

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Prodigy Investment Holdings, Inc.,¹

Reorganized Debtor.

Chapter 11

Case No. 23-11120 (BLS)

(Jointly Administered)

Objection Deadline: November 26, 2024 at 4:00 p.m. (ET)

Hearing Date: January 15, 2025 at 10:00 a.m. (ET)

**MOTION OF THE DISTRIBUTION TRUSTEE PURSUANT TO
FED. R. BANKR. P. 9019 FOR ENTRY OF AN ORDER APPROVING STIPULATION
BETWEEN THE DISTRIBUTION TRUSTEE AND MICHELE THORNE**

Steven Balasiano, in his capacity as the distribution trustee (the “Distribution Trustee”) of the PTR A Distribution Trust (the “Distribution Trust”) established in the above-captioned chapter 11 case (the “Chapter 11 Case”) of the reorganized debtor (“Prodigy” or the “Reorganized Debtor”), by and through his undersigned counsel, hereby submits this motion (the “Motion”),² pursuant to section 105 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an order, in substantially the form attached hereto as Exhibit A (the “Proposed Order”), approving the stipulation (the “Stipulation”) between the Distribution Trustee and Michele Thorne (“Thorne” and, together with the Distribution Trustee, the “Parties”) incorporating the terms of that *Class Action and PAGA Settlement Agreement* (the “Settlement Agreement”)³ by and between Plaintiffs

¹ The Reorganized Debtor in this Chapter 11 Case, along with the last four digits of the Reorganized Debtor’s federal tax identification number, is: Prodigy Investments Holdings, Inc. (9565). The location of the Reorganized Debtor’s service address is: 3350 Virginia St., 2nd Floor, Miami, FL 33133.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or Settlement Agreement, as applicable.

³ A copy of the Stipulation is attached to the Proposed Order as Exhibit 1 and a copy of the Settlement Agreement is attached to the Stipulation as Exhibit 1-A.



Thorne, Maho Lazo, Stephanie Bitetti, Amar Khatib, Kathy Thai, and Anthony Diaz (together, the “Plaintiffs”) and Defendants Proterra, Inc and Proterra Operating Company, Inc. In support of this Motion, the Distribution Trustee respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).⁴ Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested herein are section 105 of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules.

BACKGROUND

General Background

3. On August 7, 2023, Proterra Inc (“Proterra”) and its affiliate, Proterra Operating Company, Inc. (“Proterra Operating,” and together with Proterra, the “Debtors”) filed voluntary petitions for relief in this Court, commencing the chapter 11 cases (the “Chapter 11 Cases”).⁵ Additional details regarding the Debtors and the facts and circumstances supporting the relief requested herein are set forth in the *Declaration of Gareth T. Joyce in Support of First Day Relief* [D.I. 16].

4. On March 1, 2024, the Debtors filed the *Fifth Amended Joint Chapter 11 Plan of*

⁴ Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Distribution Trustee hereby confirms his consent to the entry of a final order by this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

⁵ For the avoidance of doubt, references to the Debtors and the Chapter 11 Cases pertain to the time before the entry of the Case Closing Order, as referenced herein, while references to the Reorganized Debtor and the Chapter 11 Case pertain to the period after the Effective Date and entry of the Case Closing Order, as applicable.

Reorganization for Proterra Inc and its Debtor Affiliate [D.I. 1154] (the “Plan”), and on March 6, 2024, the Court entered an order [D.I. 1180] (the “Confirmation Order”) confirming the Plan and all supplements thereto, including the Distribution Trust Agreement (the “DTA”). *See* [D.I. 1208].

5. The Plan became effective on March 13, 2024 (the “Effective Date”).

6. On March 22, 2024, the Court entered the *Order (I) Amending Case Caption to Reflect Change of Debtors' Names, (II) Closing Proterra Operating Company, Inc's Chapter 11 Case; and (III) Granting Related Relief* [D.I. 1233] (the “Case Closing Order”) authorizing the Debtors and Distribution Trust to amend the case caption used in the Chapter 11 Cases to reflect the changes of their respective legal names. As such, Proterra Operating Company, Inc., Case No. 23-11121 (BLS), was closed while the lead case, Proterra Inc, Case No. 23-11120 (BLS), remained open. Furthermore, the caption was amended to reflect the new name of the Reorganized Debtor in the remaining Chapter 11 Case, Prodigy Investments Holdings, Inc.

7. Pursuant to the Plan, as of the Effective Date, the Distribution Trust was established, for among other reasons, to provide for distributions to the Distribution Trust’s Beneficiaries. *See* Plan, Art. IV. The Plan and the DTA also authorize the Distribution Trustee to pursue objections to, and estimation and settlements of, all Disputed Claims to make the aforementioned distributions. *See* Plan, Art. IV.C.7.

The State Court Action and Settlement Agreement

8. Prior to the Petition Date, on August 19, 2021, the Plaintiffs sued the Debtors in Superior Court of the State of California, County of Los Angeles (the “State Court”) in an action captioned *Lazo v. Proterra Operating Company, Inc.* (Case Number 21STCV30663) (the “State Court Action”).

9. In the State Court Action, the Plaintiffs alleged for themselves and for a class of similarly situated workers (the “Settlement Class,” with each individual worker a “Class”

Member”), and as Private Attorney Generals under the California Private Attorneys General Act (“PAGA”), numerous violations by the Debtors of California state wage and hour laws (the “Class Claim”) and asserted certain penalties related to the Debtors’ PAGA violations (the “PAGA Penalties”).

10. On October 20, 2022, the Plaintiffs and the Debtors remotely attended mediation that resulted in an aggregate settlement amount of \$856,000 (the “Gross Settlement Amount”) and other material terms embodied in the Settlement Agreement.

11. In line with the Settlement Agreement, Plaintiff Lazo filed a *First Amended Complaint* in the State Court, which was joined by the other Plaintiffs. Plaintiff Lazo’s *First Amended Complaint* also added the following cause of action: violation of Labor Code section 2698, et seq. (PAGA) (the “Operative Complaint”).

12. The Debtors denied the allegations in the Operative Complaint, including any failure to comply with the laws identified in the Operative Complaint, and any and all liability for the causes of action alleged.

13. Upon commencement of the Chapter 11 Cases, the State Court Action was stayed. The State Court Action and the Operative Complaint will be disposed of by the Stipulation and (if and as entered) the Proposed Order.

14. In November 2023, the Plaintiffs timely filed various general unsecured proofs of claims in the Chapter 11 Cases consistent with the terms of the Settlement Agreement against each Debtor⁶ asserting: (i) employee wage and hour settlement payments due and owing to each individual Plaintiff in the amount of \$7,500.00 each, for a total of \$45,000.00 (Claim Nos. 832,

⁶ As each of the GUC Claims is filed against both Debtors, the totals herein do not include the Duplicative Claims, as defined herein, which will be expunged pursuant to the Stipulation.

837, 838, 839, 843, 844, 845, 847, 850, 851, 853, and 855); (ii) claims related to the Class Claim in the amount of \$329,500.00 (Claim Nos. 898, and 906); (iii) claims related to the PAGA Penalties in the amount of \$40,000.00 (Claim Nos. 897 and 902); and (iv) fees owed to Class Counsel in the amount of \$167,500.00 due to each Wilshire Law, PLC and Justice Law for a total of \$335,000.00 (Claim Nos. 884, 885, 886 and 901) (the “Class Counsel Fees” and together with the Class Claim and the PAGA Penalties, the “GUC Claims”).

15. The aggregate GUC Claims, in the total amount (omitting duplication as the Plan permits) of \$749,500.00 (the “Net Allowed Amount”), reflects a credit from the Gross Settlement Amount of \$106,500.00, which the Debtors had already paid to the Class Members during the pendency of the State Court Action through a “Pick Up Stix” process.

16. The Distribution Trustee and his professionals have reviewed the GUC Claims and the Settlement Agreement and determined that it is appropriate to allow the GUC Claims in accordance with the Settlement Agreement, and to make further provision for the allocation of proceeds of the GUC Claims as set forth therein.

a. The Stipulation

17. If approved, the Stipulation will allow certain GUC Claims, expunge duplicative GUC Claims, and incorporate the terms of the Settlement Agreement, including but not limited to: (i) an opt-out process related thereto; (ii) a distribution scheme to members of the Settlement Class; (iii) award fees to Class Counsel and financial adviser related to the GUC Claims; and (iv) resolve the GUC Claims and any other actual or potential exposure of the Debtors’ estates and the GUC Trust arising from the State Court Action and the Operative Complaint. The principal terms of the

Stipulation are as follows:⁷

- (a) GUC Claim Nos. 837, 838, 844, 845, 850, 853, 884, 886, 898, and 897 are allowed as General Unsecured Claims (the “Allowed Claims”), in the aggregate amount of \$749,500.00.
- (b) GUC Claim Nos. 832, 839, 843, 847, 851, 855, 906, 902, 885, and 901 shall be disallowed as duplicative (the “Duplicative Claims”) and expunged.
- (c) The Allowed Claims shall be treated in all respects in accordance with and subject to the provisions of the Plan.
- (d) The Distribution Trustee is authorized to take any steps as may be required or necessary to implement the Stipulation and Settlement Agreement and the transactions contemplated thereby, and the Debtor’s claims agent is authorized to make any changes to the claims register as necessary.
- (e) Provision is made for fees and expenses of Class Counsel, Class Counsel, Plaintiff’s financial adviser, and a settlement administrator.
- (f) Provision is made for service awards to lead plaintiffs.
- (g) Provision is made for distributions to the California Law and Workforce Development Agency, aggrieved employees (within the meaning of PAGA), and absent members of the Settlement Class, with alternative *cy pres* provisions in the latter two instances.
- (h) Provision is made in respect of opt-out and notice.
- (i) Certain releases are granted.
- (j) Bankruptcy Rule 7023 is applied to certify the Settlement Class and approve Thorne as representative thereof and Justice Law Corporation and Wilshire Law Firm, PLC as counsel thereto, in each case for settlement purposes only.
- (k) The Stipulation and Settlement Agreement will be binding on the Parties from the date of the Stipulation’s execution but is expressly subject to and contingent upon entry of a final, non-appealable order by the Bankruptcy Court approving the Stipulation. If the Bankruptcy Court denies approval of the Stipulation, the Stipulation will be null and void, and will be of no force and effect.

⁷ The following summary is qualified in its entirety by reference to the provisions of the Stipulation and Settlement Agreement. In the event of any inconsistencies between the provisions of the Stipulation and/or Settlement Agreement and the terms set forth herein, the terms of the Stipulation and/or Settlement Agreement, as applicable, shall govern.

RELIEF REQUESTED

18. The Distribution Trustee requests entry of an order, pursuant to Bankruptcy Rule 9019 and Section 105 of the Bankruptcy Code, in substantially the form of the Proposed Order, approving the Stipulation.

BASIS FOR RELIEF

19. Generally, when PAGA claims are settled, the court must “review and approve” the settlement. Cal. Lab. Code § 2699(l). “In so doing, the court must consider whether the proposed ‘PAGA settlement is fair and adequate in view of the purposes and policies of the statute.’” *Vargas v. Cent. Freight Lines, Inc.*, No. 16-cv-00507-JLB, 2017 U.S. Dist. LEXIS 157976, at *7-8 (S.D. Cal. Sep. 25, 2017) (quoting *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016)). The purposes and policies of the statute include “benefit[ing] the public by augmenting the state’s enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance.” *Id.* “Neither the California legislature, nor the California Supreme Court, nor the California Courts of Appeal, nor the California Labor & Workforce Development Agency (“LWDA”) has provided any definitive answer’ as to what the appropriate standard is for approval of a PAGA settlement. *Id.* (quoting *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, No. 14cv01093, 253 F. Supp. 3d 1074, 2017 U.S. Dist. LEXIS 79277, 2017 WL 2224265, at *1 (C.D. Cal. May 19, 2017)).

20. Pursuant to Section IX.E of the Plan, the GUC Claims underlying the State Court Action and the Operative Complaint were discharged, and the continued prosecution of the State Court Action was permanently enjoined. In exchange, the Plan affords Plaintiff the right to distributions under the Plan to the extent the GUC Claims become allowed General Unsecured Claims. Accordingly, what is being settled here is not the State Court Action, but the GUC Claims.

21. Under the Plan, the Distribution Trustee is authorized to settle any Claims without

Court approval. *See* Plan § IX.A (“In accordance with the provisions of the Plan, pursuant to sections 1123 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Distribution Trustee may compromise and settle Claims against the Estates and Causes of Action against other Entities.”). Although the Distribution Trustee is excused from seeking Court approval of the Stipulation and Settlement Agreement under the Plan, the Distribution Trustee does so, at the Plaintiffs’ request, in order to satisfy any potential approval requirement that may exist under PAGA. The Distribution Trustee asserts that the Stipulation and Settlement Agreement are “fair and adequate in view of the purposes and policies of the statute.” *Vargas*, No. 16-cv-00507-JLB, 2017 U.S. Dist. LEXIS 157976, at *7-8. The Settlement Agreement was negotiated at arm’s length and will result in a significant recovery for the Class Members that will “benefit the public by augmenting the state’s enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance.” *Id.* It was negotiated at arm’s length, by parties represented by competent counsel. The Stipulation merely is intended to give effect to the Settlement Agreement.

22. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. Bankr. R. 9019(a). Bankruptcy Rule 9019(a) “empowers the Bankruptcy Court to approve compromises and settlements if they are in the best interests of the estate.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). Under this authority, the Third Circuit has emphasized that “to minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy.” *In re Key3Media Group, Inc.*, 336 B.R. 87, 93 (Bankr. D. Del. 2005) (internal quotations omitted); *see also Protective Comm. for Indep. Stockholders of*

TMT Trailer Ferry Inc. v. Anderson, 390 U.S. 414, 424 (1968) (settlement and compromise are “a normal part of the process of reorganization”); *In re Culmtech, Ltd.*, 118 B.R. 237, 238 (Bankr. M.D. Pa. 1990) (observing that “compromises are favored in bankruptcy and . . . much of litigation in bankruptcy estates results in settlements”). Moreover, section 105(a) provides that a bankruptcy court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

23. Compromises are favored in the bankruptcy context “[t]o minimize litigation and expedite the administration of a bankruptcy estate.” *Martin v. Myers (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). “The authority to approve a compromise [or] settlement is within the sound discretion of the bankruptcy court.” *In re Northwestern Corp.*, No. 03-12872, 2008 WL 2704341, at *6 (Bankr. D. Del. Jul. 10, 2008) (“In exercising this discretion, the bankruptcy court must determine whether the compromise is fair, reasonable, and in the best interests of the estate.”) (quoting *In re Key3Media Group, Inc.*, 336 B.R. 87 at 92).

24. When determining whether a settlement is fair and reasonable under Bankruptcy Rule 9019(a), courts in the Third Circuit consider the following factors (collectively, the “Martin Factors”):

- (a) the probability of success in litigation;
- (b) the likely difficulties of collection;
- (c) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- (d) The paramount interest of the creditors.

Martin, 91 F.3d at 393; *Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006); *see also In re TSIC, Inc.*, 393 B.R. 71, 78–79 (Bankr. D. Del. 2008) (“the settlement

need only be above the lowest point in the range of reasonableness”) (internal citations omitted); *In re Marvel Entm’t Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (in applying Bankruptcy Rule 9019(a), whether a court should approve a settlement depends on several factors, including the probability of success in the litigation, the complexity of the litigation, the attendant expense and delay, and the interests of the creditors); *In re Geller*, 74 B.R. 685, 688 (Bankr. E.D. Pa. 1987) (generally, a settlement will be approved as long as it clears a threshold of reasonableness); *Official Unsecured Creditors’ Comm. v. Pa. Truck Lines, Inc. (In re Pa. Truck Lines, Inc.)*, 150 B.R. 595, 598 (E.D. Pa. 1992), *aff’d* 8 F.3d 812 (3d Cir. 1993) (settlement must not fall below the lowest level in the range of reasonableness).

25. While bankruptcy courts are directed to determine whether settlements are in the “best interests of the estate,” *In re Energy Coop., Inc.*, 886 F. 2d 921, 927 (7th Cir. 1989), the bankruptcy court should not substitute its judgment for that of a trustee or debtor in possession. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F. 2d 1303, 1311 (5th Cir. 1985); *In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). Indeed, the bankruptcy court is not to decide the numerous questions of law or fact raised in the litigation, but rather should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. *See In re Penn Cent. Transp. Co.*, 596 F. 2d 1102, 1114 (3d Cir. 1979); *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004) (“In approving a settlement, the court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must only conclude that the compromise or settlement . . . is above the lowest point in the range of reasonableness.”) (internal citations and quotation marks omitted).

26. The Stipulation embodying the terms of the Settlement Agreement will result in the

prompt resolution of the GUC Claims and, therefore, is in the best interests of the Distribution Trust and the Debtor's estate.

27. *Probability of Success.* Absent the Distribution Trustee's entry into the Stipulation, the compromises in the Settlement Agreement could be unwound, and the Distribution Trustee could be forced to litigate the issues alleged in the Operative Complaint through the claims reconciliation process or another forum. While the Distribution Trustee understands the former Debtors believed they had strong defenses with respect to the GUC Claims and allegations set forth in the Operative Complaint on both procedural and substantive grounds, the outcome of litigation is uncertain, and very large awards are routinely granted to plaintiffs under applicable non-bankruptcy law in respect of damages and penalties. Therefore, this factor weighs in favor of approving the Stipulation and Settlement Agreement.

28. *Difficulties of Collection.* Because the Stipulation does not provide for the payment of any settlement funds to the Distribution Trust, this factor is inapplicable.

29. *Complexity of Litigation.* California wage and hour claims are very complex to litigate, always involving extensive fact discovery, and typically involving numerous rounds of dispositive motion practice. If the Stipulation is not adopted and approved by the Court and the State Court, the Distribution Trust may be subject to such costly and complex litigation. For these reasons, this factor also weighs in favor of approving the Stipulation and Settlement Agreement.

30. *Paramount Interests of Creditors.* Finally, the Stipulation and Settlement Agreement are in the paramount interest of creditors. The Stipulation achieves the consensual resolution of the GUC Claims arising from the State Court Action and the Settlement Agreement provides a distribution scheme for the benefit of members of the Settlement Class, which is in their best interest because it will streamline the claims resolution process and allow for quicker

distributions than would otherwise be available through protracted litigation.

31. For all of these reasons, the Distribution Trustee submits that his entry into the Stipulation is a sound exercise of his business judgment and respectfully requests that the Court approve and authorize his entry into the Stipulation, which incorporates the Settlement Agreement, through entry of the Proposed Order.

NOTICE

32. The Distribution Trustee will provide notice of this Motion to: (i) the United States Trustee for the District of Delaware; (ii) the Plaintiffs; (iii) Class Counsel; and (iv) the parties who have requested notice pursuant to Bankruptcy Rule 2002. The Distribution Trustee respectfully submits that no further notice is required.

NO PRIOR REQUEST

33. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Distribution Trustee respectfully requests that the Court enter the Proposed Order and grant such other and further relief as may be appropriate.

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Dated: November 12, 2024

MORRIS JAMES LLP

/s/ Siena B. Cerra

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Counsel to the Distribution Trust

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Prodigy Investment Holdings, Inc.,¹

Reorganized Debtor.

Chapter 11

Case No. 23-11120 (BLS)

(Jointly Administered)

Objection Deadline: November 26, 2024 at 4:00 p.m. (ET)

Hearing Date: January 15, 2025 at 10:00 a.m. (ET)

**NOTICE OF MOTION OF THE DISTRIBUTION TRUSTEE PURSUANT TO
FED. R. BANKR. P. 9019 FOR ENTRY OF AN ORDER APPROVING STIPULATION
BETWEEN THE DISTRIBUTION TRUSTEE AND MICHELE THORNE**

PLEASE TAKE NOTICE that on November 12, 2024, the distribution trustee (the “Distribution Trustee”) of the PTR A Distribution Trust (the “Distribution Trust”), by and through its undersigned counsel, filed the *Motion of the Distribution Trustee Pursuant to Fed. R. Bankr. P. 9019 for Entry of an Order Approving Stipulation Between the Distribution Trustee and Michele Thorne* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Motion must be filed and received before **November 26, 2024, at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the response on undersigned counsel.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion will be held on **January 15, 2025, at 10:00 a.m. (ET)** before the Honorable Brendan L. Shannon, United States Bankruptcy Judge for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801.

IF NO OBJECTIONS ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN CONNECTION WITH SUCH PLEADINGS WITHOUT FURTHER NOTICE OR HEARING.

[Signature Page to Follow]

¹ The Reorganized Debtor in this Chapter 11 Case, along with the last four digits of the Reorganized Debtor’s federal tax identification number, is: Prodigy Investments Holdings, Inc. (9565). The location of the Reorganized Debtor’s service address is: 3350 Virginia St., 2nd Floor, Miami, FL 33133.

Dated: November 12, 2024

MORRIS JAMES LLP

/s/ Siena B. Cerra

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Counsel to the Distribution Trust

EXHIBIT A

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Prodigy Investment Holdings, Inc.,¹

Reorganized Debtor.

Chapter 11

Case No. 23-11120 (BLS)

(Jointly Administered_

Re: Docket No. ____

**ORDER APPROVING STIPULATION
BETWEEN THE DISTRIBUTION TRUSTEE AND MICHELE THORNE**

This matter coming before the Court on the *Motion of the Distribution Trustee Pursuant to Fed. R. Bankr. P. 9019 For Entry of an Order Approving Stipulation Between the Distribution Trustee and Michele Thorne* (the “Motion”); and the Stipulation.² Upon consideration of the Motion, the Stipulation, and all related pleadings; it appearing that relief requested in the Stipulation is in the best interests of the Distribution Trust and the parties in interest; notice of the Stipulation being sufficient under the circumstances and there being no need for further notice; and the Court, upon due deliberation, having found that “cause” exists to approve the Stipulation;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Stipulation attached hereto as Exhibit 1, is APPROVED.
2. The terms and conditions of this Order shall be effective immediately upon its entry.
3. The Distribution Trustee is authorized to take any steps as may be required or necessary to implement the Stipulation and the transactions contemplated thereby, and the

¹ The Reorganized Debtor in this Chapter 11 Case, along with the last four digits of the Reorganized Debtor’s federal tax identification number, is: Prodigy Investments Holdings, Inc. (9565). The location of the Reorganized Debtor’s service address is: 3350 Virginia St., 2nd Floor, Miami, FL 33133.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Debtor's claims agent is authorized to make any changes to the claims register as necessary.

4. Distribution, if any, on the Allowed Claims shall be made in accordance with, and subject to, the provisions of the Plan.

5. The Duplicative Claims shall be disallowed and expunged.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

EXHIBIT 1

THE STIPULATION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Prodigy Investment Holdings, Inc.,¹

Reorganized Debtor.

Chapter 11

Case No. 23-11120 (BLS)

Jointly Administered

STIPULATION

Steven Balasiano, in his capacity as the distribution trustee (the “Distribution Trustee”) of the PTR A Distribution Trust (the “Distribution Trust”) established in the above-captioned chapter 11 case (the “Chapter 11 Case”) of the reorganized debtor (“Prodigy” or the “Reorganized Debtor”), and Michele Thorne (“Thorne” and, together with the Distribution Trustee, the “Parties”) enter into this stipulation (the “Stipulation”)² incorporating the terms of that *Class Action and PAGA Settlement Agreement* (the “Settlement Agreement”)³ by and between Plaintiffs Thorne, Maho Lazo, Stephanie Bitetti, Amar Khatib, Kathy Thai, and Anthony Diaz (together, the “Plaintiffs”) and Defendants Proterra, Inc and Proterra Operating Company, Inc. (the “Debtors”), and agree as follows:

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Fifth Amended Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [D.I. 1154] (the “Plan”) and the Distribution Trust Agreement [D.I. 1208] (the “DTA”).

³ A copy of the Settlement Agreement is attached to the Stipulation as Exhibit 1-A.

RECITALS

WHEREAS, on August 19, 2021, the Plaintiffs sued the Debtors in Superior Court of the State of California, County of Los Angeles (the “State Court”) in an action captioned *Lazo v. Proterra Operating Company, Inc.* (Case Number 21STCV30663) (the “State Court Action”), alleging for themselves and for a class of similarly situated workers (the “Settlement Class,” with each individual worker a “Class Member”), and as Private Attorney Generals under the California Private Attorneys General Act (“PAGA”), numerous violations by the Debtors of California state wage and hour laws (the “Class Claim”) and asserted certain penalties related to the Debtors’ PAGA violations (the “PAGA Penalties”);

WHEREAS, on October 20, 2022, the Plaintiffs and Debtors remotely attended mediation that resulted in the Settlement Agreement, subject to the State Court’s approval;

WHEREAS, Plaintiff Lazo filed a *First Amended Complaint* in the State Court, which was joined by the other Plaintiffs, adding violation of Labor Code section 2698, et seq. (PAGA) as an additional cause of action (the “Operative Complaint”), which allegations the Debtors denied;

WHEREAS, on August 7, 2023, the Debtors filed voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the “Court”), commencing the Chapter 11 Cases;

WHEREAS, in November 2023, the Plaintiffs and counsel to the Settlement Class (“Class Counsel”) timely filed various general unsecured proofs of claims in the Chapter 11 Cases consistent with the terms of the Settlement Agreement, asserting: (i) employee wage and hour settlement payments due and owing to each individual Plaintiff in the amount of \$7,500.00 each, for a total of \$45,000.00 (Claim Nos. 832, 837, 838, 839, 843, 844, 845, 847, 850, 851, 853, and 855); (ii) claims related to the Class Claim in the amount of \$329,500.00 (Claim Nos. 898 and

906); (iii) claims related to the PAGA Penalties in the amount of \$40,000.00 (Claim Nos. 897 and 902); and (iv) fees owed to Class Counsel in the amount of \$167,500.00 due to each Wilshire Law, PLC and Justice Law for a total of \$335,000.00 (Claim Nos. 884, 885, 886 and 901) (the “Class Counsel Fees” and together with the Class Claim and the PAGA Penalties, the “GUC Claims”);⁴

WHEREAS, on March 1, 2024, the Debtors filed the Plan, and on March 6, 2024, the Court entered an order [D.I. 1180] (the “Confirmation Order”) confirming the Plan and all supplements thereto, including the DTA;

WHEREAS, the Plan became effective on March 13, 2024 (the “Effective Date”), and pursuant to the Plan, as of the Effective Date, the Distribution Trust was established, for among other reasons, to provide for distributions to the Distribution Trust’s Beneficiaries. *See* Plan, Art. IV;

WHEREAS, the Plan and the DTA also authorize the Distribution Trustee to pursue objections to, and estimation and settlements of, all Disputed Claims to make the aforementioned distributions. *See* Plan, Art. IV.C.7;

WHEREAS, after good faith, arm’s-length negotiations, in order to resolve the GUC Claims and prevent the costs, delays and uncertainties of continued litigation, the Parties have agreed to the terms and conditions set forth herein, which incorporate the terms of the Settlement Agreement;

NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

⁴ The aggregate GUC Claims, in the total amount of \$749,500.00, reflect a credit of \$106,500.00, which the Debtors had already paid Class Members during the pendency of the State Court Action through a “Pick Up Stix” process.

STIPULATION

1. *Disposition of the GUC Claims.* In accordance with the Plan, the GUC Claims will be treated as follows:

- GUC Claim Nos. 837, 838, 844, 845, 850, 853, 884, 886, 898, and 897 are allowed as General Unsecured Claims (the “Allowed Claims”), in the aggregate amount of \$749,500.00.
- GUC Claim Nos. 832, 839, 843, 847, 851, 855, 906, 902, 885, and 901 shall be disallowed as duplicative (the “Duplicative Claims”) and expunged.
- The Allowed Claims shall be treated in all respects in accordance with and subject to the provisions of the Plan.
- The Distribution Trustee is authorized to take any steps as may be required or necessary to implement the Stipulation and Settlement Agreement and the transactions contemplated hereby and thereby, and the Debtor’s claims agent is authorized to make any changes to the claims register as necessary.

2. *Settlement Agreement.* The Stipulation incorporates all provisions of the Settlement Agreement, annexed hereto as Exhibit 1-A.

3. *Allocation of Proceeds.* The proceeds of the Allowed Claims shall be allocated as follows:

(a) 33 1/3% of the proceeds will be paid to Class Counsel, as a legal fee to be divided equally between them;

(b) 15% of the proceeds will be paid to Dundon Advisers LLC, for services as restructuring financial adviser to Plaintiffs and Class Counsel

(c) Class Counsel will be reimbursed up to \$30,000 in reasonable and necessary expenses;

(d) Each of the named Plaintiffs will receive \$7,500.00;

(e) A settlement administrator designated by Class Counsel shall receive its fees and expenses as and to the extent incurred;

(f) Proceeds remaining after the payments made in clauses “a” to “e” above constitute the “Net Fund” and shall be allocated as follows:

(i) On account of a nominal \$40,000 PAGA penalty, the Net Fund shall be allocated 5.34% to PAGA Penalties, of which 25% (1.34% of the Net Fund) shall be paid to the

Settlement Administrator for the benefit of aggrieved employees within the meaning of PAGA (“Aggrieved Employees”) and 75% of which 75% (4.00% of the Net Fund) shall be paid to the California Labor and Workforce Development Agency, the sub-allocation among Aggrieved Employees being as provided in the Settlement Agreement;

(ii) The balance of the Net Fund shall be paid to the Settlement Administrator for the benefit Class Members, the sub-allocation among Class Members being proportionate to the allocations provided in the Settlement Agreement;

Provided, however if and to the extent that that Class Members and Aggrieved Employees would, after incurrence of related Settlement Administrator costs, receive less than \$25 gross of withholdings, the Settlement Administrator shall donate the funds in a *cy pres* contribution to a charity designated by Class Counsel in lieu of effectuating individual distributions to the Aggrieved Employees.

4. *Notice and Opt-Out.* In addition to the Distribution Trustee providing all ordinary notice of the Motion, the Settlement Administrator shall publish notice (substantially in the form annexed as Exhibit “B” hereto) of the Stipulation and the hearing date set for approval of the Proposed Order in a California legal newspaper of general circulation, inviting opposition from Aggrieved Employees or absent Class Members and opt-outs from the relief provided herein from absent class members,⁵ to be effectuated through a website maintained for such purpose by the Settlement Administrator. If an absent Class Member opts out, he or she will not receive any share of the sub-allocation to the Settlement Class of proceeds of the Allowed Claims, and will instead be entitled to have any timely wage and hour claim he or she filed separate from the Plaintiffs to be considered in the ordinary course. However, nothing in this Stipulation or the Order shall be deemed to revive any right of an opt-out absent Class Member to file proofs of claim or limit the scope of any transfer of assets of the Debtors free and clear of liabilities.

5. *Release.* In addition to the releases contemplated by the Settlement Agreement, Thorne, for herself and for each Settlement Class Member who did not opt out, forever waives, releases and discharges all claims or causes of action, save for the Allowed Claims to the extent

⁵ There is no opt-out provision in PAGA.

allowed hereby, which have or could arise under the State Court Action and Operative Complaint, to the extent the same would lie against the Distribution Trustee, the Distribution Trust, or the Debtor, and any attorney or other advisor to the Distribution Trustee, the Distribution Trust, or the Debtor. For the avoidance of doubt, the Distribution Trustee, Distribution Trust, and Debtor's estate have no obligation to pay any amounts on account of the Operative Complaint or State Court Action to any of the Plaintiffs, Class Counsel, LWDA and Aggrieved Employees, as defined in the Settlement Agreement, or Class Members other than to make distributions on the Allowed Claims in accordance with the Plan.

6. *Bankruptcy Court Approval.* This Stipulation will be binding on the Parties from the date of its execution but is expressly subject to and contingent upon entry of a final, non-appealable order by the Bankruptcy Court approving this Stipulation. If the Bankruptcy Court denies approval of this Stipulation, this Stipulation will be null and void, and will be of no force and effect.

7. *Authority to Execute.* The undersigned each represent and warrant that they are fully authorized and empowered to enter into this Stipulation on behalf of, and to bind, each Party as applicable (in the case of the Distribution Trustee and the Debtor, subject to the Bankruptcy Court's approval) and that each such Party has full knowledge of, is authorized to enter into, and has consented to, this Stipulation. All representations, warranties, inducements, and/or statements of intention made by the Parties are embodied in this Stipulation, and no Party relied upon, will be bound by, or will be liable for any alleged representation, warranty, inducement, or statement of intention that is not expressly set forth in this Stipulation.

8. *No Undue Influence.* The Parties each declare that their respective decisions in executing this Stipulation are not predicated on or influenced by any declaration or representation

of the other Parties, except as otherwise expressly provided herein. Each Party agrees that it or its counsel has carefully read this Stipulation, and that it understands all of its terms and conditions, knows its contents and has signed below as to its free and voluntary acts.

9. *Modifications.* No modification, amendment or waiver of any of the terms or provisions of this Stipulation will bind any Party unless such modification, amendment or waiver is in writing, has been executed by a duly authorized representative of the Party against whom such modification, amendment or waiver is sought to be enforced, and if material, has been approved by the Bankruptcy Court.

10. *Enforceability.* If any part of this Stipulation is held to be unenforceable by any court of competent jurisdiction, the unenforceable provision will be deemed amended to the least extent possible to render it enforceable and the remainder of this Stipulation will remain in full force and effect.

11. *Governing Law.* This Stipulation will be governed by and construed in accordance with the Bankruptcy Code and the laws of the State of Delaware without regard to the conflict of laws principles thereof. The Bankruptcy Court will retain exclusive jurisdiction over any and all disputes and matters arising out of or otherwise relating to this Stipulation, and the Parties hereby consent to such jurisdiction to resolve any disputes or controversies arising from or related to the Stipulation or the order approving the Stipulation.

12. *Disputes.* Any motion or application brought before the Bankruptcy Court to resolve a dispute arising from or related to this Stipulation shall be brought on notice as provided by and in accordance with the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware.

13. *Fees and Costs.* Each party shall bear its own costs and attorneys' fees incurred in connection with the negotiation, drafting and court approval of this Stipulation.

14. *Interpretation.* The Parties acknowledge that this Stipulation is the joint work product of all Parties and that, accordingly, in the event of ambiguities in this Stipulation, no inferences will be drawn against any Party on the basis of authorship of this Stipulation.

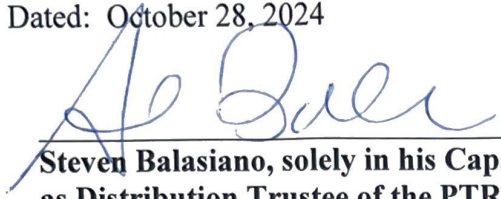
15. *Execution.* This Stipulation may be executed in one or more counterparts and by facsimile or electronic copy, all of which will be considered effective as an original signature.

16. *No Admissions.* Except with respect to the enforcement of the terms of this Stipulation, nothing herein and no action taken by any of the Parties hereto shall be construed as an admission or concession with respect to the merits of any claim or causes of action.

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IN WITNESS HEREOF and in agreement herewith, by and through the undersigned, the Parties have executed and delivered this Stipulation as of the date first set forth below.

Dated: October 28, 2024



**Steven Balasiano, solely in his Capacity
as Distribution Trustee of the PTR
Distribution Trust**

Michele Thorne

IN WITNESS HEREOF and in agreement herewith, by and through the undersigned, the Parties have executed and delivered this Stipulation as of the date first set forth below.

Dated: October 28, 2024



**Steven Balasiano, solely in his Capacity
as Distribution Trustee of the PTR
Distribution Trust**

Michele Thorne

EXHIBIT 1-A

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”) is made by and between Plaintiffs Maho Lazo, Stephanie Bitetti, Amar Khatib, Kathy Thai, Michele Thorne, and Anthony Diaz (“Plaintiffs,” “Plaintiff Lazo,” “Plaintiff Bitetti,” “Plaintiff Khatib,” “Plaintiff Thai,” “Plaintiff Thorne,” and “Plaintiff Diaz”) and Defendants Proterra, Inc. and Proterra Operating Company, Inc. (“Defendants”). The Agreement refers to Plaintiffs and Defendants as “Parties,” or individually as “Party.”

A. DEFINITIONS.

1. “Action” means the lawsuit alleging wage and hour violations against Defendants captioned *Lazo v. Proterra Operating Company, Inc.* initiated by Plaintiff Lazo on August 19, 2021, and pending in Superior Court of the State of California, County of Los Angeles (Case Number 21STCV30663), which includes as named Plaintiffs Khatib, Bitetti, Thai, Thorne, and Diaz, and as named Defendants Proterra, Inc. and Proterra Operating Company, Inc.
2. “Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
4. “Aggrieved Employee” means all persons who worked for Defendants in California as hourly paid or non-exempt employees during the PAGA Period.
5. “Class” means all persons who worked for Defendants in California as hourly paid or non-exempt employees during the Class Period.
6. “Class Counsel” means Justice Law Corporation and Wilshire Law Firm, PLC.
7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” means the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
8. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s: (a) full name; (b) last-known mailing address; (c) Social Security Number; and (d) number of Workweeks and PAGA Pay Periods.
9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

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10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address Database (“NCOA”), skip traces, and direct contact by the Administrator with Class Members.
11. “Class Notice” means the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
12. “Class Period” means the period from April 3, 2017 to December 19, 2022.
13. “Class Representatives” means the named Plaintiffs in the operative First Amended Complaint in the Action seeking Court approval to serve as the Class Representatives.
14. “Class Representative Service Payments” means the payment to the Class Representatives for initiating the Action and providing services in support of the Action.
15. “Court” means the Superior Court of California, County of Los Angeles.
16. “Defendants” means the named Defendants Proterra, Inc. and Proterra Operating Company, Inc.
17. “Defense Counsel” means Greenberg Traurig, LLP.
18. “Effective Date” means the later of the following dates: (a) if the Settlement has received Final Approval by the Court and there were no timely objections filed, or that any timely objections have been withdrawn, then the date the Court’s order of final approval of the Settlement; (b) if one or more timely objections has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector to seek appellate review of the trial court’s order of Final Approval of the Settlement, without a timely appeal having been filed; or (c) if a timely appeal of the Court’s order of Final Approval has been filed, then the Settlement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the trial court’s Final Approval without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.
19. “Final Approval” means the Court’s order granting final approval of the Settlement.
20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
21. “Gross Settlement Amount” means \$856,500 which is the total amount Defendants agree to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service

Payments, Administration Expenses Payment, and \$106,500 in *Pick Up Stix* settlement credit.

22. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
23. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of twenty-five percent (25%) of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period.
24. “Judgment” means the judgment entered by the Court based upon the Final Approval.
25. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
26. “LWDA PAGA Payment” means seventy-five percent (75%) of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
27. “Net Settlement Amount” means the Gross Settlement Amount less the following payments in the amounts approved by the Court: (a) Individual PAGA Payments; (b) LWDA PAGA Payment; (c) Class Representative Service Payments; (d) Class Counsel Fees Payment; (e) Class Counsel Litigation Expenses Payment; and (f) Administration Expenses Payment. A *Pick Up Stix* settlement credit of \$106,500 will also be deducted from the Gross Settlement Amount when calculating the Net Settlement Amount. The remainder is to be paid to Participating Class Members as Individual Class Payments.
28. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
30. “PAGA Period” means the period from May 11, 2020 to December 19, 2022.
31. “PAGA” means the Private Attorneys General Act of 2004 (Labor Code section 2698. *et seq.*).
32. “PAGA Notices” means Plaintiffs’ letters to the LWDA and Defendants providing notice pursuant to Labor Code section 2699.3, subd. (a).
33. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated seventy-five percent (75%) to the LWDA and the twenty-five percent (25%) to the Aggrieved Employees in settlement of PAGA claims.

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34. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
35. “Plaintiffs” means Maho Lazo, Stephanie Bitetti, Amar Khatib, Kathy Thai, Michele Thorne, and Anthony Diaz, the named plaintiffs in the Action.
36. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
37. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
38. “Released Class Claims” means the claims being released as described in Section E.2. below.
39. “Released PAGA Claims” means the claims being released as described in Section E.3. below.
40. “Released Parties” means Defendants and all their subsidiaries, affiliates, predecessors, successors, and related entities, and each of their respective officers, directors, employees, fiduciaries, trustees, agents, and insurance and benefits plans.
41. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
42. “Response Deadline” means sixty (60) calendar days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement; or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired.
43. “Settlement” means the disposition of the Action effected by this Settlement Agreement and the Judgment.
44. “Workweek” means any week during which a Class Member worked for Defendants for at least one day during the Class Period.

B. RECITALS.

1. Plaintiff Bitetti provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions on May 11, 2021. Plaintiff Lazo provided written notice to the LWDA and Defendants on August 12, 2021. Plaintiff Diaz provided written notice to the LWDA and Defendants on October 1, 2021. Plaintiff Thorne provided written notice to the LWDA and Defendants on October 12, 2021. Finally, Plaintiff Thai provided written notice to the LWDA and Defendants on October 20, 2021.

2. On August 11, 2021, Plaintiff Bitetti filed a representative PAGA action against Defendants in the Superior Court of California, County of Los Angeles (Case No. 21STCV29732). On August 19, 2021, Plaintiff Lazo filed a wage-and-hour class action lawsuit against Defendants in the Superior Court of California, County of Los Angeles, alleging similar violations (Case No. 21STCV30663). On September 30, 2021, Plaintiff Khatib filed a wage-and-hour class action lawsuit against Defendants in the Superior Court of California, County of Humboldt, alleging similar violations that was later transferred to San Mateo County (Case No. 22-CIV-01447).
3. On October 20, 2022, the Parties remotely attended mediation with Mark S. Rudy that resulted in a global settlement, subject to the Court's approval.
4. In line with the settlement, Plaintiff Lazo filed a First Amended Complaint in the Superior Court of California, County of Los Angeles, adding Plaintiff Bitetti, Plaintiff Khatib, Plaintiff Thai, Plaintiff Thorne, and Plaintiff Diaz as additional plaintiffs. Plaintiff Lazo's First Amended Complaint also added the following cause of action: violation of Labor Code section 2698, *et seq.* (PAGA) ("Operative Complaint").
5. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint, and deny any and all liability for the causes of action alleged.
6. The Parties conducted significant investigation and discovery of the facts and law both before and after the Action was filed. Defendants produced hundreds of documents relating to their policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest break policies, and payroll, timekeeping, and operational policies. As part of Defendants' production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of Workweeks and PAGA Pay Periods. Plaintiffs also interviewed Class Members who worked for Defendants throughout the Class Period. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130.
7. The Court has not yet granted class certification.
8. The Parties, Class Counsel, and Defense Counsel represent they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement Agreement.

C. MONETARY TERMS.

1. Gross Settlement Amount. Defendants promise to pay \$856,500 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any employer payroll taxes) prior to the deadline stated in

Section D of this Settlement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - a. To Plaintiffs: Class Representative Service Payments of no more than \$7,500 each Plaintiff (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members). Defendants will not oppose Plaintiffs' request for the Class Representative Service Payments that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves the Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.
 - b. To Class Counsel: A Class Counsel Fees Payment of not more than \$285,500 (1/3 of the Gross Settlement Amount) and a Class Counsel Litigation Expenses Payment of not more than \$30,000. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Class Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, hold Defendants harmless, and indemnify Defendants, from any dispute or controversy regarding any division or sharing of any of these payments.
 - c. To the Administrator: An Administration Expenses Payment not to exceed \$20,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$20,000, the Administrator will retain the remainder in the Net Settlement Amount.

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- d. To Each Participating Class Member: An Individual Class Payment calculated by: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period; and (b) multiplying the result by each Participating Class Member's Workweeks.
- i. Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims ("Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for penalties and interest ("Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
 - iii. Effect of the *Pick Up Stix* Settlement Credit on Individual Class Payments: Class Members who received a prior individual settlement in October 2022 related to the claims raised in the lawsuits will receive a credit for their prior amount received, which will be subtracted from their settlement checks.
- e. To the LWDA and Aggrieved Employees: PAGA Penalties in the sum of \$40,000 to be paid from the Gross Settlement Amount, seventy-five percent (75%) of which (\$30,000) will be allocated to the LWDA as the LWDA PAGA Payment and twenty-five percent (25%) of which (\$10,000) will be allocated to the Aggrieved Employees as their Individual PAGA Payments.
- i. The Administrator will calculate each Individual PAGA Payment by: (a) dividing the amount of the Aggrieved Employees' twenty-five percent (25%) share of PAGA Penalties (\$10,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period; and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. In addition, the Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

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- f. Pick Up Stix Settlement Credit: A credit of \$106,500 for which Defendants paid Class Members during the pendency of the lawsuits through a *Pick Up Stix* settlement will be deducted from the Gross Settlement Amount.

D. SETTLEMENT FUNDING AND PAYMENTS.

1. Workweeks and Pay Periods. Based on a review of their records to date, Defendants estimate there are 344 Class Members who worked a total of 22,188 Workweeks, and 195 Aggrieved Employees who worked a total 7,151 of PAGA Pay Periods.
2. Funding of Gross Settlement Amount. Defendants shall fund the Gross Settlement Amount by transmitting the funds to the Administrator within fourteen (14) calendar days the Effective Date.
3. Payments from the Gross Settlement Amount. Within fourteen (14) calendar days after Defendants fully fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Administration Expenses Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - a. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via first-class United States Postal Service (“USPS”) mail, postage prepaid. The face of each check shall state checks that are not cashed within one hundred eighty (180) calendar days after the date of mailing will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notices were returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees, including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notices were returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients’ mailing addresses using the NCOA.
 - b. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) calendar days of receiving a returned check, the Administrator will remail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced if requested by the Class Member prior to the void date.

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- c. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the *cy pres* recipient Legal Aid At Work, thereby leaving no “unpaid residue” subject to the requirements of Code of Civil Procedure section 384, subd. (b).
- d. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Settlement.

E. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

1. Plaintiffs’ Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged based on the facts contained in the Operative Complaint; and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in Plaintiffs’ PAGA Notices (“Plaintiffs’ Release”). Plaintiffs also agree not to disparage Defendants in any manner or in any medium. Plaintiffs’ Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge they may discover facts or law different from, or in addition to, the facts or law Plaintiffs now know or believe to be true but agree Plaintiffs’ Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs’ discovery of them.
 - a. Plaintiffs’ Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs’ Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the 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. Release by Participating Class Members Who Are Not Aggrieved Employees. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts contained in the Operative Complaint that occurred during the Class Period and ascertained during the Action. Except as set forth in Section E.3. of

this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

3. Release by Non-Participating Class Members Who Are Aggrieved Employees. All Non-Participating Class Members, who are Aggrieved Employees, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and PAGA Notices that occurred during the PAGA Period and were ascertained during the Action.

F. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval").

1. Defendants' Responsibilities. Defendants will prepare and deliver to Class Counsel a signed declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their declarations, Defense Counsel and Defendants shall aver they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
2. Plaintiffs' Responsibilities. Plaintiffs will prepare all documents necessary for obtaining Preliminary Approval, including: (a) a draft of the notice and memorandum in support of the Motion for Preliminary Approval that includes an analysis of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement under Labor Code section 2699, subd. (f)(2)); (b) a draft proposed of the Order Granting Preliminary Approval and Approval of PAGA Settlement; (c) a draft of the proposed Class Notice; (d) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel, Defendants, or Defense Counsel; (e) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and the Administrator; (f) a signed declaration from Class Counsel attesting to their competency to represent the Class Members; their timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (g) all facts relevant to any actual or potential conflict of interest with Class Members and the Administrator. In their declarations, Plaintiffs and Class Counsel shall aver they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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- a. The amounts of Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Expenses Payment, and Class Representative Service Payments shall be determined by the Court, and the Court's determination on these amounts shall be final and binding. The Court's approval or denial of any amount requested for these items are not material conditions of this Agreement and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Agreement. Any order or proceeding relating to an application for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Expenses Payment, and Class Representative Service Payments shall not operate to terminate or cancel this Agreement.
 - b. If the Court declines to conditionally certify the Class or to Preliminarily Approve all material aspects of the Agreement with prejudice, the Agreement will be null and void, and the Parties will have no further obligations under the Agreement.
 - c. Defendants agree they will not oppose Plaintiffs' Motion for Preliminary Approval of the Settlement Agreement so long as the motion is consistent with the terms of the Parties' Settlement Agreement.
3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for: (a) expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) calendar days after the full execution of this Agreement; (b) obtaining a prompt hearing date for the Motion for Preliminary Approval; and (c) appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
4. Duty to Cooperate. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Settlement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Settlement and otherwise satisfy the Court's concerns.

G. SETTLEMENT ADMINISTRATION.

1. Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their counsel represent they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for the purposes of calculating payroll tax withholdings and providing reports to the state and federal tax authorities.

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3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund under US Treasury Regulation section 468B-1.
4. Notice to Class Members.
 - a. Class Data. No later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover the Class Data omitted Class Members' identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use their best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
 - b. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.
 - c. Before mailing Class Notices, the Administrator shall update Class Member addresses using the NCOA. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data the Class Notice substantially in the form attached to this Agreement as **Exhibit A** via first-class USPS mail. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts.
 - d. No later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall remail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and remail the Class Notice to the most current address obtained.
 - e. The deadlines for Class Members' written objections, challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members whose notice is

remailed. The Administrator will inform the Class Member of the extended deadline with the remailed Class Notice.

- f. If the Administrator, Defendants, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement no later than fourteen (14) calendar days after receipt of Class Notice or the deadline dates in the Class Notice, whichever is later.

5. Requests for Exclusion (Opt-Outs).

- a. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator by fax, email, or mail a signed written Request for Exclusion no later than sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notices are remailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's: (i) full name; (ii) present address; (iii) email address or telephone number; and (iv) simple statement electing to be excluded from the Settlement. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- b. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable susceptible to challenge.
- c. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits, and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Section E.2. and Section E.3. of this Agreement, regardless of whether the Participating Class Member receives the Class Notice or objects to the Settlement.

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- d. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Section E.3. of this Agreement and are eligible for an Individual PAGA Payment.
6. Challenges to Calculation of Workweeks and PAGA Periods. Each Class Member shall have sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notices are remailed) to challenge the number of Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.
7. Objections to Settlement.
 - a. Only Participating Class Members may object to the class action components of the Settlement and/or this Settlement Agreement, including contesting the fairness of the Settlement Agreement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments.
 - b. Participating Class Members may send signed written objections to the Administrator by fax, email, or mail. The written objection must: (i) indicate what the Class Member is objecting to; (ii) why the Class Member is objecting; (iii) any fact that support the objection; and (iv) include the Class Member's full name, present address, and email address or telephone number.
 - c. Alternatively, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so no later than sixty (60) calendar days after the Administrator's mailing of the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notices are remailed).
8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- a. Website, Email Address, and Toll-Free Number. The Administrator will establish and maintain and use a website to post information of interest to Class Members. This information includes the date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, Class Notice, Motion for Final Approval, Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payments, Final Approval, and Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.
- b. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. No later than five (5) calendar days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing: (i) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (ii) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (iii) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- c. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: (i) Class Notices mailed or remailed; (ii) Class Notices returned undelivered; (iii) Requests for Exclusion (whether valid or invalid) received; (iv) objections received; (v) challenges to Workweeks and/or PAGA Pay Periods received and/or resolved; and (vi) checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion.
- d. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Settlement on all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- e. Administrator’s Declaration. No later than fourteen (14) calendar days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to: (i) mailing of Class Notice; (ii) Class Notices returned as undelivered; (iii) remailing of Class Notices; (iv) attempts to locate Class Members; (v) total number of Requests for Exclusion from Settlement it received (both valid or invalid); (vi) number of written objections received; and (vii) Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties

and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

- f. Final Report by Administrator. Within ten (10) calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) calendar days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

H. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Based on their records, Defendants estimate, as of the date of this Settlement Agreement, there are: (1) 344 Class Members who worked a total of 22,188 Workweeks; and (2) 195 Aggrieved Employees who worked a total 7,151 of PAGA Pay Periods. If the number of Workweeks worked by the Class Members increases by more than ten percent (10%) (or 2,219) then the Gross Settlement Amount shall be increased proportionally by the Workweeks worked in excess of 24,407 multiplied by the workweek value. The workweek value shall be calculated by dividing the Gross Settlement Amount by 22,188 Workweeks. The Parties agree the workweek value is \$38.60 (\$856,500 / 22,188 workweeks). Thus, for example, should there be 25,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by \$22,889.80 ((25,000 workweeks – 24,407 workweeks) x (\$38.60 workweek value)).

I. DEFENDANTS' RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten (10%) of the total of all Class Members, Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever and that neither Party will have any further obligation to perform under this Settlement provided Defendants will remain responsible for paying all settlement administration costs incurred to that point. Defendants must notify Class Counsel and the Court of its selection to withdraw no later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel. A late election will have no effect.

J. MOTION FOR FINAL APPROVAL. No later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiffs will file in Court a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (I), a Proposed Final Approval Order, and a proposed Judgment.

1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) calendar court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

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2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administration Expenses Payment shall not constitute a material modification to the Settlement within the meaning of this section.
3. Continuing Jurisdiction of the Court. The Parties agree after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and Settlement solely for purposes of: (a) enforcing this Agreement and/or Judgment; (b) addressing settlement administration matters; and (c) addressing such post-Judgment matters as are permitted by law.
4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Settlement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Settlement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing any additional settlement administration costs reasonably incurred after remittitur on a 50-50 basis. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this section if the Gross Settlement Amount remains unchanged.

K. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

L. ADDITIONAL PROVISIONS.

1. No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants has any liability for any claims asserted. Moreover, nothing in this Agreement

should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree class certification and representative treatment is for purposes of this Agreement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendants' defenses. This Agreement and Parties' willingness to settle will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate this Agreement).

2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendants, and Defense Counsel separately agree, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (a) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (b) to counsel in a related matter; (c) to the extent necessary to report income to appropriate taxing authorities; (d) in response to a court order or subpoena; or (e) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendants, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with a third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This section does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Class Counsel reserve the right to encourage Class Members to participate in the Settlement. Nothing in this section shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibit shall constitute the entire agreement between the Parties relating to the Agreement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent they are authorized by Plaintiffs and Defendants 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 reasonably required to effectuate the terms of this Agreement, including any amendments to this Agreement.

6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement Agreement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by the Court. If the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement Agreement, or on any modification of the Settlement Agreement that may become necessary to implement the Settlement Agreement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
7. No Prior Assignments. The Parties separately represent and warrant they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
8. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
12. 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 the Party was the drafter or participated in the drafting.
13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. No later than ninety (90) calendar days after the date when the Court discharges the Administrator's obligation to provide a declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and

electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

15. Headings. The descriptive heading of any section of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. If any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
17. Notice. All notices, demands, or other communications between the Parties in connection with 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, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

Douglas Han
Shunt Tatavos-Gharajeh
Justice Law Corporation
751 North Fair Oaks Ave., Suite 101
Pasadena, California 91103
(Tel) (818) 230-7502
(Fax) (818) 230-7259
dhan@JusticeLawCorp.com
statavos@JusticeLawCorp.com

Benjamin H. Haber
Justin F. Marquez
Arrash T. Fattahi
Wilshire Law Firm
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
(Tel) (213) 381-9988
(Fax) (213) 381-9989
benjamin@wilshirelawfirm.com
justin@wilshirelawfirm.com
afattahi@wilshirelawfirm.com

To Defendants:

Ronald Holland
Erik Christensen
Greenberg Traurig, LLP
101 Second St., Suite 2200
San Francisco, California 94105
(Tel) (415) 655-1300
(Fax) (415) 707-2010
Ron.Holland@gtlaw.com
Erik.Christensen@gtlaw.com

18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.*, DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
19. Stay of Litigation. The Parties agree upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

Dated: 4/20/2023

Maho Lazo

DocuSigned by:

By: _____
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Dated: 4/21/2023

Stephanie Bitetti

DocuSigned by:

By: _____
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Dated: _____

Amar Khatib

By: _____

Dated: _____

Kathy Thai

By: _____

Dated: _____

Michele Thorne

By: _____

Dated: _____

Anthony Diaz

By: _____

Dated: _____

Justice Law Corporation

By: _____
Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Attorneys for Plaintiffs

Dated: _____

Maho Lazo

By: _____

Dated: _____

Stephanie Bitetti

By: _____

04/18/2023
Dated: _____

Amar Khatib

By: *Amar Khatib*

04/26/2023
Dated: _____

Kathy Thai

By: *K. Thai*

04/18/2023
Dated: _____

Michele Thorne

By: *Michele R Thorne*

04/28/2023
Dated: _____

Anthony Diaz

By: *Anthony Diaz*

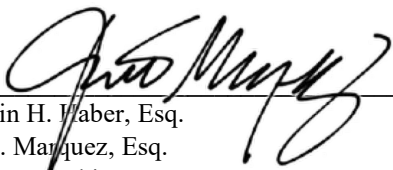
Dated: April 28, 2023

Justice Law Corporation



By: *D. Han*

Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Attorneys for Plaintiffs

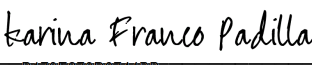

Dated: 4/21/2023**Wilshire Law Firm**

By: 
Benjamin H. Waber, Esq.
Justin F. Marquez, Esq.
Arrash T. Fattahi, Esq.
Attorneys for Plaintiffs


Dated: 5/14/2023**Proterra, Inc.**

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By: _____
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Attorneys for Defendants

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Jeff Mitchell

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