

## SETTLEMENT AGREEMENT

This Settlement Agreement (this “Settlement” or “Agreement”) is made by and between Jaclyn Epter (“Plaintiff”) and Downtown Streets, Inc. (“Defendant” or “DST”). Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties,” and each as a “Party.”

### I. DEFINITIONS

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

- A. “Action” means the civil action titled *Jaclyn Epter v. Downtown Streets, Inc.* (San Francisco County San Francisco Superior Court Case No. CGC-19-579955).
- B. “Agreement” shall refer to this document.
- C. “Class Member” means named Plaintiff in this Action and any DST employee who worked as “Employment Specialists” or “Case Managers” at any time between October 11, 2015 and March 31, 2020 (the “Class Period”). The Class does not include any individuals who already have resolved the claims asserted in the Action, whether by settlement or adjudication.
- D. “Class Counsel” means Marco A. Palau, Joseph D. Sutton and Eric S. Trabucco of Advocates for Worker Rights LLP.
- E. “Class Counsel Fees and Expenses Payment” means the amount awarded to Class Counsel by the Superior Court to compensate them for their reasonable fees and litigation expenses in connection with the Action, including their pre-filing investigation, their commencement of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
- F. “Class Notice” means the court-approved Notice of Proposed Settlement, Conditional Certification of Settlement Class, Preliminary Approval of Settlement, and Hearing Date for Final Court Approval.
- G. “Class Notice Packet” means the Class Notice, the Request for Exclusion/Opt-Out Form, and the Individual Class Member Dispute Form.
- H. “Class Representative Service Award” means the payment made, in addition to her respective settlement share, to Plaintiff in her capacity as a Class Representative to compensate her for initiating and pursuing the Action, and undertaking the risk of liability for attorneys’ fees and litigation costs in the event she was unsuccessful in the prosecution of the Action.
- I. “Defendant’s Counsel” means Steven Friedlander, Scott Atkinson, and Tatyana Shmygol of SV Employment Law Firm PC.
- J. “Effective Date” means: (a) if no Class Member files and serves any timely and valid objections to the Settlement, then the date upon which the Superior Court grants Final Approval of the Settlement; (b) if any Class Member files and serves a timely and valid objection but it is subsequently withdrawn, then the date upon

which the Superior Court grants Final Approval of the Settlement; or (c) if any Class Member files and serves a valid and timely objection, then the date which is sixty-five (65) days after (i) service of notice of entry of the Final Approval Order and Judgment on the Parties to the Action and all objectors to the Settlement, if any, without appeals or requests for review being taken, or (ii) order affirming the Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies, if appeals or requests for review have been taken.

- K. “Employer Payroll Contributions” shall mean those payroll taxes and other monetary contributions required by state and federal law to be made by an employer on wage payments, including but not limited to FICA, Medicare, FUTA, and SUTA, and any federal and state unemployment taxes, payable with respect to amounts treated as wages under this Agreement.
- L. “Final Approval Hearing” means the hearing to be conducted by the Superior Court to determine whether to finally approve and implement the terms of this Agreement.
- M. “Individual Class Member Dispute Form” means the form in the Class Notice Packet that allows a Class Member to challenge the Defendant’s records of the number of workweeks worked by that Class Member for the period from October 11, 2015 to March 31, 2020.
- N. “Judgment” means the Order Granting Final Approval of Class Action Settlement and Entering Final Judgment entered by the Superior Court.
- O. “Gross Settlement Amount” (“GSA”) means the maximum amount to be paid by Defendant as provided by this Agreement. The Gross Settlement Amount does not include Employer Payroll Contributions on the wage portion of Class Member Settlement Shares, which Defendant shall pay separately, and there shall be no reversion to the Defendant.
- P. “Net Settlement Amount” means the Gross Settlement Amount, less (as approved by the Superior Court) (1) the Class Representative Service Award; (2) Class Counsel’s Fees and Expenses Payment (which includes all attorneys’ fees and expenses incurred to date and to be incurred in documenting the Settlement, securing court approval of the Settlement, attending to the administration of the Settlement, and obtaining dismissal of the Action); (3); the portion of the PAGA Payment allocated to the LWDA; and (4) the Settlement Administrator’s reasonable fees and expenses incurred in administering the Settlement.
- Q. “PAGA Payment” means the payment made for civil penalties in the amount of \$10,000 to be paid to the California Labor and Workforce Development Agency (“LWDA”) and the Participating Class Members from the GSA to settle claims pursuant to the Private Attorneys General Act, Cal. Lab. Code section 2698, *et seq.*
- R. “Participating Class Member” means each individual Class Member, as defined herein, who does not submit a valid and timely request to be excluded from the Settlement.
- S. “Preliminary Approval of the Settlement” means the Superior Court’s preliminary

approval of the Settlement without material change, or with material changes to the Settlement to which the Parties agree.

- T. “Released Parties” means Defendant and any of its past, present and future parents, subsidiaries, divisions, and affiliated companies and entities, and each of its/their past, present, and future officers, directors, employees and agents.
- U. “Settlement” means the terms and conditions set forth in this Agreement meant to resolve the Action.
- V. “Settlement Administrator” means Phoenix Class Action Administration Solutions (“Phoenix”) selected by the Parties to administer the Settlement.
- W. “Settlement Share” means the total gross amount each Participating Class Member will receive as their respective portion of the Net Settlement Amount.

## **II. RECITALS**

- A. On October 11, 2019, Plaintiff commenced the Action in the Superior Court. On December 13, 2019 Plaintiff filed her First Amended Complaint.
- B. In the Action, Plaintiff alleges the following claims in operative complaint: (1) failure to pay for all hours; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods or premium wages in lieu thereof; (4) failure to provide lawful rest periods or premium wages in lieu thereof; (5) failure to provide accurate itemized wage statements; (6) failure to pay all wages owed upon termination of the employment relationship giving rise to waiting time penalties; (7) violation of California’s Unfair Competition Law;; and (8) civil penalties pursuant to the Private Attorney General Act (“PAGA”). Based on these claims, Plaintiff seeks the recovery of wages, including overtime pay, minimum wages, liquidated damages, statutory and civil penalties, waiting-time penalties, rest break and meal period premiums, prejudgment interest, and attorneys’ fees and costs.
- C. Shortly after the complaint was filed, the parties began discussing mediation and eventually agreed on the scope of an informal exchange of discovery needed to effectively mediate the Action. On January 8, 2021, the Parties participated in a mediation presided over by JAMS mediator John Bates. In advance of the mediation, Defendant produced a wealth of documents that the Parties agreed were crucial for mediation. During the mediation, each side, represented by its respective counsel, recognized the substantial risk of an adverse result in the Action and agreed to settle the Action, and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. This Agreement replaces and supersedes any other agreements, understandings, or representations between the Parties.

Based on these Recitals, the Parties agree as follows:

## **III. SETTLEMENT TERMS AND CONDITIONS**

### **A. Gross Settlement Amount.**

1. Subject to the terms and conditions of this Agreement, including but not

limited to sections III.A.2. and III.E.6., the Gross Settlement Amount that Defendant will be obligated to pay in connection with the Settlement of the Action is \$170,000.00. This amount will cover (as approved by the Superior Court) (1) all Settlement Shares paid to Participating Class Members; (2) the Class Representative Service Award; (3) Class Counsel's Fees and Expenses Payment; (4) the PAGA Payment; and (5) the Settlement Administrator's fees and expenses. The Gross Settlement Amount does not include required Employer Payroll Contributions on the wage portion of Class Member Settlement Shares, which Defendant shall pay separately, and there shall be no reversion to the Defendant.

2. The Gross Settlement Amount shall be deposited with the Settlement Administrator in a Qualified Settlement Fund ("QSF") in two equal installments of \$85,000 as follows: (1) Defendant shall make the first payment of \$85,000.00 within fourteen (14) days after the Effective Date. Within ten (10) days after the receipt of the first payment of \$85,000, the Settlement Administrator shall pay proportional amounts of Plaintiff's Class Representative Service Award, Class Counsel's litigation costs and fees, and Class Members' settlement shares. (2) Defendant shall make the remaining payment of \$85,000.00 on the later of six (6) months following the Effective Date or the first business day of Defendant's next fiscal year. The Settlement Administrator will then pay the remaining proportions of Plaintiff's Class Representative Service Award, Class Counsel's litigation costs and fees, and Class Members' settlement shares within ten (10) days of receiving the second and final payment of the Gross Settlement Amount. The Settlement Administrator shall hold all portions of the Gross Settlement Amount in an interest-bearing QSF for the benefit of Settlement Class members until the time for disbursement. If for any reason this Settlement does not obtain final approval by the Court, all monies deposited by Defendant shall revert back to Defendant.
3. This Agreement is based on Defendant's representation that there are approximately seventy-two (72) Class Members, including the named Plaintiffs in this Action. However, if the class size increases to eighty (80) or more Class Members for the Class Period, then at Defendant's option, the GSA will increase proportionately or this Agreement will be terminated.

**B. Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Settlement Shares from the Net Settlement Amount to Participating Class Members as follows:

1. **Calculation.** A Participating Class Member's Settlement Share will equal the Net Settlement Amount times the ratio of the number of workweeks worked by the Class Member for Defendant between October 11, 2015 to March 31, 2020 to the total number of workweeks worked by all Participating Class Members during this period.
2. **Treatment.**

- a. Twenty-five percent (25%) of each Settlement Share will be treated as a payment in settlement of the Participating Class Member's claims for statutory and civil penalties. Twenty-five percent (25%) of each Settlement Share will be treated as payment in settlement of the Class Member's claims for interest. Collectively, this fifty percent (50%) portion is the deemed the "Non-Wage Portion."
    - b. Fifty percent (50%) of each Settlement Share (the "Wage Portion") will be treated as a payment in settlement of the Participating Class Member's claims for unpaid wages. Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and deductions, and the Settlement Administrator will issue to the Class Member a Form W-2 with respect to the Wage Portion.
  3. **Class Members Are Not Required to Submit a Claim Form to Receive a Share of the Settlement.** Class Notice Section F will provide the number of workweeks (based on Defendant's records) and the approximate proportional share of the settlement payment attributed to any individual Class member. If the Participating Class Member does not dispute the number of workweeks set forth in Section F of the Class Notice, then the Settlement Administrator will mail that Class Member's shares of their individual settlement payment within the time frame specified in § III.A.2. The Individual Class Member Dispute Form only needs to be returned to the Settlement Administrator if the Participating Class Member disputes Defendant's records as to the number of workweeks that individual worked as an employment specialist and/or case manager from October 11, 2015 to March 31, 2020. Should a current or former employee of Defendant claim that they have been improperly excluded from the Class, they must contact the Settlement Administrator within 60 calendar days after the Settlement Administrator mails the Class Notice Packet and provide documentation that they worked as an "Employment Specialist" or "Case Manager" for Defendant at some point during the Class Period and have not already resolved the claims asserted in the Action, whether by settlement or adjudication. Defendant's records will be controlling when it comes to determining whether a current or former employee was improperly excluded from the Class.
  4. **Effect of Class Members Who Request to Be Excluded from the Settlement.** A Class Member who elects not to participate in the Settlement will not share in any Settlement proceeds or be bound by the Settlement; that Class Member's workweeks will not be included in the calculations of Settlement Shares for those Class Members who do not request exclusion; and the Settlement Share that otherwise would have been payable to such Class Member will be retained in the Net Settlement Amount for distribution to all other Participating Class Members who do not request to be excluded from the Settlement.
- C. **Payments to Plaintiff, Class Counsel, and Settlement Administrator.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will

make the following payments out of the Gross Settlement Amount as follows:

1. **To Plaintiff:** In addition her Settlement Share, the Plaintiff will apply to the Superior Court for an award of not more than \$10,000.00 as a Class Representative Service Award in consideration for initiating and pursuing the Action, and undertaking the risk of liability for attorneys' fees, expenses and litigation costs in the event she was unsuccessful in the prosecution of the Action. Defendant will not oppose Plaintiff's Class Representative Service Award request of up to \$10,000.00. The Settlement Administrator will pay the Class Representative Service Award approved by the Superior Court out of the Gross Settlement Amount. If the Superior Court approves a Class Representative Service Award of less than \$10,000.00 total, the remainder will be retained in the Net Settlement Amount. Tax deductions and withholdings will not be taken from the Class Representative Service Award, and instead a Form 1099 will be issued to Plaintiff with respect to this payment.
  2. **To Class Counsel:** Class Counsel will apply to the Superior Court for an award of reasonable attorneys' fees of not more than thirty-three and 1/3 percent (33 & 1/3%) of the Gross Settlement Amount (or \$56,661.00) and (b) reasonable litigation costs not to exceed \$21,000.00 incurred in this action by Class Counsel. Defendant will not oppose Class Counsel's request for a Class Counsel Fees and Expenses Payment of these amounts. The Settlement Administrator will pay the amount approved by the Superior Court out of the Gross Settlement Amount. Tax deductions and withholdings will not be taken from the Class Counsel Fees and Expenses Payment, and instead a Form 1099 will be issued to Class Counsel.
  3. **To the Settlement Administrator.** The Settlement Administrator will pay to itself out of the Gross Settlement Amount its reasonable fees and expenses as approved by the Superior Court, not to exceed \$5,000.00.
- D. **PAGA Payment.** Ten thousand Dollars (\$10,000) of the Gross Settlement Amount is allocated to settle claims for civil penalties under Private Attorneys General Act, Cal. Lab. Code section 2698, *et seq.* Seventy-five percent (75%) of the PAGA Payment (\$7,500) shall be paid to the California Labor and Workforce Development Agency ("LWDA") as required by PAGA. The \$2,500 remainder of the PAGA Payment shall become part of the Net Settlement Amount and distributed to participating Class Members in settlement of the PAGA cause of action.
- E. **Settlement Administrator.** The Parties chosen Settlement Administrator, Phoenix, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing to all Class Members the Class Notice Packet; conducting a National Change of Address search and using Accurint and other reasonable and cost-effective skip trace methods to locate any Class Member whose Class Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's

new address; setting up a toll-free telephone number to field calls from Class Members; receiving requests for exclusion in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of requests for exclusions; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a Class Member's Settlement Share, subject to the limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

**F. Procedure for Approving Settlement.**

**1. Motion for Preliminary Approval.**

- a. Plaintiff will file a motion (the "Motion for Preliminary Approval") with the Superior Court for an order granting Preliminary Approval of the Settlement, conditionally certifying the Class, setting a date for the Final Approval Hearing, conditionally appointing Plaintiff as Class Representative and their counsel of record in the Action as Class Counsel, and approving the Class Notice.
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an order granting the motion.
- c. Should the Superior Court decline to preliminarily approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, the Settlement will be null and void and the Parties will have no further obligations under it.

**2. Notice to Class Members.** After the Superior Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with the Class Notice Packet, which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement and an Individual Class Member Dispute Form stating the total number of workweeks attributed to that Class Member by Defendant's records.

- a. Within 7 business days after the Superior Court enters its order granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator the Class Member Data, preferably in electronic form for the Class Members containing, for each Class Member, the Class Member's name, employee identification number, last known address, and Social Security number, the end date for each Class Member's employment, and the number of workweeks worked by the Class Member for Defendant. If any or all of the Class Members' Data are unavailable to Defendant, Defendant will use best efforts to deduce or reconstruct the Class

Member's Data prior to when it must be submitted to the Settlement Administrator. At the time Defendant transmits the Class Member Data to the Settlement Administrator, it shall also provide to Class Counsel a signed verification confirming the accuracy of the number of Class Members.

- b. Within 7 business days after receiving the Class Members' Data, the Settlement Administrator will mail the Class Notice Packets to all identified Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than 7 days from receipt of the returned packet, search for a more current address for the Class Member using Accurint and other reasonable and cost-effective skip trace methods, and re-mail the Class Notice Packet to the Class Member along with a Notice of Re-mailing. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date of each such re-mailing as part of a weekly status report provided to the Parties. Defendant's Counsel will be entitled to receive from the Settlement Administrator any updated address information about a Class Member as the Settlement Administrator obtains such information.
- d. Each week, the Settlement Administrator will provide to Class Counsel and Defendant's Counsel a report showing whether any Class Notice Packets have been returned and re-mailed and the receipt of any requests for exclusion.
- e. Not later than sixteen (16) court days prior to the Final Approval Hearing, the Settlement Administrator will serve on the Parties and cause to be filed with the Superior Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes



occur from the date of the filing of its prior declaration.

**3. Objections to Settlement; Disputing the Number of Workweeks; Requests for Exclusion.**

- a. **Objection to Settlement.** A Class Member who wishes to object to any term of the Settlement must send the objection to the Settlement Administrator by either email, FAX or mail postmarked no later than 60 calendar days after the Settlement Administrator mails the Class Notice setting forth the grounds for the objection, the full name, address, and telephone number of the objector, date, and signature. The Settlement Administrator will forward any objections received to the lawyers for Plaintiff and Defendant. Absent good cause found by the Court, objections will be waived or not considered if not timely or otherwise compliant. Class Counsel and Defendant's counsel will file a response to any objection within 7 calendar days before the Final Approval Hearing. The parties will provide the Court with a complete and accurate list of all Class Members who object to the Settlement, along with their objections in the final approval motion.
- b. **Individual Class Member Dispute Form.** A Class Member who wishes to dispute the number of workweeks she or he worked outlined in the Class Member Dispute Form sent to the Class Member as part of the Class Notice Packet, may do so by submitting the Class Member Dispute Form, including any supporting documents (such as paycheck stubs) to the Settlement Administrator by either email, FAX or mail postmarked no later than 60 calendar days after the Settlement Administrator mails the Class Member Dispute Form. The Settlement Administrator will make the final determination as to the correct number of compensable workweeks for such a Class Member and will inform the Class Member regarding the final determination of their total number of workweeks. The parties will provide the Court with a complete and accurate list of all Class Members who disputed their workweeks in the final approval motion.
- c. **Requests for Exclusion.** A Class Member who wishes to be excluded from the Settlement must mail, email, or fax the Settlement Administrator a written and signed Request for Exclusion/Opt-Out Form no later than 60 calendar days after the Settlement Administrator mails the Class Notice Packet. The request must contain the name (printed legibly), address, telephone number, and last four digits of the Class Member's social security number or their tax identification number. If a question is raised about the authenticity of any request for exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity, such as a copy of their driver's license, passport, or permanent residency card. A Class Member who submits a timely request for exclusion will not participate in or be bound by the Settlement and the Judgment and will not receive a Settlement Share, but will retain the right, if any, he or

she may have to pursue a claim against Defendant. Class Members who submit a Request for Exclusion that fails to include the aforementioned identifying information will be contacted by the Settlement Administrator so that they may correct their request if they wish to be excluded. Class Members who do not submit a timely request for exclusion in the manner and by the deadline specified in the Class Notice will automatically be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Superior Court, and by the Judgment, regardless of whether they have objected to the Settlement. Class Members who exclude themselves from the Settlement will lose standing to object to the Settlement. If the Settlement Administrator receives both an objection and an exclusion request from the same Class Member, the Settlement Administrator will exclude the Class Member from the Settlement. The parties will provide the Court with a complete and accurate list of all Class Members who submitted a timely and complete Request for Exclusion in the final approval motion.

- d. **Report.** Not later than five business (5) days after the deadline to contest the Class Member Dispute Form and request to be excluded from the Settlement, the Settlement Administrator will provide counsel for Defendant with a complete and accurate list of all Class Members who have contested the information on their Class Member Dispute Form or requested to be excluded from the Settlement. The Settlement Administrator will provide Class Counsel with the same information by employee identification number only, without disclosing the Class Members' names and other personally identifying information.
4. **No Solicitation of Objection, Appeal, or Election Not to Participate in Settlement.** Neither Party nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
5. **Defendant's Right to Reject Settlement.** If five percent (5%) or more of the Class Members submit valid Requests for Exclusion, Defendant will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Maximum Settlement Amount, or any amounts that otherwise would have been owed under this Settlement, except that Defendant will pay the Settlement Administration Costs incurred as of the date that Defendant exercise their right to void the Settlement. Defendant will notify Class Counsel and the Court whether it is exercising this right to void not later than seven (7) days after the Settlement Administrator notifies the Parties of the number of valid Requests for Exclusion it has received
6. **Additional Briefing and Final Approval.**

- a. Not later than sixteen (16) court days before the Final Approval Hearing, Plaintiff will file with the Superior Court a motion for final approval of the Settlement and payment of the Settlement Administrator's reasonable fees and expenses, the Class Representative Service Award, the PAGA Payment, and the Class Counsel Fees and Expenses Payment pursuant to this Settlement.
  - b. If the Superior Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement to which the Parties do not agree, then either Party will have the right to void the Settlement; if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, except that Defendant will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the right to void the Settlement under this paragraph. However, an award by the Superior Court of a lesser amount than that sought by Plaintiff and Class Counsel for the Class Representative Service Award or the Class Counsel Fees and Expenses Payment will not constitute a material change to the Settlement within the meaning of this paragraph.
  - c. Upon final approval of the Settlement by the Superior Court, the Parties will present to the Superior Court an Order for its approval and entry of Judgment. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (1) enforcing this Agreement, (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under court rules or applicable law.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the material terms of this Agreement, Plaintiff, Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiff or Class Counsel from appealing from a refusal by the Superior Court to award the full Class Representative Payments or the Class Counsel Fees and Expenses Payment sought by them, but not the approval of the Settlement otherwise. If an appeal is taken from the Judgment, the time for consummating the Settlement (including making payments to Class Members under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final, as defined in this Agreement.

8. **Vacation, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal or a petition for certiorari, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material change to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiff or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court not later than 30 days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Superior Court's award of the Class Representative Service Award or the Class Counsel Fees and Expenses Payment will not constitute a vacating, reversal, or material modification of the Judgment within the meaning of this paragraph.
9. **Uncashed Settlement Share Checks.** A Class Member must cash his or her Settlement Share checks within 180 calendar days after it is mailed to him or her. If a check mailed to a Class Member as part of the first of the two settlement payments is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class Member at his or her correct address. However, if the Settlement Administrator is unable to locate the Class Member's correct address or the first settlement payment is returned as undeliverable to the Settlement Administrator for a second time, then the Class Member will not be sent their second installment check, and the Settlement Administrator will reallocate the Class Member's settlement share on a *pro rata* basis to Class Members for whom there are correct addresses for the second installment of settlement payments. If any Class Member's first Settlement Share check is not cashed within 120 days after its last mailing to the Class Member, the Settlement Administrator will send the Class Member a letter or postcard informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced but not cashed. If any Class Member's first settlement check remains uncashed after 180 days, those funds will be reallocated during the second disbursement of settlement shares on a *pro rata* basis to Class Members who cashed their first settlement checks. If any Class Member's second Settlement Share check is not cashed within 120 days after its last mailing to the Class Member, the Settlement Administrator will send the Class Member a letter or postcard informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced but not cashed. If one or more Class Members fail to cash their second Settlement Share check within 180 days after it is mailed to their last known address, and if the aggregate funds represented by the uncashed checks total \$5,000.00 or more, they will be distributed to each Class Member who is participating in the Settlement

and cashed their first Settlement Share check in the same *pro rata* manner as the first settlement share checks. If the aggregate funds represented by uncashed second checks total less than \$5,000.00, they will be donated to Legal Aid at Work.

#### G. Release and Waiver of Claims.

1. **Plaintiff.** In consideration of the other terms and conditions of the Settlement, Plaintiff releases any and all claims against Released Parties, including but not limited to those raised and those that could have been raised in the Action; those released by Class Members as set forth below; and those arising from or related to their employment with Defendant (the “Plaintiff’s Released Claims”). Plaintiff’s Released Claims include all claims, whether known or unknown. Thus, even if Plaintiff discovers facts in addition to or different from those that she now knows or believes to be true with respect to the subject matter of her Released Claims, those claims will remain released and forever barred. Therefore, because Plaintiff is granting a general release, she expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

*A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.*

2. **Class Members.** In consideration of the Settlement, each Class Member who does not timely request to be excluded from the Settlement releases any and all claims against Released Parties based on the facts that were alleged, or could have been alleged, in the Action or otherwise based on or related to the allegations that that Defendant or any of the Released Parties failed to pay all wages due, including minimum and overtime premium wages; failed to provide compliant rest breaks and meal periods; failed to pay all final wages upon termination; and failed to render accurate wage statements, for the period from October 11, 2015 through March 31, 2020. Such claims include, but are not limited to, claims under the California Labor Code sections 201, 202, 203, 204b, 210, 218.5, 226, 226.7, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198; the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab. Code § 2698 et seq.; California Business and Professions Code section 17200 et seq.; the California Industrial Welfare Commission Wage Order 04-2001; liquidated damages under California law; claims under any other associated federal, state or local statutory or regulatory law; claims for penalties; claims for punitive damages; tort claims; and any associated claim for interest, attorneys’ fees, or costs (the “Class Members’ Released Claims”). The Class Members’ Released Claims

include all such claims, whether known or unknown by the Class Members or any of them.

#### H. Miscellaneous Terms.

1. **Confirmatory Discovery.** Defendant agrees to provide Class Counsel with the following additional discovery to confirm the fairness and reasonableness of the Agreement and to facilitate court approval of the Settlement: the total number of Class Members who worked for Defendant at any time from October 11, 2015 to March 31, 2020.
2. **References.** Defendant agrees that any request for information or a reference related to Plaintiff's employment with Defendant will be responded to with the release only Plaintiff's dates of employment, position held, and their last rate of pay only.
3. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this or other than the representations, warranties, covenants, and inducements expressly stated in this Agreement.
4. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Superior Court, and in all cases all such documents, supplemental provisions and assistance of the Superior Court will be consistent with this Agreement.
5. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
6. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
7. **Applicable Law.** All terms and conditions of this Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
8. **Cooperation in Drafting.** The Parties have cooperated in the drafting and

preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

9. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's length negotiations, taking into account all relevant factors, current and potential. In addition, Mediator John Bates may, at his discretion, execute a declaration supporting the Settlement and the reasonableness of this Settlement, and the Superior Court may, in its discretion, contact Mr. Bates to discuss the Settlement and whether or not the Settlement is fair and reasonable.
10. **No Admission of Liability.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than Settlement, the Action is not appropriate for class and representative treatment. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Settlement, nor any document referred to or contemplated by this Settlement, nor any action taken to carry out this Settlement, is or may be construed as, or may be used as an admission, concession, or indication by or against any Released Party of any fault, wrongdoing, or liability whatsoever. Nor should the Settlement be construed as an admission that Plaintiff can serve as an adequate Class Representative except for purposes of this Settlement. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
11. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
12. **Severability.** Before declaring any provision of this Settlement invalid, the Parties request that the Superior Court first attempt to construe the provisions valid to the fullest extent possible under applicable precedents. In the event any provision of this Settlement shall be found invalid, void or unenforceable, that provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

**Class Counsel**

**Defendant's Counsel**

Marco A. Palau

Joseph D. Sutton  
Eric S. Trabucco  
Advocates for Worker Rights LLP  
212 9<sup>th</sup> Street, Suite 314  
Oakland, CA 94607  
Tel: 510-269-4200  
Fax (408) 657-4684

Steven Friedlander  
Scott Atkinson  
Tatyana Shmygol  
SV Employment Law Firm PC  
160 Bovet Road, Suite 401  
San Mateo, CA 94402

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

**IV. EXECUTION BY PARTIES AND COUNSEL**

The Parties hereby execute this Agreement.

Dated: June 10, 2021

  
Downtown Streets, Inc. *Board Chair*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jaclyn Epter



Marco A. Palau

Steven Friedlander

Scott Atkinson

Joseph D. Sutton

Tatyana Shmygol

Eric S. Trabucco

SV Employment Law Firm PC

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**IV. EXECUTION BY PARTIES AND COUNSEL**

The Parties hereby execute this Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Downtown Streets, Inc.

06/09/2021

Dated: \_\_\_\_\_

*Jaclyn Epter*  
\_\_\_\_\_  
Jaclyn Epter