks by all Class Members during the Class
20 Period and then allocated on a pro rata basis except the following Class Members who entered into
21 separate settlement agreements releasing Released Parties and waiving participation in or distribution
22 from a collective/representative/class action shall be excluded from the calculation and distribution:
23 Jesus Oliveros Ortiz, Ninfa Gonzales, Jon Hall, Mario Haro, Daniel Herrera, Fernando Herrera,
24 Santos Jimenez, Fernando Negron, and Ismael Perez. Class Qualifying Workweeks will be rounded
25 up to the next whole integer. Each Class Member's approximate Individual Class Settlement
26 Payment amount will be included in his or her Notice Packet. After final approval by the Court, the
27 Net Settlement Amount will be dispersed to Participating Class Members (those who did not exclude
28 themselves and those who were not identified in this paragraph) on a pro rata basis based on the

1 individual Class Qualifying Workweeks worked during the Class Period by each Participating Class
2 Member.

3 Each Individual Class Settlement Payment will represent wages and penalties allocated using
4 the following formula: 20% allocated to wages and 80% allocated to penalties and interest. The
5 amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's
6 wages and all other authorized and required withholdings and shall be reported by W-2 forms. The
7 employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. The
8 amounts paid as penalties and interest shall be subject to all authorized and required withholdings
9 other than the tax withholdings customarily made from employees' wages and shall be reported by
10 IRS 1099 forms.

11 No later than ten (10) business days after receiving the Gross Settlement Amount from
12 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual Class
13 Settlement Payments to Participating Class Members. Individual Class Settlement Payments paid
14 from the Net Settlement Amount allocated to wages will be reduced by applicable employer and
15 employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage
16 portion of the Individual Class Settlement Payments. The Settlement Administrator will issue a Form
17 1099 to the extent required by law for the interest and penalty portions of the Individual Class
18 Settlement Payments. Participating Class Members shall have 180 days from the date their
19 Individual Class Settlement Payment checks are dated to cash their Settlement checks. Any checks
20 that are not cashed upon the expiration of that 180-day time period will be void, and the uncashed
21 funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member
22 for whom the funds are designated.

23 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
24 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
25 a mass search on LexisNexis or comparable databases based on set criteria and, if another address is
26 identified, the Settlement Administrator shall mail the check to the newly identified address. If the
27 Settlement Administrator is unable to obtain a valid mailing address through this process, the
28

1 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
2 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

3 **f. Default on Payment.**

4 Defendants' failure to fund the Gross Settlement Amount within thirty (30) days after the
5 Date of Finality shall be considered a default. In the event Defendants fail to timely fund the Gross
6 Settlement Amount, the Settlement Administrator will provide notice to Class Counsel and Defense
7 Counsel within three (3) business days of the missed payment. Thereafter, Defendants will have
8 fourteen (14) days to cure the default and tender payment to the Settlement Administrator.

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

10 The Individual Class Settlement Payments made to Participating Class Members and
11 Individual PAGA Settlement Payments made to the Aggrieved Employees under this Agreement, as
12 well as any other payments made pursuant to this Agreement, will not be utilized to calculate any
13 additional benefits under any benefit plans to which any Class Members or Aggrieved Employee
14 may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
15 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is
16 the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to
17 which any Class Members or Aggrieved Employees may be entitled under any benefit plans.

18 **ARTICLE V**

19 **LIMITATIONS ON USE OF THIS SETTLEMENT**

20 **Section 5.01: No Admission**

21 Defendants dispute the allegations in the Action and take the position that, but for this
22 Settlement, a Class should not have been certified in the Action. This Agreement is entered into
23 solely for the purpose of settling highly-disputed claims. Nothing in this Agreement is intended nor
24 will be construed as an admission of liability or wrongdoing by Defendants.

25 **Section 5.02: Non-Evidentiary Use**

26 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
27 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
28 deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties,

1 including, but not limited to, evidence of a presumption, concession, indication, or admission by any
2 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
3 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
4 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
5 Agreement or for Defendants to establish that a Class Member has resolved any of his or her claims
6 released through this Agreement.

7 **Section 5.03: Nullification**

8 The Parties have agreed to the filing of the First Amended Complaint to add class claims and
9 to the certification of the Class encompassing all claims alleged in the Action for the sole purpose of
10 effectuating this Agreement. If (a) the Court should for any reason fail to certify this Class for
11 settlement, or (b) the Court should for any reason fail to approve this Settlement, or (c) the Court
12 should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, or declared or
13 rendered void, or (e) the Court should for any reason fail to dispose of the Action in its entirety, then
14 (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related
15 negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall
16 stand in the same position, without prejudice, as if the Agreement had been neither entered into nor
17 filed with the Court; (iv) all Parties to this Agreement shall stand in the same position, without
18 prejudice, as if the First Amendment Complaint had not been filed with the Court; and (v) the fact
19 that the Parties were willing to stipulate to class certification of all causes of action pled in the Action
20 as part of the Settlement will have no bearing on, and will not be admissible in connection with, the
21 issue of whether a Class claim can be asserted or the issue of whether the Class should be certified
22 by the Court in a non-settlement context in this Action or any other action, and in any of those events,
23 Defendants expressly reserve the right to oppose assertion of a Class claim and certification of the
24 Class.

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

1 **ARTICLE VI**

2 **RELEASES**

3 **Section 6.01: Released Claims by Class Members**

4 Upon the date Defendants transfer the Gross Settlement Amount, Named Plaintiffs and
5 Participating Class Members who do not opt out of the Settlement release the Released Parties from
6 any and all claims alleged or that could have been alleged in Named Plaintiffs' Operative Complaint
7 during the Class Period, including, but not limited to: (1) Failure to pay minimum wages in violation
8 of Labor Code §§ 1194, 1194.2, 1197, and Industrial Welfare Commission Wage Order 5; (2) Failure
9 to furnish wage statements under Labor Code §§ 226 and 226.3; (3) Failure to Maintain Payroll
10 Records under Labor Code §§1174 and 1174.5; (4) Failure to provide meal and rest period
11 compensation under Labor Code §§ 226.7; (5) Failure to pay wages in a timely manner under Labor
12 Code § 204; (6) Failure to pay overtime compensation under Labor Code § 1194; (7) Waiting time
13 penalties under Labor Code §§ 201, 202, and 203; and (8) Unfair business practices in violation of
14 California Business and Professions Code § 17200, based on the preceding claims ("Released Class
15 Claims").

16 **Section 6.02: Released Claims by Aggrieved Employees**

17 Upon the date of funding the GSA, the State of California and Aggrieved Employees release
18 the Released Parties from all claims alleged or that could have been alleged in the Operative
19 Complaint of the Action, which arose during the PAGA Period, regardless of whether Aggrieved
20 Employees opt out of the Class Settlement, including, but not limited to: (1) Failure to pay minimum
21 wages in violation of Labor Code §§ 1194, 1194.2, 1197, and Industrial Welfare Commission Wage
22 Order 5; (2) Failure to furnish wage statements under Labor Code §§ 226 and 226.3; (3) Failure to
23 Maintain Payroll Records under Labor Code §§1174 and 1174.5; (4) Failure to provide meal and rest
24 period compensation under Labor Code §§ 226.7; (5) Failure to pay wages in a timely manner under
25 Labor Code § 204; (6) Failure to pay overtime compensation under Labor Code § 1194; (7) Waiting
26 time penalties under Labor Code §§ 201, 202, and 203; (8) Unfair business practices in violation of
27 California Business and Professions Code § 17200; and (9) Civil penalties under the Private Attorney
28 General Act Labor Code §§ 2698 et. seq., based on the preceding claims ("Released PAGA Claims")

1 (the Released Class Claims, collectively with the Released PAGA Claims, the “Released Claims”).

2 **ARTICLE VII**

3 **MISCELLANEOUS PROVISIONS**

4 **Section 7.01: Amendments or Modification**

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

8 **Section 7.02: Assignment**

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

14 **Section 7.03: Governing Law**

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

18 **Section 7.04: No Publicity**

19 The Parties, Defense Counsel, and Class Counsel shall not issue any press release, contact
20 the press, respond to any press inquiry or have any communication with the press about the fact,
21 amount or terms of this Settlement, except that Class Counsel will be permitted only to post the
22 following statement on Class Counsel’s online presence: “Wage and Hour and Wrongful
23 Termination \$2,650,000.00, August 2023.” The Parties, Defense Counsel, and Class Counsel shall
24 not engage in any advertising or marketing relating to the settlement of these Actions in any manner
25 that identifies or that is suggestive of Defendants, including but not limited to, any postings on any
26 websites maintained by Class Counsel. Nothing in this Section is intended to interfere with Class
27 Counsel’s duties and obligations to faithfully discharge their duties as Class Counsel, including but
28 not limited to, communicating with Class Members regarding the Settlement.

1 **Section 7.05: Entire Agreement**

2 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
3 contains the entire understanding of the Parties with respect to the subject matter contained herein.
4 In case of any conflict between text contained in Articles I through VII of this Agreement and text
5 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VII) shall be
6 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
7 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
8 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
9 supersedes all prior agreements and understandings among the Parties with respect to the settlement
10 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
11 prior agreements or proposals.

12 **Section 7.06: Waiver of Compliance**

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

19 **Section 7.07: Counterparts and Fax/PDF Signatures**

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

25 **Section 7.08: Meet and Confer Regarding Disputes**

26 Should any dispute arise among the Parties or their respective counsel regarding the
27 implementation or interpretation of this Agreement, a representative of Class Counsel and a
28

1 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
2 to submitting such disputes to the Court.

3 **Section 7.09: Agreement Binding on Successors**

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

6 **Section 7.10: Cooperation in Drafting**

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

10 **Section 7.11: Fair and Reasonable Settlement**

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

16 **Section 7.12: Headings**

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

20 **Section 7.13: Notice**

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

23 *To Named Plaintiffs and the Class:*

24 Jonathan P. LaCour, Esq. (SBN: 285098)
25 Lisa Noveck, Esq. (SBN: 316660)
26 Jameson Evans, Esq. (SBN: 340954)
27 Amanda M. Thompson, Esq. (SBN: 347005)
28 **EMPLOYEES FIRST LABOR LAW P.C.**
1 S Fair Oaks Ave. Suite 200

1 Pasadena, California 91105
2 Telephone: (310) 853-3461
3 Facsimile: (949) 743-5442

4 And

5 *To Defendant:*

6 Jason E. Murtagh
7 Buchanan Ingersoll & Rooney LLP
8 One America Plaza
9 600 West Broadway, Suite 1100
10 San Diego, CA 92101
11 Phone: (619) 239-8700
12 Fax: (619) 702-3898

13 Melissa Murphy Weber (Admitted *Pro Hac Vice*)
14 Buchanan Ingersoll & Rooney, P.C.
15 Two Liberty Place
16 50 S. 16th Street, Suite 3200
17 Philadelphia, PA 19102
18 Telephone: (215) 665-5339

19 **Section 7.14: Enforcement of Settlement and Continuing Court Jurisdiction**

20 To the extent consistent with class action procedure, this Agreement shall be enforceable by
21 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
22 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the
23 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
24 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
25 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
26 extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more
27 of the Parties institutes any legal action or other proceeding against any other Party or Parties to
28 enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover
from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness
fees incurred in connection with any enforcement actions.

1 **Section 7.15: Mutual Full Cooperation**

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

9 **Section 7.16: Authorization to Act**

10 Class Counsel warrants and represents that they are authorized by Named Plaintiffs, and
11 Defense Counsel warrants that they are authorized by Defendants, to take all appropriate action
12 required to effectuate the terms of this Agreement, except for signing documents, including, but not
13 limited to, this Agreement, that are required to be signed by the Parties themselves. Defendants
14 represent and warrant that the individual executing this Agreement on its behalf has the full right,
15 power, and authority to enter into this Agreement and to carry out the transactions contemplated
16 herein.

17 **Section 7.17: No Reliance on Representations**

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

25 **EXECUTION BY PARTIES AND COUNSEL**


26 The Parties and their counsel hereby execute this Agreement.

27 **[SIGNATURE PAGES FOLLOW]**

28

1 Dated: 01 / 23 / 2024

Joseph Kim

2 By:  _____

3 Named Plaintiff

4 Dated: 01 / 22 / 2024


Jesus Oliveros Ortiz

5 By: *Jesus Oliveros Ortiz* _____

6 Named Plaintiff

7
8 Dated: 1/26/2024
9 _____

INCOTEC INTEGRATED COATING AND SEED TECHNOLOGY, INC.

10 By:  _____
11 (Signature)

12 Bradley Cook

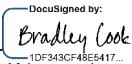
13 (Printed Name)

14 President of Incotec

15 (Title)

16 Dated: 1/26/2024
17 _____

CRODA INC.

18 By:  _____
19 (Signature)

20 Bradley Cook

21 (Printed Name)

22 Senior Vice President

23 (Title)

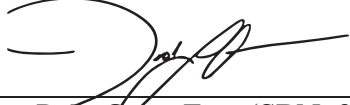
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[SIGNATURE PAGE CONTINUES]

1 **APPROVED AS TO FORM ONLY:**

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Dated: January 23, 2024

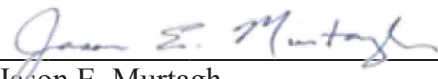
EMPLOYEES FIRST LABOR LAW P.C.

By: 
Jonathan P. LaCour, Esq. (SBN: 285098)
Lisa Noveck, Esq. (SBN: 316660)
Jameson Evans, Esq. (SBN: 340954)
Amanda M. Thompson, Esq. (SBN: 347005)
1 S Fair Oaks Ave. Suite 200
Pasadena, California 91105
Telephone: (310) 853-3461
Facsimile: (949) 743-5442

Attorneys for Plaintiffs
Joseph Kim and Jesus Oliveros Ortiz

Dated: January 29, 2024

**BUCHANAN INGERSOLL & ROONEY
LLP**

By: 
Jason E. Murtagh
Melissa Murphy Weber

Attorneys for Defendants
Incotec Integrated Coating and Seed
Technology, Inc. and Croda Inc.

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EXHIBIT B

CASE NAME: KIM v INCOTEC

Requesting Attorney: Amanda Thompson
Plaintiff or Defense: Plaintiff
Firm Name: Employees First Labor Law
Telephone: (310) 853-3461
Email: amandat@pierrelacour.com

Date: March 5, 2024
Prepared By: Dominique Fite, Esq.
 50 Corporate Park, Irvine CA 92606
 DFite@CPTGroup.com
Direct Number: (619) 613-1653
Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

| | |
|--|--|
| Class Size: 41 | Undeliverable Mail Rate: 8% |
| Opt-Out Filing Rate: 1.5% | Payment Option: Check |
| No. of Checks Issued: 40 | Unclaimed Funds: SCO |
| Language Translation Services: No | Postage Total: \$68.74 |
| Settlement Website: No | Grand Total: \$10,344.45 |
| Notice Procedures: Mail | CPT'S DISCOUNTED FEE: \$10,000.00 |

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.
 The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

After receiving the data, CPT will scrub all records to eliminate duplicates and anomalies, ensuring a higher success percentage in delivering the Class Notice. Each Class Member will receive a unique mailing ID that will be utilized for all administrative purposes.

| ADMINISTRATIVE TASKS | UNIT PRICE | PIECES/HOURS | COST ESTIMATE |
|---------------------------------------|------------|--------------|-----------------|
| Project Manager: Case Intake & Review | \$95.00 | 2 | \$190.00 |
| Programming: Data Base Setup | \$150.00 | 2 | \$300.00 |
| Sub Total: | | | \$490.00 |

DIRECT MAIL NOTIFICATION

CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible. A detailed notice and a one-page opt-out form will be mailed.

| ADMINISTRATIVE TASKS | UNIT PRICE | PIECES/HOURS | COST ESTIMATE |
|--|------------|--------------|-----------------|
| Project Manager: Format Documents | \$95.00 | 2 | \$190.00 |
| National Change of Address Search (NCOA) | \$135.00 | 1 | \$135.00 |
| XML Lex ID Skip Trace | \$0.85 | 4 | \$3.40 |
| Print & Mail Notice Packets | \$1.00 | 41 | \$41.00 |
| First-Class Postage (up to 1 oz.)* | \$0.68 | 41 | \$27.88 |
| Sub Total: | | | \$397.28 |

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

According to CPT's historical data, 8% of the notices would be returned as undeliverable. Upon notification from USPS, CPT will conduct a skip trace to try to find a current address. As a result, 70% of the undeliverable notice packets are remailed.

| ADMINISTRATIVE TASKS | UNIT PRICE | PIECES/HOURS | COST ESTIMATE |
|------------------------------------|------------|--------------|-----------------|
| Clerical Staff | \$60.00 | 2 | \$120.00 |
| Update Undeliverable Mail Database | \$0.50 | 3 | \$1.50 |
| Skip Trace for Best Address | \$1.00 | 3 | \$3.00 |
| Print & Remail Notice Packets | \$1.00 | 2 | \$2.00 |
| First-Class Postage (up to 1 oz.) | \$0.68 | 2 | \$1.36 |
| Sub Total: | | | \$127.86 |

OPT-OUT PROCESSING

CPT will thoroughly examine the submitted responses to identify and remove any duplicates, fraudulent entries, or other invalid submissions. CPT will handle the processing and verification of any opt-outs, objections, and other responses submitted by class members. Deficient opt-outs will be sent a notice by mail, offering the class member a chance to cure.

| ADMINISTRATIVE TASKS | UNIT PRICE | PIECES/HOURS | COST ESTIMATE |
|---|------------|--------------|-----------------|
| Programming: De-duplication/Scrubbing | \$150.00 | 1 | \$150.00 |
| Project Manager: Validate Opt-Outs | \$95.00 | 1 | \$95.00 |
| Clerical Staff | \$60.00 | 1 | \$60.00 |
| Opt-Out Processing | \$2.50 | 1 | \$1.54 |
| Print & Mail Deficiency/Dispute Notices | \$1.50 | 1 | \$1.50 |
| First-Class Postage (up to 1 oz.) | \$0.68 | 1 | \$0.68 |
| Review & Process Deficiency Responses | \$10.00 | 1 | \$10.00 |
| Sub Total: | | | \$318.72 |

CLASS MEMBER SUPPORT

CPT will establish a toll-free telephone number equipped with interactive voice response (IVR) capabilities and live customer support representatives. Live support will be available during regular business hours, Monday to Friday, 9:00 AM to 5:30 PM, Pacific Time (PT). The dedicated case phone number shall be operational for a maximum of 120 days following the disbursement.

| ADMINISTRATIVE TASKS | UNIT PRICE | PIECES/HOURS | COST ESTIMATE |
|----------------------------------|------------|--------------|-----------------|
| Toll-Free Number Establish/Setup | \$150.00 | 2 | \$300.00 |
| Live Call Center Support Reps. | \$3.50 | 11 | \$38.50 |
| Sub Total: | | | \$338.50 |

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

| ADMINISTRATIVE TASKS | UNIT PRICE | PIECES/HOURS | COST ESTIMATE |
|--|------------|--------------|-----------------|
| Programming: SSN Selection | \$150.00 | 1 | \$150.00 |
| Department Manager: Analysis & Reporting | \$95.00 | 3 | \$285.00 |
| IRS SSN Verification | \$0.20 | 40 | \$8.08 |
| Sub Total: | | | \$443.08 |

DISTRIBUTION SERVICES

CPT will establish and oversee the administration of the 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF) for a maximum duration of one year following the distribution of funds. Once approved, CPT will conduct the essential calculations and distribute funds. CPT will send a magnetic ink character recognition (MICR) check to class members who are eligible. CPT employs a Payee Positive Pay System to reconcile cashed checks and performs monthly account reconciliations for the QSF. Undeliverable checks are skip traces to determine a current address and are remailed accordingly. Requests for check reissues will be processed continuously and mailed to class members.

| ADMINISTRATIVE TASKS | UNIT PRICE | PIECES/HOURS | COST ESTIMATE |
|--|------------|--------------|-------------------|
| Programming: Calculation Totals | \$150.00 | 3 | \$450.00 |
| Project Supervisor: Review of Distribution | \$150.00 | 3 | \$450.00 |
| Project Manager: Correspondence w/Parties | \$95.00 | 2 | \$190.00 |
| Programming: Setup & Printing of Checks | \$150.00 | 3 | \$450.00 |
| Obtain EIN, Setup QSF/Bank Account | \$150.00 | 3 | \$450.00 |
| Print & Mail Notice, Checks & W2/1099 | \$2.50 | 40 | \$100.96 |
| First-Class Postage (up to 1 oz.) | \$0.68 | 40 | \$27.46 |
| Project Supervisor: Account Reconciliation | \$150.00 | 15 | \$2,250.00 |
| Update Undeliverable Checks Database | \$0.50 | 2 | \$1.01 |
| Skip Trace for Best Address | \$1.00 | 2 | \$2.02 |
| Remail Undeliverable Checks | \$2.50 | 2 | \$5.00 |
| First-Class Postage (up to 1 oz.) | \$0.68 | 2 | \$1.36 |
| Re-Issue Checks as Required | \$5.00 | 2 | \$10.00 |
| First-Class Postage (up to 1 oz.) | \$0.68 | 2 | \$1.36 |
| Sub Total: | | | \$4,389.17 |

TAX REPORTING & SETTLEMENT CONCLUSION

CPT prepares annual tax reporting on behalf of the QSF and Federal and State taxes in accordance with current state and federal regulations.

All parties will be furnished with weekly and final reports. A declaration attesting to due process will be provided to all parties.

| ADMINISTRATIVE TASKS | UNIT PRICE | PIECES/HOURS | COST ESTIMATE |
|---|------------|--------------|-------------------|
| Project Supervisor: Reconcile Uncashed Chk | \$150.00 | 1 | \$150.00 |
| Programming: Weekly & Final Reports | \$150.00 | 2 | \$300.00 |
| Project Supervisor: Final Declaration | \$150.00 | 2 | \$300.00 |
| Project Manager: Account Files Sent to Atty | \$95.00 | 2 | \$190.00 |
| CA Tax Preparation* | \$600.00 | 1 | \$600.00 |
| Annual Tax Reporting to IRS* | \$1,000.00 | 1 | \$1,000.00 |
| QSF Annual Tax Reporting | \$500.00 | 1 | \$500.00 |
| Sub Total: | | | \$3,040.00 |

*CPT will file Federal and California taxes in accordance with current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

| ADMINISTRATIVE TASKS | UNIT PRICE | PIECES/HOURS | COST ESTIMATE |
|---|------------|--------------|-----------------|
| UPEnterprise Reporting Services | \$0.15 | 8 | \$1.20 |
| Project Manager: Reporting & Remittance | \$95.00 | 2 | \$190.00 |
| Project Supervisor: Review of Report | \$150.00 | 1 | \$150.00 |
| Certified Mail Report to SCO | \$8.64 | 1 | \$8.64 |
| Add'l Account Recons | \$150.00 | 3 | \$450.00 |
| Sub Total: | | | \$799.84 |

Total Administration Costs: \$10,344.45

Courtesy Discount: -\$344.45

CPT'S DISCOUNTED FLAT FEE: \$10,000.00

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this

Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.