

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (hereinafter the “Settlement Agreement” or “Agreement”) is made by the Named Plaintiffs, as defined in this Agreement, on behalf of themselves and all others similarly situated (including the Settlement Class as defined below) (collectively “Plaintiffs”), and Defendant Mapbear, Inc. dba Instacart (“Instacart” or “Defendant”), in the action captioned *Camp, et al. v. Mapbear, Inc. dba Instacart*, Case No. BC652216 (Superior Court for the County of Los Angeles) (hereinafter “the Litigation”). Plaintiffs and Defendant will, at times, be referred to collectively herein as “the Parties.”

This Settlement Agreement is intended to fully and finally compromise, resolve, discharge and settle all claims brought against Instacart in the Litigation, and all claims based on or reasonably related thereto, to the fullest extent reflected herein, subject to the approval of the Court.

I. DEFINITIONS

The following are certain definitions applicable to this Agreement. Definitions contained elsewhere in this Agreement, including all definitions in the preceding section of this Agreement, shall also be effective.

1. “Asserted Claims” – All claims asserted in the operative Complaint of the Litigation and their associated allegations and prayer for relief.
2. “Claim” – The amount to which a Settlement Class Member is entitled under this Agreement.
3. “Claims Administrator” – The Claims Administrator shall be Simpluris, a third party claims administrator that has been mutually agreed upon by the Parties to effectuate the Settlement, as approved by the Court, or any successors mutually agreed upon by Named Plaintiffs and Defendant and approved by the Court.

4. “Claims Administration Expenses” – Those expenses of effectuating and administering the Settlement, *i.e.*, the costs incurred to the Claims Administrator, the costs of giving notice to Settlement Class Members, the costs of administering and disbursing the Net Common Fund, and the fees of the Claims Administrator approved for reimbursement by the court. The Parties estimate Claims Administration Expenses to be approximately \$120,000. These expenses shall be paid from the Gross Common Fund.

5. “Class Counsel” – The Arns Law Firm as class counsel for Plaintiffs.

6. “Class Counsel Fees” – The amount, not to exceed thirty-three and one-third percent (33.33%) of the Gross Common Fund, awarded to the Class Counsel by the Superior Court for the County of Los Angeles for prosecuting and obtaining a settlement of the Litigation. These fees shall be paid from the Gross Common Fund.

7. “Class Period” – The period of time from January 9, 2011 up to and including the date of preliminary approval of the settlement by the Court.

8. “Class Representative Service Award” – The sum to be paid, subject to Court approval, to each of the Named Plaintiffs for their services as class representatives, and for the risks and work attendant to that role, which shall be paid from the Gross Common Fund and shall not exceed (1) \$5,000 each for Plaintiffs Arlin Golden, Dominic Cobarruviaz, and Batya Weber for their active involvement in the Litigation on behalf of the Settlement Class; (2) \$1,000 each for Plaintiffs John Reilly, Christopher Russell, Susan Bannon, Derek Williams, Jonathan Husting, Matthew Clayton, Ladia Armstrong, Stephanie Weidner, Margaret Connolly, Matthew Parsons, Sarah Lester, Nathan Raines, Benjamin Boven, Amy Nosek, James Richie, Andrew Kendrick, Lea Johnson, Marcella Holmes, Elisabeth Perez, Marketta Wilder, and Jeremy Nail;

and (3) \$500 each for the remaining Named Plaintiffs. The tax treatment of such payments is addressed in Section III, Paragraph 14(e) of this Agreement.

9. “Court” – The Superior Court for the County of Los Angeles.

10. “Covered Services” – Services performed through the Instacart platform in the Instacart States, while being classified as an independent contractor of Instacart, that consist of any of the following: (i) in-store services, including but not limited to, waiting for and accepting a customer’s order, retrieving a customer’s selected items from a retail store, taking a customer order’s through checkout, ringing up a customer’s order at a checkout station, and/or preparing the order for delivery (“In-Store Services”); and/or (ii) transporting a customer’s order from the retail store to a location specified by the customer (“Delivering Services”).

11. “Defendant’s Counsel” – Kecker & Van Nest LLP as counsel for Defendant.

12. “Effective Date” – The Effective Date shall be the later of the following events: (a) when the period for filing any appeal, writ or other appellate proceeding related to the Litigation or this Settlement has lapsed; (b) when any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (c) when any appeal, writ, or other appellate proceeding has upheld the Court’s final approval order and judgment related to this Settlement with no right to pursue further remedies or relief. It is the intention of the Parties that the Settlement shall not become effective until the Court’s final approval order and entered judgment is completely final, and there is no further recourse by any appellant or objector who seeks to contest the Settlement or the finality of the Litigation.

13. “Employee Payroll Taxes” – The employee portion of all applicable tax withholdings including, but not limited to, taxes required by the Federal Insurance Contributions

Act (“FICA”), and other employment related taxes and withholding of federal, state and local income taxes.

14. “Employer Payroll Taxes” – The employer’s share of FICA taxes, Federal Unemployment Tax Act (“FUTA”) taxes, and all local, state, and federal payroll taxes and deductions related to the Settlement Payments.

15. “Exclusion Request”— A written request by a member of the Settlement Class to exclude themselves from the Settlement in accordance with the instructions in the Notice(s).

16. “Final Approval Hearing” – The hearing to be conducted by the Superior Court for the County of Los Angeles to determine whether to enter the Final Judgment approving and implementing the terms of this Agreement.

17. “Final Judgment” – The Final Judgment and Order Approving Class Settlement.

18. “Gross Common Fund” – The maximum amount of \$4,625,000.00 that Defendant shall pay, in its entirety, pursuant to this Settlement Agreement. The Gross Common Fund is an “all in” number that shall be used for payment of all Claims, Claims Administration Expenses, Class Counsel Fees, Plaintiffs’ Litigation Expenses, Class Representative Service Awards, PAGA Payment, and all taxes arising from payments pursuant to this Agreement, including but not limited to, Employee Payroll Taxes and Employer Payroll Taxes.

19. “Instacart States” – The following states and federal districts: California, New York, Colorado, Illinois, Washington State, Oregon, Massachusetts, Pennsylvania, Indiana, Texas, Georgia, Maryland, Virginia, Florida, Minnesota, New Jersey, Arizona, and North Carolina.

20. “Motion for Preliminary Approval” – The Motion for Preliminary Approval of the Settlement and its supporting papers.

21. “Named Plaintiffs” – Plaintiffs Dominic Cobarruviaz, Arlin Golden, John Reilly, Christopher Russell, Susan Bannon, Batya Weber, Derek Williams, Jonathan Husting, Matthew Clayton, Ladia Armstrong, Stephanie Weidner, Margaret Connolly, Matthew Parsons, Sarah Lester, Nathan Raines, Benjamin Boven, Amy Nosek, James Richie, Andrew Kendrick, Ana Arias, Aegea Barclay, Kenneth Reilly Barton, Jayson Calendario, Casey Camp, Michael Connors, Victor Francis, Modi Frank, Stefanie Frizzell, Tachina Garrett, Shannon Goodsell, Mimi Hayes, Timothy Hearl, Michael Hearn, Christopher Holmes, Marcella Holmes, Lea Johnson, Kevin Jones, Shannon Kitchen-Juarez, Lindsay Kreslake, Jennell Leveque, Daniel Major, Christopher Martinez, Carolina Mayorga, Matthew McIntyre, Yoshinari Mogi, Jeremy Nail, Elizabeth Perez, Skyla Pojednic, Allan Ritterband, Tracy Roebuck, Jason Skerik, Ammora Slaybaugh-Collins, Ja’neene Staton, Lily Sun, Ebangha Tanyi, Matthew Telles, Elizabeth Temkin, Paula Van, Mary Ann Varughese, Marketta Wilder, Margaret Wolf, Justin Zoeckler, Brian Zolenski, Laura Oxenfeld, Paulina Nguyen, Jeff Kendrick, Vanessa Bain, Mary Sylvia, Kimberlee Keller, Robin Drummond, Adan Botello, Cynthia Jennings, Alex Richter, Vicky Wilson, David Shempert, Deedra Everett, Tenola Hill, Alfred Mann, and Tommy Garadis..

22. “Net Common Fund” – The Net Common Fund shall equal the net amount available for payment of Claims to Settlement Class Members after deducting Claims Administration Expenses, Class Counsel Fees, Plaintiffs’ Litigation Expenses, the California Labor & Workforce Development Agency’s (“LWDA”) share of the PAGA Payment, all taxes, all taxes arising from payments, including but not limited to, Employee Payroll Taxes and Employer Payroll Taxes, and the Class Representative Service Awards.

23. “Notice(s)” – The Notice(s) of Pendency of Class Action Settlement and Proposed Hearing Date for Court Approval to be provided to Settlement Class Members, subject

to Court approval. The Parties anticipate that multiple and different Notices will be sent to Settlement Class Members to effectuate this Settlement, and have attached agreed upon proposed form(s) of notice hereto as **Exhibit A**, which are incorporated by reference into this Settlement Agreement. The Parties, however, acknowledge and understand that the number and form(s) of notice(s) ultimately approved and/or ordered by the Court may differ materially from the proposed form(s) of notice attached hereto, and the Court's approval of the attached form(s) of notice is not a material condition of this Agreement or the Settlement. In the event that multiple Notices are approved and/or ordered by the Court, all references to a singular "Notice" herein shall be interpreted to apply equally to each individual Notice that is approved by the Court and sent to Settlement Class Members.

24. "Order Granting Preliminary Approval" – The order or statement of decision that the Named Plaintiffs and Defendant will seek from the Court granting preliminary approval of the Settlement, without material variation from the form attached hereto as **Exhibit B**. Entry of the Order Granting Preliminary Approval shall constitute preliminary approval of the Settlement Agreement.

25. "PAGA Payment" – A payment of eighty thousand dollars (\$80,000) to settle all claims against Defendant under the California Private Attorneys General Act ("PAGA") (Cal. Lab. Code, § 2698 *et seq.*). From this amount, seventy-five percent (75%) shall be paid to the LWDA for civil penalties pursuant to PAGA and twenty-five percent (25%) will be distributed to the Settlement Class Members as part of the Net Common Fund for payment of civil penalties pursuant to PAGA.

26. "Plaintiffs' Litigation Expenses" – The sum of Plaintiffs' expenses of litigation incurred by Plaintiffs and Class Counsel as set forth on Class Counsel's billing statement and

approved for reimbursement by the Superior Court for the County of Los Angeles, which shall not exceed \$50,000.

27. “Preliminary Approval Date” – The date that the Court enters the Order Granting Preliminary Approval and thus: a) preliminarily approves the Settlement, and the exhibits thereto, and b) enters an order providing for notice to the Settlement Class, an opportunity to opt out of the Settlement Class, an opportunity to submit timely objections to the Settlement, a procedure for submitting claims, and setting a date for the Final Approval Hearing.

28. “Preliminary Approval Hearing” – The hearing to be conducted by the Superior Court for the County of Los Angeles to determine whether to grant the Motion for Preliminary Approval.

29. “Released Claims” – Includes collectively: (i) the Settlement Class Members’ Released Claims; and (ii) the Named Plaintiffs’ Released Claims.

30. “Releasees” – Includes collectively: (i) Defendant Mapbear, Inc. dba Instacart; (ii) Defendant’s past, present and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees franchisees, and any other legal entities that are owned or controlled by Defendant, whether foreign or domestic; and (iii) the past, present and future shareholders, employees, directors, officers, members agents, independent contractors, consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors or assigns of the entities listed in Parts (i) or (ii) of this definition.

31. “Settlement” – The settlement of this Litigation and related claims between and among the Named Plaintiffs, the Settlement Class Members, and Defendant, as set forth in, and effectuated by, this Agreement.

32. “Settlement Class” – All individuals who performed Covered Services during the Class Period. Excluded from the Class are Class Counsel and their immediate family members and the judicial officers and associated court staff assigned to the Litigation and their immediate family members.

33. “Settlement Class Member(s)” – Any person(s) included in the Settlement Class and who has not timely and validly opted out of the Settlement in accordance with the instructions in the Notice(s). This includes, but is not limited to, the Named Plaintiffs.

34. “Settlement Payment” or “Settlement Check” – The payment of the Claim mailed by the Claims Administrator to the Settlement Class Member.

II. RECITALS

1. WHEREAS, on February 28, 2017, the Named Plaintiffs filed a complaint in the Superior Court for the County of Los Angeles entitled *Camp, et al. v. Maplebear, Inc. dba Instacart*, Case No. BC652216, on behalf of themselves and allegedly similarly situated individuals who performed Covered Services in the Instacart States for Defendant Instacart during the applicable class period (hereinafter the “Complaint”). The Complaint alleges nationwide claims on behalf of a proposed nationwide class under the Fair Labor Standards Act (“FLSA”) (29 U.S.C. §§ 201 *et seq.*), and claims on behalf of multiple state-specific sub-classes under the laws of the Instacart States for various alleged wage and hour violations, including but not limited to: (1) violations of the FLSA; (2) unpaid wages; (3) failure to pay minimum wages; (4) failure to pay overtime wages; (5) failure to properly report pay and provide proper wage statements; (6) failure to reimburse employees for required business expenses; (7) failure to provide wages when due; (8) failure to prove meal and rest periods, (9) willful misclassification, (10) advice regarding misclassification, (11) failure to pay spread of hours pay, (12) failure to pay call-in pay, (13) improper tip pooling, (14) civil penalties under Cal. Labor Code § 2699 (the

PAGA); (15) unfair, unlawful, and fraudulent business practices; (16) fraud and intentional misrepresentation; (17) conversion, and (18) tortious interference with prospective economic advantage.

2. WHEREAS, all of the Named Plaintiffs have performed a variety of Covered Services for Defendant in one or more Instacart States during the Settlement Class time period.

3. WHEREAS, Defendant has not yet responded to the Named Plaintiffs' Complaint in the Litigation, but has provided notice of its intention to move to compel individual arbitration for claims alleged in the Complaint and to otherwise vigorously defend against the claims alleged in the Complaint.

4. WHEREAS, Class Counsel for the Named Plaintiffs filed two previous class action complaints against Instacart in the United States District Court for the Northern District of California: (1) *Cobarruviaz et al. v. Maplebear, Inc. dba Instacart*, Case No. 3:15-cv-00697-EMC (filed on January 9, 2015 and removed from the Superior Court for the County of San Francisco on February 13, 2015); and (2) *Husting et al. v. Maplebear, Inc. dba Instacart*, Case No. 3:16-cv-06921-EMC (filed on December 1, 2016).

5. WHEREAS, the *Cobarruviaz* class action complaint, as amended on April 8, 2015, alleged nationwide collective action claims against Instacart for minimum wage and overtime violations of the FLSA, and wage and hour claims against Instacart under the state laws of California, New York, Pennsylvania, and Colorado, including but not limited to claims for unpaid wages, failure to pay minimum wages, failure to pay overtime wages, failure to properly report pay and provide proper wage statements, failure to reimburse expenses, failure to provide meal and/or rest periods, willful misclassification, advice regarding misclassification, failure to pay spread of hours pay, failure to pay call-in pay, unfair, unlawful, and fraudulent business

practices, fraud and intentional misrepresentation, and civil penalties under Cal. Labor Code § 2699 (PAGA).

6. WHEREAS, the *Husting* class action complaint alleged nationwide collective action claims under the FLSA relating to unpaid minimum and overtime wages and tip pooling violations, and class action claims under the state laws of California, New York, Pennsylvania, Colorado, Illinois, Washington, Indiana, Texas, Georgia, Oregon, and Massachusetts for unpaid wages, failure to pay minimum wages, failure to pay overtime wages, failure to provide meal and/or rest periods, wage statement violations, failure to reimburse business expenses, failure to pay spread of hours and call-in pay, fraud and intentional misrepresentation, conversion, and tortious interference with prospective economic advantage.

7. WHEREAS, on November 3, 2015, Defendant obtained an order from the United States District Court for the Northern District of California compelling each named plaintiff in the *Cobarruviaz* lawsuit to submit his or her non-PAGA claims against Instacart to individual and binding arbitration.

8. WHEREAS, on November 16, 2016, the United States District Judge in the *Cobarruviaz* lawsuit declined to reconsider and upheld his November 3, 2015 order compelling individual arbitration of the *Cobarruviaz* named plaintiffs following the Ninth Circuit's decision in *Morris v. Ernst & Young LLP*, 834 F.3d 975 (9th Cir. 2016), which decision is currently pending on appeal before the United States Supreme Court.

9. WHEREAS, the United States District Court for the Southern District of New York in *Moton v. Maplebear, Inc. d/b/a Instacart* (Case No. 1:15-cv-08879-CM), and the United States District Court for the Eastern District of New York in *Bynum v. Maplebear, Inc. d/b/a*

Instacart (Case No. 1:15-cv-06263-JBW-CLP), also enforced Instacart's arbitration clause against plaintiffs who performed Covered Services.

10. WHEREAS, the *Cobarruviaz* and *Husting* lawsuits were voluntarily dismissed without prejudice on February 23, 2017.

11. WHEREAS, Class Counsel has filed fifty (50) individual arbitration demands against Instacart since December 2015 on behalf of persons who performed Covered Services in California, Colorado, Texas, Washington, Pennsylvania, Illinois, New York, Massachusetts, and Georgia, each of which alleged claims against Instacart under the FLSA and state law, including but not limited to claims for unpaid wages, minimum wage violations, overtime violations, failure to reimburse for business expenses, meal and rest break violations, wage statement violations, willful misclassification, unfair, unlawful, and fraudulent business practices, and fraud and intentional misrepresentation.

12. WHEREAS, forty-nine (49) of the foregoing arbitration proceedings filed by Class Counsel against Instacart remain open and pending.

13. WHEREAS, the Named Plaintiffs in the Litigation include named plaintiffs from the *Cobarruviaz* and *Husting* lawsuits, as well as individuals represented by Class Counsel who filed the aforementioned individual arbitrations against Instacart, and individuals who retained Class Counsel to assert claims against Instacart relating to the performance of Covered Services.

14. WHEREAS, the Parties have engaged in investigation, and exchanged documents and information in connection with the Litigation, including but not limited to depositions, documents and information exchanged through formal discovery in the *Cobarruviaz* lawsuit, and in certain of the aforementioned arbitrations. As part of this process, Defendant has provided documents and detailed information to Class Counsel to review and analyze, and the Plaintiffs

and Class Counsel have also conducted their own independent investigations and evaluations, have examined the benefits to be obtained under the terms of this Settlement Agreement, have considered the claims of the Plaintiffs, the claims of the Settlement Class, the risks associated with the continued prosecution of the Litigation and the likelihood of success on the merits.

15. WHEREAS, the Parties have engaged in multiple full-day mediation sessions before Judge W. Scott Snowden (Ret.), a highly qualified JAMS mediator, including on July 15, 2015, and on January 25, 2017, negotiated and reached a settlement in principle, the basic terms of which were set forth in a signed Memorandum of Understanding.

16. WHEREAS, this Settlement Agreement is made in compromise of disputed claims. Based upon all of the information evaluated, investigated, and reviewed, and after considering all of the circumstances relating to this litigation, including the uncertainties surrounding the risks of further litigation and the defenses that Defendant could assert, the Named Plaintiffs and Class Counsel believe that this proposed Settlement Agreement is fair, reasonable, adequate, in the best interests of the Named Plaintiffs and the Settlement Class, and confers substantial benefits upon the Settlement Class.

17. WHEREAS, the Named Plaintiffs warrant and represent that they are effecting this Settlement and executing this Agreement and the releases contained herein after having received full legal advice as to their respective rights and after having had the opportunity to obtain independent counsel to review this Agreement if desired.

18. WHEREAS, Instacart and Class Counsel understand and agree that this Agreement is intended to fully resolve and provide complete and global peace on all matters between Instacart and all individuals and plaintiffs represented by the Arns Law Firm, including all claims brought against Instacart in the Litigation, all claims previously brought against

Instacart in the *Cobarruviaz* and *Husting* lawsuits, all claims brought against Instacart in the aforementioned individual arbitration proceedings, and all claims that any client of the Arns Law Firm may have against Instacart relating to the Covered Services.

19. WHEREAS, the Parties desire to compromise and settle all issues and claims that have been, could have been, or should have been brought against Defendant in the Litigation

20. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by the Named Plaintiffs, for themselves and on behalf of the Settlement Class, and by Defendant, that subject to the approval of the Court, the Litigation shall be settled and compromised, and the Released Claims shall be finally and fully compromised, settled, and released as to the Releasees, in the manner and upon the terms and conditions set forth hereafter in this Agreement.

III. SETTLEMENT TERMS

Plaintiffs and Defendant agree as follows:

1. **Scope of Settlement:**

The Settlement includes monetary and non-monetary components, as set forth in detail below. The Settlement described herein will effect a full and final settlement and resolution of:

a) all claims brought against Defendant in the Litigation, as defined in this Agreement; and b) all Named Plaintiffs' Released Claims and Settlement Class Members' Released Claims as described in Sections III.17 and III.18.¹

2. **Maximum Potential Monetary Consideration:**

(a) Subject to court approval, and in consideration for the mutual covenants and promises set forth herein, Defendant shall pay the Gross Common Fund amount of \$4,625,000

¹ All paragraph and section references are references to the paragraph or section and any sub-paragraphs and/or sub-sections.

into an Escrow Account administered by the Claims Administrator for benefit of the Settlement Class and for distribution in the manner specified in this Agreement. It is understood and agreed that payment of this Gross Common Fund amount of \$4,625,000 shall be the sole financial obligation of Defendant under this Agreement and shall be Defendant's maximum total liability under this Agreement and that under no circumstance shall Defendant be required to pay anything more than this Gross Common Fund amount.

(b) The Gross Common Fund is an "all in" number that shall be used for the benefit of the Settlement Class to: (1) to satisfy the Claims of all Settlement Class Members, as specified herein; (2) to satisfy all Plaintiffs' Litigation Expenses; (3) to satisfy all claims for an award of Plaintiffs' Class Counsel Fees; (4) to satisfy the Class Representative Service Awards; (5) to satisfy the PAGA Payment; (6) to satisfy the Claims Administration Expenses incurred in this action; and (7) to satisfy all other cost and expenses related to the Settlement, including Employer Payroll Taxes. After the Effective Date, Defendant shall not have any right to the return or reversion of the Gross Common Fund, or any portion thereof, except as provided herein.

(c) The Gross Common Fund shall be paid in accordance with the terms of this Agreement and in no event shall Defendant be liable for making any payments under this Settlement, or for providing any relief to the Settlement Class or the Named Plaintiffs before the deadlines set forth in this Agreement.

(d) If this Agreement is not approved, is nullified pursuant to Section IV, is overturned or is modified on appeal or as a result of further proceedings on remand of any appeal with respect to this Agreement, or if the Effective Date otherwise does not occur, the balance of

the Gross Common Fund, including all earned and accrued interest, shall be returned to Defendant within five (5) days, or as soon as practicable, as set forth in this Agreement.

3. Non-Monetary Consideration:

(a) The non-monetary components of this Settlement from Instacart are:

(1) As soon as is practical after the Effective Date, and following product review and testing, Instacart will modify the existing user interfaces related to the Service fee to provide additional information to customers regarding the nature of the Service fee and the differences between the Service fee and tip. This subsection applies only to the extent the Service fee and tip remain part of the user interface.

(2) On or before (90) days after the Effective Date, Instacart will include, as a step in the shopper application and/or on-boarding process, explicit notification that, in certain jurisdictions, commercial automobile insurance is required in order to perform Instacart services and that such insurance is not provided by Instacart.

(3) On or before thirty (30) days after the Effective Date, Instacart will create a formal deactivation policy. Pursuant to such deactivation policy, individuals will only be deactivated from the Instacart platform for providing Covered Services for specifically delineated causes, and not at will. The delineated causes will be communicated to such individuals at or around the time that the formal deactivation policy is implemented.

(4) On or before sixty (60) days after the Effective Date, Instacart will create a formal, internal process through which a person performing Covered Services who has been deactivated may obtain certain additional information regarding the reasons for his or her deactivation and through which such person may ask Instacart to reconsider any such deactivation; and

(5) On or before ninety (90) days after the Effective Date, Instacart will create an interface or computer application that will allow a person performing Covered Services to obtain more detailed information regarding the Covered Services he or she has performed, including information regarding his/her tasks performed through the Instacart platform and the money s/he has received for performing Covered Services.

(6) Instacart maintains the right to make further changes to these non-monetary components of this Settlement, as long as such changes do not materially and adversely undermine the primary benefits of the non-monetary terms set forth in subsections (1) to (4) above. Instacart also maintains the right to make further changes to these non-monetary components if such changes are warranted by future changes in the laws governing the classification of independent contractors or employees.

(b) The non-monetary terms set forth in Paragraph 3(a) will expire upon the earliest of the following two dates: (i) two years after the Effective Date; or (ii) the date upon which there is a change to any applicable statute, regulation, or other law that Instacart reasonably believes would require a modification to any of the provisions set forth in Paragraph 3(a).

4. Denial of Liability:

(a) DEFENDANT DENIES THAT IT OR ANY OF ITS PAST OR CURRENT PARENTS, SUBSIDIARIES, AFFILIATES OR SUCCESSORS OR ANY OTHER RELEASEE HAS ENGAGED IN ANY UNLAWFUL ACTIVITY, WRONGDOING OR HAS FAILED TO COMPLY WITH THE LAW IN ANY RESPECT; DENIES THE ALLEGATIONS IN THE LITIGATION; DENIES HAVING ANY LIABILITY TO ANYONE UNDER THE CLAIMS ASSERTED IN THE LITIGATION; DENIES THAT ANY MEMBER OF THE SETTLEMENT CLASS IS OR EVER WAS AN EMPLOYEE OF DEFENDANT; DENIES FAILING TO PAY

WAGES, OVERTIME, BUSINESS EXPENSES OR OTHER AMOUNTS TO THE EXTENT REQUIRED BY LAW; DENIES THAT IT FAILED TO PROVIDE WAGE STATEMENTS OR OTHER MATERIALS AND INFORMATION TO THE EXTENT REQUIRED BY LAW; DENIES THAT IT FAILED TO PROVIDE MEAL AND REST PERIODS TO THE EXTENT REQUIRED BY LAW; DENIES THAT IT VIOLATED ANY TIP POOLING OR ANY OTHER TIP-RELATED LAW; DENIES THAT IT WILLFULLY VIOLATED ANY LAW; DENIES THAT IT COMMITTED ANY TORT, INCLUDING FRAUD, CONVERSION, OR TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; DENIES THAT A LITIGATION CLASS COULD PROPERLY BE CERTIFIED IN THIS LITIGATION; AND DENIES THAT REPRESENTATIVE PENALTIES COULD PROPERLY BE SOUGHT IN THIS LITIGATION.

(b) The Parties expressly acknowledge that this Agreement is entered into for the sole purpose of compromising highly disputed claims and eliminating the uncertainties, burdens, expense and delay of protracted litigation and expressly acknowledge that nothing herein is an admission of liability, culpability, negligence, or wrongdoing by Defendant or any of the Releasees. The Parties also expressly acknowledge that there has been no final determination by any court as to the merits of the claims asserted by Plaintiffs and the Settlement Class against Defendant, nor has there been any final determination as to whether a class should be certified, other than for settlement purposes only.

5. Restrictions on Use of the Agreement/Information Regarding Settlement:

(a) The Parties agree that this Agreement is a settlement document and shall, pursuant to California Evidence Code Section 1152 or any other equivalent or related law, regulation, statute, or provision, be inadmissible as evidence in any proceeding. In addition, the

Parties agree that this Agreement, the fact of this Settlement, any other evidence of this Settlement, any of the terms in the Agreement, any documents filed in support of the Settlement, any press release or other statement concerning the Agreement or Settlement and/or any negotiations, proceedings, acts performed, or documents executed pursuant to, or in furtherance of, this Agreement or the Settlement shall not, in any court, arbitration, administrative proceeding or other proceeding or tribunal, constitute, or be offered, received, claimed, construed or used or deemed as, an admission, finding or evidence of: 1) any wrongdoing, fault or omission by Defendant; 2) any violation of any statute or law; 3) any liability on the claims or allegations in the Litigation or any other proceeding; 4) the validity of any claim in the Litigation or any Released Claim; or 5) the propriety of certifying a litigation class or any representative group in the Litigation or any other proceeding, and shall not be used by any person or entity for any purpose whatsoever in any legal proceeding other than a proceeding to enforce the terms of the Agreement in this Litigation, including but not limited to any arbitration or legal proceeding.

(b) However, the Parties also agree that this paragraph and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any proceeding to enforce any or all terms of this Agreement. The Parties also agree that the Releasees shall have the right to file the Settlement Agreement, the Final Approval Order, and any other document or evidence relating to the Settlement in any action that may be brought against them in order to support a defense or counterclaim relating to any claims released, precluded, or barred by this Agreement.

6. Certification of Settlement Class for Settlement Purposes Only

(a) For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class under California law (California Code of Civil Procedure §382 and Rules of

Court, rule 3.769) for settlement purposes only. The Parties agree that this Settlement Agreement is contingent upon the approval and certification by the Court of the Settlement Class for settlement purposes only.

(b) The Parties agree that Defendant does not waive, and instead expressly reserves, its rights to challenge the propriety of class certification for any purpose should the Court not approve the Settlement Agreement and expressly disputes that certification would be proper for the purposes of litigating the class' claims proposed in the Litigation.

(c) The Parties agree that the Parties' stipulation to the certification of the Settlement Class for settlement purposes only shall not be used by any person or entity for any purpose whatsoever in any legal proceeding, including but not limited to any arbitration, other than a proceeding to enforce the terms of this Agreement, as set forth in this Agreement. This includes, but is not limited to, an agreement that this stipulation shall not constitute, or be offered, received, claimed, construed or deemed as, a waiver, admission, finding or evidence of the propriety of certifying a litigation class in the Litigation or in any other legal proceeding.

(d) Defendant does not agree or consent to certification of the Settlement Class for any purpose other than to effectuate the Settlement of the Action. If this Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not occur, all Orders certifying the Settlement Class for purposes of effecting this Settlement Agreement, and all preliminary and/or final findings regarding the Settlement Class certification order, shall be automatically vacated upon notice to the Court and the Litigation shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made. Additionally, the Litigation shall revert *nunc pro tunc* to the

procedural status quo as of the date and time immediately before execution of the Settlement Agreement, in accordance with this Settlement Agreement.

(e) In connection with the proposed certification of the Settlement Class, the Parties shall cooperate and present to the Court for its consideration, information and/or evidence as may be requested by the Court, under the applicable due process requirements and standards for class certification.

7. Relation to *Sumerlin* Lawsuit, Statute of Limitations, and LWDA Notices

(a) The Parties agree to cooperate to have the Complaint related to the *Sumerlin et al. v. Maplebear, Inc. d/b/a Instacart* lawsuit (Case No. BC603030), which is currently pending in the Superior Court for the County of Los Angeles before Judge John Shepard Wiley, Jr., solely for purposes of implementing this Agreement and effectuating the Settlement.

(b) The Parties agree and stipulate that the statutes of limitations shall be tolled for each of the named plaintiffs in the *Cobarruviaz* and *Husting* lawsuits such that their claims alleged in the Complaint will relate back to the filing dates of the *Cobarruviaz* and *Husting* actions, respectively for each cause of action, for purposes of the relevant statutes of limitations.

(c) Plaintiffs agree to prepare and serve the California Labor and Workforce Development Agency (LWDA) with an amended PAGA letter to cover alleged tip-related violations under California Labor Code Section 351, as necessary to effectuate the broadest possible release of PAGA claims pursuant to this Agreement.

(d) The Parties agree to take any administrative actions deemed necessary by the Parties to effectuate the broadest possible release as described above.

(e) The Parties agree that the filing of the Complaint and relating the Litigation to the *Sumerlin* lawsuit and pending *Sumerlin* settlement will streamline the settlement process and

ensure that more money can be paid to Settlement Class Members, including by minimizing costs relating to multiple notice(s) and approval processes.

(f) If, for any reason, the Settlement does not become Final or the Effective Date does not occur, the Parties stipulate and agree that Defendant shall maintain all rights, remedies, arguments, and defenses to the Complaint, including but not limited to Defendant's right to file a Motion to Compel Arbitration and/or a Demurrer or Motion to Strike.

(g) If, for any reason, the Settlement does not become Final or the Effective Date does not occur, the Parties stipulate and agree that all named plaintiffs from the *Cobarruviaz* lawsuit who were compelled to arbitration by the United States District Court for the Northern District of California shall immediately withdraw as named plaintiffs in the Litigation for all non-PAGA claims asserted against Instacart, and to the extent they pursue such non-PAGA claims against Instacart, they will do so via binding arbitration in a manner consistent with the November 3, 2015 order in the *Cobarruviaz* lawsuit.

(h) To the extent that they have not already done so, the Parties agree to seek an immediate stay of any actions currently pending against Instacart aside from the Litigation, and agree to seek an immediate stay of any deadlines, hearing dates, trial dates, and/or other dates or obligations therein until final approval of the Settlement is obtained, and the Parties further agree to cooperate on a process to seek such stays. Upon final approval of the Settlement, the Parties agree to seek immediate dismissal of any remaining actions aside from the Litigation.

8. Settlement Approval Procedure:

(a) This Settlement Agreement will become final and effective upon occurrence of all of the events required to obtain the Effective Date. The Parties and their counsel agree to use

their best efforts to obtain a final court order approving this Settlement (“Final Approval Order”).

(b) Promptly upon execution of this Settlement Agreement by the Parties and their respective counsel of record, the Named Plaintiffs shall submit the following to the Court for approval: (1) a Motion for Preliminary Approval of the Settlement as described in Sections III.9 of this Agreement for purposes of effectuating this Settlement; and (2) a Stipulation seeking to relate the Complaint to the *Sumerlin* Litigation and tolling the statutes of limitations for the claims in the Complaint, as described in Section III.7 of this Agreement.

(c) The documents described in subsection (b) above shall seek the following order(s) from the Court, among other orders detailed in this Agreement or agreed upon by the Parties: (1) the entry of an order by the Court granting preliminary approval of the Settlement Agreement, including conditional certification of the Class for settlement purposes only (the Parties’ proposed Order Granting Preliminary Approval is attached hereto as “Exhibit B”); (2) the entry of an order by the Court relating the Complaint to the *Sumerlin* Litigation; (3) the entry of an order by the Court approving the proposed Notice(s), the proposed and agreed upon form(s) of which are attached hereto as Exhibit A; (4) the entry of an order by the Court scheduling a hearing date for final approval of the Settlement Agreement; and (5) the entry of an order barring and enjoining the Named Plaintiffs and all members of the Settlement Class from, instigating or participating in any lawsuit or proceeding which asserts any claims that are, or relate in any way to, the Named Plaintiffs’ or the Settlement Class Members’ Released Claims, pending final determination of whether the Settlement should be approved and unless and until they submit a timely request for exclusion pursuant to the Agreement.

(d) After the Order Granting Preliminary Approval is Granted, the Parties will seek Final Approval of the Settlement as detailed in this Settlement. As part of this process, Class Counsel shall file, on or before the date of the final approval hearing, the documents detailed in this Settlement, including but not limited to the Claims Administrator's verification, in writing, that the Notice to the Class has been disseminated in accordance with the Court's Order Granting Preliminary Approval.

9. Preliminary Approval of Settlement:

The Parties agree to the following procedures for obtaining preliminary approval of the Settlement, certifying a conditional Settlement Class, notifying Class Members, and obtaining final court approval of the Settlement:

(a) Class Certification for Settlement Purposes Only:

The Parties stipulate to certification of the Class for purposes of settlement only, as described in Section III.6.

(b) Motion for Preliminary Approval:

Named Plaintiffs shall file the Motion for Preliminary Approval of the Settlement and proposed Order Granting Preliminary Approval of the Settlement with the supporting papers, a draft of which will be timely provided to Defendant's Counsel for approval prior to filing with the court. The Parties shall jointly agree upon the timing for that filing, the Motion to be filed with the Court, the Claims Administrator, and the timing for any preliminary or final approval hearings requested in the Motion.

The Parties agree that the Court may enter the Order Granting Preliminary Approval, without material variation from Exhibit B except as otherwise permitted by this Agreement, preliminarily approving the Settlement and this Agreement. Among other things, the Order

Granting Preliminary Approval shall preliminarily certify the Settlement Class for settlement purposes only; approve the Named Plaintiffs as class representatives; appoint Class Counsel to represent the Settlement Class; appoint the Claims Administrator; approve the Notice(s) of Class Settlement; approve the requirements for objecting to the Settlement and excluding individuals from the Settlement Class, as provided in this Agreement; provide that certification and all actions associated with certification are undertaken on the condition that the certification and other actions shall be automatically vacated if this Agreement is terminated, as provided in this Agreement; preliminarily enjoin all Named Plaintiffs, Settlement Class Members, and their Legally Authorized Representatives, unless and until they submit a timely request for exclusion pursuant to this Agreement, from filing or otherwise participating in any other suit based on the Named Plaintiffs' Released Claims or Settlement Class Members' Released claims, or from attempting to effect an opt-out of a group, class, or subclass of individuals, and schedule the Final Approval Hearing.

(c) **Notice of Class Settlement:**

The Parties agree to cooperate and take all reasonable steps to have the settlement of the Litigation related to the pending *Sumerlin* settlement such that a single class notice will be sent for both the *Sumerlin* settlement and the total settlement under the Complaint. In the event a single class notice becomes impracticable, a single class notice will be sent for both the *Sumerlin* settlement and the total California class settlement under the Complaint, and a separate, second class notice will be sent for the non-California class settlement under the Complaint. Assuming either can be achieved, the Parties agree that the California claims and time period in the Complaint that overlap with the *Sumerlin* action shall be subsumed and disposed of by the *Sumerlin* settlement. The Parties further agree that the single class notice described in and

proposed by this Paragraph will adequately describe both the *Sumerlin* settlement and the relevant settlement of the Litigation, and will provide any overlapping class members an ability to opt out of one or both settlements.

The Parties' proposed form(s) of notice(s) attached hereto as Exhibit A reflect the Parties' intention to consolidate class notice(s) with the *Sumerlin* settlement as stated in this Section, and to minimize the number of different notices required to effectuate the Settlement. Notwithstanding the Parties' shared intent to obtain the Court's approval of the Parties' proposed form(s) of notice attached hereto as Exhibit A, the Parties understand and agree that the Court's approval of the Parties' proposed form(s) of notice attached hereto as Exhibit A shall not be deemed a material condition or term of this Agreement, and the Court's modification of the Notice(s) required to effectuate the Settlement shall not be a basis to invalidate this Agreement.

In the event that the Court does not approve the use of a single notice with the *Sumerlin* settlement as proposed in this Section, and/or directs the Parties to prepare and/or use notice(s) that materially differ from the form(s) of notice attached hereto as Exhibit A, the Parties agree to cooperate in good faith to prepare alternative form(s) of notice consistent with the Court's instructions to effectuate the terms and intentions of this Settlement and Agreement. The defined term "Notice(s)" as used in this Agreement shall include any alternative notice(s) agreed upon by the Parties and/or ordered by the Court.

Following entry of the Order Granting Preliminary Approval of the Settlement, the Notice(s) shall be mailed to the Settlement Class. The Parties understand that the Court may require, and the Parties may mutually propose, that multiple different Notices be sent to different sub-classes of the Settlement Class, and that each sub-class of the Settlement Class may have opt-out and/or opt-in rights with respect to each such Notice. Accordingly, the terms of this

Agreement regarding or relating to opt-out rights and processes, objection rights and processes, and other rights and processes specific to each Notice sent to Settlement Class Members (or a sub-class thereof) are understood to apply to each and every Notice that may be sent to Settlement Class Members. The Parties understand and agree that the use of multiple Notices may require maintaining separate lists of Opt Outs for each such Notice.

The Notice(s) will, subject to Court approval and specific to the case(s) and release(s) for each such Notice, advise all of the Settlement Class of the nature of the case, the terms of the Settlement, the terms of the release and the binding nature of the release, the fact that any Settlement Class Member who negotiates the check with his/her Settlement Payment is opting into a release of federal FLSA wage and hour claims (in addition to the other claims being released under this Agreement), the final approval hearing date or date(s), an estimate of the Allocation of Claims for each member of the Settlement Class, the Settlement Class' right to opt out or object, and the processes for opting out or objecting. The Notice(s) shall inform members of the Settlement Class that Settlement Payments will be made by direct payment via first class mail.

(i) Within thirty (30) days of notice of the entry of an order granting preliminary approval, Defendant will provide, confidentially, to the Claims Administrator the best information that it can identify in its possession, custody or control following a good faith inquiry with respect to the full names, social security number (if provided to Defendant), last known addresses, and the applicable Compensable Hours of the members of the Settlement Class. The Claims Administrator shall keep and maintain all information provided by Defendant as secure and confidential and shall only use such information for purposes of the notice and administration of this Settlement.

(ii) The Claims Administrator shall send a copy of the Notice(s) by postal mail to each member of the Settlement Class. The Claims Administrator shall also send a copy of each Notice to Class Counsel and to the counsel for Defendant. Before any such postal mailing, the Claims Administrator will use the United States Postal Service National Change of Address database (“NCOALink”) to obtain the most-current names and postal mail addresses for each member of the Settlement Class to ensure that each Notice is sent to all members of the Settlement Class at the addresses most likely to result in immediate receipt of the Notice. If deemed necessary by the Claims Administrator, before any such mailing, the Claims Administrator will perform further reasonable searches (*e.g.*, through Lexis/Nexis) for the most-current names and postal mail addresses for any members of the Settlement Class. Within sixty (60) calendar days following preliminary approval, the Claims Administrator shall mail each Notice to all identified members of the Settlement Class via first class U.S. Mail using the most current mailing address information available.

(iii) It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the member of the Settlement Class received the Notice(s) applicable to that member. With respect to any returned, undeliverable Notice, the Claims Administrator will perform a routine skip trace procedure to obtain a current address for that member of the Settlement Class and, if an updated address is located, then undertake one (1) re-mailing of the Notice to such address within five (5) calendar days of the receipt of the returned envelope. Additionally, if any undeliverable Notice is returned with a forwarding address, the Claims Administrator shall forward the postal mailing to that address. Members of the Settlement Class to whom Notices were re-sent after having been returned undeliverable to the Claims Administrator shall have ten (10) calendar days thereafter to object, opt out, or

challenge the information set forth in the Notice. Notices that are re-mailed shall be accompanied by a short cover letter from the Claims Administrator informing the recipient of this adjusted deadline. In the event that a Notice is returned as undeliverable a second time, no further postal mailing shall be required.

(iv) Upon completion of these steps by the Claims Administrator, the Parties agree that these procedures constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for members of the Settlement Class, such that no additional efforts to do so shall be required. Upon completion of these steps by the Claims Administrator, the Parties and the Claims Administrator shall be deemed to have satisfied their obligations to provide notice to the affected members of the Settlement Class, and, regardless of whether the affected member of the Settlement Class actually receives the Notice or cashes his or her individual Claim check, the affected member of the Settlement Class shall remain a Settlement Class Member and shall be bound by all the terms of the Settlement and the Court's final approval order and judgment.

(v) If any Notice or re-mailed Notice is returned as undeliverable, the Claims Administrator will promptly log each such Notice and provide copies of the log to Class Counsel and counsel for Defendant, as requested.

(vi) If any individual whose name does not appear on the list of members of the Settlement Class that Instacart provides the Claims Administrator (and who has not previously opted out of the Settlement Class) believes that he or she is a member of the Settlement Class, he or she shall have the opportunity to dispute his or her exclusion from the Settlement Class. If an individual believes that he or she is a member of the Settlement Class, he or she must notify the Claims Administrator within a reasonable amount of time after the first

mailing of the Notice. The Parties will meet and confer regarding any such individuals in an attempt to reach an agreement as to whether any such individual should be regarded as a member of the Settlement Class. If the Parties so agree, the Claims Administrator will mail a Notice to the individual and treat the individual as a member of the Settlement Class for all other purposes and the individual will have all of the same rights and obligations as any other member of the Settlement Class under this Agreement.

(d) **Opt-Out Process:**

(i) Members of the Settlement Class may opt out of the settlement pursuant to this subsection, or may object to the Settlement pursuant to subsection (e) below, but may not do both. Any member of the Settlement Class who submits a timely Request for Exclusion pursuant to this subsection may not file an objection to the Settlement.

(ii) Named Plaintiffs represent that they shall not themselves opt out of the settlement of the Litigation or the *Sumerlin* settlement, and Named Plaintiffs and Class Counsel warrant and represent that they shall not encourage, counsel, or represent others to opt out of the settlement of the Litigation or the *Sumerlin* settlement.

(iii) Members of the Settlement Class (with the exception of the Named Plaintiffs) may choose to opt-out of the Settlement by following the directions in the Notice(s). Any such request to opt-out (“Request for Exclusion”) must be made in writing to the Claims Administrator, signed by the member of the Settlement Class, and postmarked no later than forty-five (45) calendar days after the date the applicable Notice is mailed to the Settlement Class or, in the case of a re-mailed Notice, not more than ten (10) calendar days after the date the applicable Notice is re-mailed (the “Response Deadline”). The date of the postmark shall be the exclusive means used to determine whether a request for exclusion has been timely submitted.

Requests for Exclusion that do not include all required information, do not comply with the instructions in the Notice, or that are not submitted on a timely basis, will be deemed null, void and ineffective. Requests for Exclusion must be exercised individually by each member of the Settlement Class, not as or on behalf of a group, class, or subclass, except that such individual exclusion requests may be submitted by a legal authorized representative of any member of the Settlement Class.

(iv) The Claims Administrator, in its sole discretion, shall determine whether a request for exclusion was timely submitted or properly made. The Claims Administrator's decision shall be final, binding, and non-appealable.

(v) The Claims Administrator shall prepare a list of all persons who timely and properly requested exclusion from the Settlement Class ("Opt-Outs") and shall, before the Final Approval Hearing, submit an affidavit to the Court and the Parties attesting to the accuracy of this list.

(vi) The Parties' counsel shall receive a copy of all valid Requests for Exclusion from the Claims Administrator within ten (10) calendar days after the final date to opt out, along with a complete list of all Persons who have timely and properly requested exclusion from the Settlement Class.

(vii) Persons who are eligible to and do submit valid and timely requests to opt-out of the Settlement Class ("Opt-Outs") will not participate in the Settlement or be bound by its terms, except as provided herein, will not be bound by the Court's final judgment approving a proposed Settlement, except as provided herein, will not be a Settlement Class Member, and will receive no part of the Net Common Fund or the Gross Common Fund. Notwithstanding the submission of a timely request for exclusion, Opt-Outs will still be bound by the settlement and

release of the PAGA claims or remedies under the final judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for Exclusion do not apply to the PAGA claims.

(viii) Every member of the Settlement Class who does not validly and timely opt out shall be deemed a “Settlement Class Member”, shall be bound by this Agreement and shall have all their claims released as provided for herein, even if they never received actual notice of the Litigation or this proposed Settlement.

(ix) By signing this agreement, the Named Plaintiffs each affirmatively opt into an agreement to release their FLSA claims against Instacart and each individually waive their respective rights to opt-out from the Settlement Class and any such request for an exclusion will be void and of no force and effect.

(e) **Objection Process:**

(i) Members of the Settlement Class who are not Opt-Outs have the right to object to this Settlement Agreement or the proposed Settlement. Members of the Settlement Class who wish to object to the Settlement Agreement or proposed Settlement must, no later than the Response Deadline, send to the Claims Administrator via US Mail either a written statement objecting to the Settlement or a written notice of intention to appear at the Final Approval Hearing and object, as set forth below. The postmark date of the notice of objection shall be the exclusive means for determining whether the notice of objection is timely. The Claims Administrator will provide any objections to all counsel for the Parties upon receipt of such objections, and to the Court if desired and in the manner directed by the Court.

(ii) Objections to the Settlement must contain at least the following: (i) the objecting Settlement Class Member’s full name, current address, telephone number, last four digits of his or her social security number, and signature; (ii) a clear reference to the Litigation,

including the name and number of the case; (iii) dates of the objector's work with Defendant; (iv) a statement of the specific legal and factual reasons why the objector believes the Settlement is unfair or objects to the Settlement; and (v) a statement whether the objector intends to appear at the final approval hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address and telephone number. All objections shall be signed by the objecting Settlement Class Member (or his or her legally authorized representative), even if the objecting Settlement Class Member is represented by counsel.

(iii) The right to object to the proposed Settlement or Settlement Agreement must be exercised individually by a Settlement Class Member or his or her attorney and not as a member of a group, class, or subclass, except that such individual exclusion requests may be submitted by a legally authorized representative for a Settlement Class Member.

(iv) Class Counsel and/or Defendant's Counsel may, at least ten (10) days (or some other number of days as the Court shall specify) before the final approval hearing, file responses to any written objections submitted to the Court.

(v) Deficient or untimely objections shall not be considered. Members of the Settlement Class who fail mail timely written objections or notice of intention to appear and object in the manner specified above shall be deemed to have waived any objections and waived any right to object or be heard at the Final Approval Hearing and shall be forever barred and foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, including its allocation plan, fee and expense award and Class Representative Service Awards.

(vi) Members of the Settlement Class who object to the proposed Settlement or the Settlement Agreement shall remain Settlement Class Members, and shall be deemed to have

voluntarily waived their right to pursue an independent remedy against Defendant and the Releasees. To the extent any Settlement Class Member objects to the proposed Settlement or Settlement Agreement and such objection is overruled in whole or in part, such individuals will be forever bound by the Court's Final Approval Order.

(vii) In the event that any Person objects to or opposes this proposed Settlement or the Settlement Agreement, or attempts to intervene in or otherwise enter the Litigation, the Parties agree to use their best efforts to cooperate in the defense of the Settlement.

Notwithstanding the foregoing, it shall be Class Counsel's sole responsibility to respond to any objections made with respect to any application for the Class Counsel Fee award, Class Representative Service Award, or Plaintiffs' Litigation Expenses award.

(viii) By signing this Agreement, Named Plaintiffs and Class Counsel each represent and warrant that they have no objection to the Settlement, and will not encourage, counsel, or represent others to object to the settlement of the Litigation or the *Sumerlin* settlement.

(f) **Dispute Procedure:**

(i) Members of the Settlement Class who are not Opt-Outs shall be entitled to dispute the calculation of the amount of their individual Claim in writing or the determination of whether they are a member of the Settlement Class. Each Settlement Class Member can dispute only the hours worked as a member of the Settlement Class or the determination of whether he/she is a member of the Settlement Class who is entitled to a Claim.

(ii) Notice of any dispute permitted in the preceding paragraph must specify the grounds for the dispute, provide any supporting documentation, and be mailed by U.S. mail to the Claims Administrator, postmarked no later than forty-five (45) calendar days after the date

the Notice is mailed to the Class or, in the case of a re-mailed Notice, not more than ten (10) calendar days after the date the Notice is re-mailed. Upon receipt of notice of any such dispute, the Claims Administrator shall promptly serve Class Counsel and Defendant's Counsel with a copy of the notice of dispute and any accompanying papers. No such notice of dispute shall be effective or considered for any purpose unless it is timely mailed by U.S. mail to and received by the Claims Administrator as provided above.

(iii) Absent an agreement between Class Counsel and Defendant's Counsel regarding how to address a Settlement Class Member's dispute allowed under this subsection, the Claims Administrator shall have authority to resolve the dispute and make a final and binding determination on the dispute without hearing or right of appeal. Class Counsel and Defendant agree to cooperate in good faith to assist the Claims Administrator in resolving these disputes, including by providing the Claims Administrator with additional documents necessary to assess the challenge, if such documents are requested, exist and can be located after a good faith search. All Settlement Class Member disputes allowed under this subsection shall be resolved, either by agreement of Class Counsel and Defendant's Counsel or by decision of the Claims Administrator as provided herein, prior to submitting the Claims Administrator's declaration to the Court for final approval.

(iv) In the event that the Claims Administrator resolves a Settlement Class Member's challenge under this subsection in favor of the Settlement Class Member, the revised Claim to such Settlement Class Member shall be calculated and disbursed from the Net Common Fund as set forth in Paragraph III(13) below.

(g) **Final Approval Hearing:** A Final Approval Hearing to determine final approval of the Settlement shall be conducted subject to the calendar of the court and agreement of the

Parties. No later than five (5) business days after the close of the Objection and Opt Out Period, the Claims Administrator shall provide Class Counsel and Counsel for Defendant with a Declaration of Compliance to be filed with the Court by Class Counsel and the list of Opt-Outs required under paragraph III.9(d). No later than seven (7) calendar days before the Final Approval Hearing, Named Plaintiffs shall file a Motion for Final Approval, Memoranda of Points and Authorities in Support of the Settlement, and Motion for Attorneys' Fees, Costs and Class Representative Service Award, all in forms to be agreed upon between the Parties and consistent with this Agreement. Upon final approval of the Settlement by the court at or after the Final Approval Hearing, the Parties shall present an agreed upon proposed Final Order and Judgment to the court for its approval and entry, the entry of which is a material condition for this Settlement Agreement.

10. Final Order and Judgment:

Upon final approval of the settlement, a Final Order and Judgment shall be entered by the Court, which shall, among other things:

- (a) Grant final approval to the Settlement as fair, reasonable, adequate, in good faith and in the best interests of the Settlement Class, as a whole, and order the Parties to carry out the provisions of this Agreement.
- (b) Enter the Final Order and Judgment regarding the Litigation, without fees or costs except as provided in this Agreement.
- (c) Approve the Opt-Out List and determine that the Opt-Out List is a complete list of all members of the Settlement Class who have timely requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Judgment except on the PAGA issues.

(d) Adjudge that the Named Plaintiffs are each conclusively deemed to have released Defendant and the Releasees of and from any and all of their Released Claims and are bound by the provisions of this Agreement.

(e) Adjudge that the members of the Settlement Class who have not been excluded from the Settlement Class as provided in the Opt-Out List approved by the Court are Settlement Class Members and are conclusively deemed to have released Defendant and the Releasees of and from any and all Settlement Class Members' Released Claims and are bound by the provisions of this Agreement.

(f) Declare that this Agreement and the Final Order and Judgment are binding on, and have *res judicata* and preclusive effect, in all pending and future lawsuits or other proceedings that: (i) encompass the Named Plaintiffs' Released Claims and that are maintained by or on behalf of the Named Plaintiffs' Releasers; and (ii) encompass the Settlement Class Members' Released Claims and that are maintained by or on behalf of the Settlement Class Members' Releasers, regardless of whether the Settlement Class Member previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Settlement Class Members' Released Claims, and even if such Settlement Class Member never received actual notice of the Litigation or this proposed Settlement.

(g) Permanently bar and enjoin the Named Plaintiffs and all Settlement Class Members from instigating or participating in any lawsuit or proceeding which asserts any claims that are, or relate to, the Named Plaintiffs' or the Settlement Class Members' Released Claims.

(h) Order that the certification of the Settlement Class and final approval of the proposed Settlement, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or disapproved in whole or in

part by the Court, or any appellate court or other court of review, or if Defendant invokes the right to withdraw from the Settlement as provided herein, in which event the Agreement and the fact that it was entered into shall not be offered, received or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of the certifiability of a litigation class. Notwithstanding the foregoing terms, the modification by the Court to the form of Notice(s), any award of attorneys' fees to Class Counsel, and Class Representative Service Awards shall not alone be sufficient to vacate the certification of the Settlement Class and final approval of the proposed Settlement.

(i) Without affecting the finality of the Final Order and Judgment, reserve continuing jurisdiction over the Named Plaintiffs, the Settlement Class and Defendant as to all matters concerning the administration, consummation, and enforcement of this Agreement, as provided herein.

(j) Approve any other and further provisions consistent with the terms of this Settlement Agreement to which the Parties expressly consent in writing.

11. Tax Treatment of Gross Common Fund:

(a) Defendant shall pay the Gross Common Fund, at the time specified in this Agreement, into an escrow account agreed to by the Parties ("Escrow Account"). The Claims Administrator agreed upon by the Parties shall act as the Escrow Agent for this account.

(b) The Parties and the Escrow Agent agree to treat the Gross Common Fund as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1 from the earliest possible date, and the Escrow Agent, as administrator of the Escrow Account within the meaning of Treasury Regulation section 1.468B-2(k)(3), shall be responsible for timely preparing and filing tax returns for the Escrow Account or any other necessary documentation,

making any advisable or necessary elections to carry out the provisions of this paragraph, and paying from the Escrow Account any and all taxes, including any interest or penalties thereon owed with respect to the Escrow Account, to the extent necessary.

(c) All taxes arising with respect to the income, if any, earned by the Gross Common Fund (including any taxes that may be imposed upon the Defendant with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes) and any expenses and costs incurred in connection with the payment of taxes pursuant to this paragraph (including, without limitation, expenses of tax attorneys and/or accountants and mailing, administration and distribution costs and expenses related to the filing or failure to file all necessary or advisable tax returns (the “Tax Expenses”) shall be paid out of the Gross Common Fund. Defendant shall not have any liability or responsibility for the taxes or the Tax Expenses beyond any portion of the Gross Common Fund that is allocated to the payment thereof. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Gross Common Fund and the distributions and payments therefrom, including, without limitation, the tax returns described in Treasury Reg. section 1.468B-2(k), and to the extent applicable, Treasury Reg. section 1.468B-2(1). Such tax returns shall be consistent with the terms herein and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund. The Escrow Agent shall also timely pay taxes and Tax Expenses out of the Settlement Fund to the extent necessary and is authorized to withdraw from the Escrow Account amounts necessary to pay taxes and Tax Expenses. The Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of the Settlement

Agreement. Neither the Parties nor their counsel shall have any responsibility or liability for the acts or omissions of the Escrow Agent.

12. Tax Allocation of Claims:

(a) For the Settlement Class Members who performed Covered Services in Instacart States except for California, Massachusetts, and Illinois, fifty percent (50%) of Claims shall be allocated to each Settlement Class Member's respective wage claims, and fifty percent (50%) of Claims shall be allocated to each Settlement Class Member's respective non-wage claims, including but not limited to claims for penalties, interest, and unreimbursed business expenses. The wage portion shall be subject to all applicable income and payroll tax withholding and shall be reported as such to each Settlement Class Member on an IRS Form W-2. The non-wage portion shall be reported as such to each Settlement Class Member via an IRS Form 1099.

(b) For the Settlement Class Members who performed Covered Services in California, Massachusetts, and Illinois, ten percent (10%) of Claims shall be allocated to each Settlement Class Member's respective wage claims, and ninety percent (90%) of Claims shall be allocated to each Settlement Class Member's respective non-wage claims, including but not limited to claims for penalties, interest, and unreimbursed business expenses. The wage portion shall be subject to all applicable income and payroll tax withholding and shall be reported as such to each Settlement Class Member on an IRS Form W-2. The non-wage portion shall be reported as such to each Settlement Class Member via an IRS Form 1099.

(c) The employee portion of all applicable income and payroll taxes, as well as the taxes on the penalties and interest damages payment, will be the responsibility of the Settlement Class Members, who agree to hold harmless the Parties, Class Counsel, Releasees and Defendant's Counsel for any tax liability, including penalties and interest, arising out of or

relating to the Settlement Class Members' failure to pay taxes on any amounts paid pursuant to this Agreement. In the event that state or federal authorities subsequently determine that any Named Plaintiff or Settlement Class Member should be classified as an employee rather than an independent contractor, or that more than the allocated percentage of the Claims should be allocated to wage claims, each such Named Plaintiff or Settlement Class Member agrees that he or she shall promptly complete and submit to Defendant a Form 4669 demonstrating payment of all taxes with respect to payments from the Defendant or under this Agreement.

(d) The Claims Administrator shall be responsible for calculating and remitting to the tax authorities all payroll taxes for payments, including State of California employment taxes which shall be remitted by the Claims Administrator on behalf of Defendant, and for preparing and filing all required tax returns or filings with respect to payments by the Claims Administrator. All applicable employer payroll tax contributions associated with the individual Claims shall also be paid by the Claims Administrator from the Gross Common Fund. At the appropriate time, the Claims Administrator shall notify Defendant of the total of the employer's share of the payroll taxes associated with each individual Claim.

(e) Payments made under this Agreement are not intended to and will not: (1) form the basis for additional contributions to, benefits under, or any other monetary entitlements under; (2) count as earnings or compensation with respect to; or (3) be considered to apply to, or be applied for purposes of, Defendant's bonus, pension, any 401(k) and/or other retirement plans or similar programs.

(f) Neither Party has made any representation to the other Party as to the taxability or tax implications of any payments pursuant to this Agreement.

(g) No person shall have any claim against Defendant, Defendant's Counsel, or the Claims Administrator based on mailings, distributions, and payments made in accordance with or pursuant to this Agreement.

13. **Method of Determining Allocation of Claims:**

(a) The Parties recognize and agree that the claims in the Litigation are difficult to determine with certainty for any given year, or at all, and are subject to myriad differing calculations and formulas. The Parties hereby agree that the formula for allocating the Claims to Settlement Class Members provided herein is reasonable and that the payments provided herein are designed to provide a fair settlement to the persons within the definition of the Class, despite uncertainties of the amounts alleged to be owed to Settlement Class Members and the calculation of them.

(b) The Parties also agree that they will request court approval of the Allocation Formula of Claims as stated in this Agreement as part of their efforts to obtain approval of this Settlement. Any modification to the Allocation Formula of Claims stated in this paragraph shall not: (i) affect the enforceability of the Agreement; (ii) provide any of the Parties with the right to terminate the Agreement; or (iii) impose any obligation on Defendant to increase the Gross Common Fund amount being paid as consideration in connection with this Agreement.

(c) **Allocation Formula for the Class:**

Claims shall be calculated using a points system, in accordance with the following Plan of Allocation:

(i) The records for each Settlement Class Member shall be examined to determine the number of hours during the Class Period that each Settlement Class Member performed Covered Services using the Instacart platform ("Compensable Hours").

(ii) For Covered Services performed by a Settlement Class Member, each such Settlement Class Member who receives payment under this Agreement shall be awarded 0.725 points for each Compensable Hour the Settlement Class Member performed Covered Services, subject to the following point enhancements:

- (1) If the applicable state minimum wage for the Compensable Hour was greater than or equal to \$8 per hour, but less than \$9 per hour, a 0.125 point enhancement.
- (2) If the applicable state minimum wage for the Compensable Hour was greater than or equal to \$9 per hour, but less than \$10 per hour, a 0.25 point enhancement.
- (3) If the applicable state minimum wage for the Compensable Hour was greater than or equal to \$10 per hour, a 0.275 point enhancement.

In addition to the above point enhancements, for Covered Services performed in New York by a Settlement Class Member, a 0.1 point enhancement shall apply to each Compensable Hour the Settlement Class Member performed Delivering Services in New York using a motor vehicle; and for Covered Services performed in California, Massachusetts, and Illinois by a Settlement Class Member, the points shall be doubled for each Compensable Hour the Settlement Class Member performed Delivering Services in those states.

(iii) For Covered Services performed after October 1, 2016 by a Settlement Class Member, each such Settlement Class Member shall receive a 0.05 point enhancement in addition to any point enhancements specified above for each Compensable Hour the Settlement Class Member performed Covered Services.

(iv) For each Settlement Class Member who spent 30 or more hours on the platform for 12 or more consecutive weeks, the points calculated according to sections (i) through (iii) above shall be doubled.

(v) Settlement Class Members may not receive double payments under this Agreement and the *Sumerlin* settlement for the same Compensable Hour. Therefore, Settlement Class Members may not receive payments under this Agreement for any Compensable Hour for which he or she receives payment under the *Sumerlin* settlement.

(vi) The Claims Administrator shall calculate the number of points to which each Settlement Class Member is entitled. The determination of each Settlement Class Member's number of hours, and the distribution of such hours between In-Store Services and Delivering Services, shall be based on the relevant records that Defendant is able to identify following a good-faith inquiry and Defendant shall make a diligent effort to supply the records to the Claims Administrator in a standard electronic format such as a Comma Separated Value file.

(vii) Following the award of points to all Settlement Class Members, each Settlement Class Member's points shall be divided by the sum of the points awarded to the total number of Settlement Class Members and the resulting fraction shall be multiplied by the Net Common Fund. The product of this calculation is the Claim that each Settlement Class Member shall receive.

14. Funding & Distribution of Gross Common Fund:

(a) **Funding of the Gross Common Fund:** Subject to the payment maximums specified in Section III.2 of this Agreement, Defendant will pay the Gross Common Fund into the Escrow Account within ten (10) calendar days after the Effective Date.

(b) **Distribution of the Net Common Fund:** The Claims Administrator will use reasonable efforts to distribute the Net Common Fund to all Settlement Class Members within ninety (90) calendar days after the Effective Date, but in no event before twenty-one (21) days after the Effective Date. In addition to Named Plaintiffs, Settlement Class Members who cash a Settlement Payment disbursement shall be deemed to have opted-in to a release of any federal FLSA individual and collective action claims and shall be bound by the Settlement. The Claims Administrator shall send with each Settlement Payment disbursement an explanation of how the Settlement Class Member's Claim was calculated and an explanation of the fact that, if the Settlement Class Member endorses the Settlement Payment disbursement check, the Settlement Class Member is releasing his or her federal FLSA wage and hour claims against Instacart, along with all other claims released under this Agreement. Additionally, each Settlement Payment check shall carry a legend that states: "By endorsing this check, I consent to join the Settlement Class in [insert case name(s) associated with Settlement Payment] and agree to release all of my federal Fair Labor Standards Act ("FLSA") wage and hour claims that are covered by the Settlement, in addition to the other claims I have released as a Settlement Class Member". Settlement Class Members other than Named Plaintiffs must cash the Settlement Payment to opt-in to a release of their FLSA claims against Instacart, although they do not need to cash the Settlement Payment to release their other claims against Instacart as detailed in this Agreement.

(c) **Application for Approval of Plaintiffs' Attorney Fees and Plaintiffs'**

Litigation Expenses:

(i) The terms of this Agreement relating to the Class Counsel Fees and Plaintiff's Litigation Expenses were not negotiated by the Parties before a full agreement was

reached as to all other material terms of the proposed Settlement, including but not limited to, the terms relating to relief to the Settlement Class.

(ii) Class Counsel shall submit an application to the court for approval of Class Counsel Fees and Plaintiffs' Litigation Expenses. Class Counsel agrees that it shall request that the court approve no more than thirty-three and one-third percent (33.33%) percent of the Gross Common Fund, for Class Counsel Fees. Defendant will not oppose such a request. As set forth above, Class Counsel Fees and Plaintiffs' Litigation Expenses shall come exclusively from the Gross Common Fund and shall be subject to approval by the Court. The Parties agree that approval by the Court of the requested Class Counsel Fees and/or Plaintiffs' Litigation Expenses is not a material condition of this Agreement or the Settlement, and the reduction or modification of such Class Counsel Fees and/or Plaintiffs' Litigation Expenses shall not be sufficient bases to rescind this Agreement or the Settlement.

(d) **Payment of Class Counsel Fees and Plaintiffs' Litigation Expenses:** The amount of court-awarded Class Counsel Fees and Plaintiffs' Litigation Expenses shall be paid by the Claims Administrator to the Class Counsel as defined in this Agreement and approved by the Court. The Claims Administrator shall make payment of the Plaintiffs' Attorney Fees and Plaintiffs' Litigation Expenses after the Effective Date, as set forth in this Agreement. Class Counsel shall provide the Claims Administrator with a properly completed Form W-9 and the Claims Administrator shall issue Form 1099 to Class Counsel for the payments.

(e) **Payment of Class Representative Service Awards:** The terms of this Agreement relating to the Class Representative Service Awards were not negotiated by the Parties before a full agreement was reached as to all other material terms of the proposed Settlement, including but not limited to, the terms relating to relief to the Settlement Class. If

approved by the Court, the Named Plaintiffs shall be paid Class Representative Service Awards in an amount to be approved by the Court. The Named Plaintiffs and Class Counsel agree that they shall request that the Court approve a payment in the amount of no more than \$5,000 as the Class Representative Service Award for Plaintiffs Arlin Golden, Dominic Cobarruviaz, and Batya Weber; no more than \$1,000 as the Class Representative Service Award for Plaintiffs John Reilly, Christopher Russell, Susan Bannon, Derek Williams, Jonathan Husting, Matthew Clayton, LaDia Armstrong, Stephanie Weidner, Margaret Connolly, Matthew Parsons, Sarah Lester, Nathan Raines, Benjamin Boven, Amy Nosek, James Richie, Andrew Kendrick, Lea Johnson, Marcella Holmes, Elisabeth Perez, Marketta Wilder, and Jeremy Nail; and no more than \$500 as the Class Representative Service Award for the remaining Named Plaintiffs.

Defendant agrees not to object to the Named Plaintiffs' and Class Counsel's request for Class Representative Service Awards for each Named Plaintiff if the requested awards do not exceed these limits. The Claims Administrator shall make payment of Class Representative Service Awards to the Named Plaintiffs after the Effective Date as set forth in this Agreement. Class Counsel shall provide the Claims Administrator with a properly completed Form W-9 and the Claims Administrator shall issue a form 1099 to each Named Plaintiff for (1) 90% of the payment received and shall issue a form W-2 for 10% of the payment received if the Named Plaintiff performed Covered Services primarily in California, Massachusetts, or Illinois; or (2) 50% of the payment received and shall issue a form W-2 for 50% of the payment received if the Named Plaintiff performed Covered Services primarily in Instacart States outside of California, Massachusetts, or Illinois. The Parties agree that approval by the Court of the requested Class Representative Service Awards is not a material condition of this Agreement or the Settlement,

and the reduction or modification of such Awards shall not be sufficient bases to rescind this Agreement or the Settlement.

(f) **Payment of Claims Administration Expenses:** The Claims Administrator shall receive the sum of up to \$120,000, or any other such amount approved by the Parties and by the Court, from the Gross Common Fund as set forth in Section III.14(f) of this Agreement. All Claims and Administration Expenses, as well as all applicable taxes and escrow fees, shall be paid out of the Gross Common Fund.

(g) **PAGA Payment:** The Claims Administrator shall make payment of the LWDA share of the PAGA Payment from the Gross Common Fund as set forth in Section III.14(g) of this Agreement.

(h) **Payment of Employer Payroll Taxes:** The Claims Administrator shall make payment of the Employer Payroll Taxes, including FUTA, SUTA, and FICA, within fifteen (15) calendar days after the Effective Date.

(i) **Approval of Fees and Costs:** Recovery of Class Counsel Fees and Plaintiffs' Litigation Expenses and the award of the Class Representative Service Awards are not conditions to this Agreement, and are to be considered by the court separately from the fairness, reasonableness, adequacy and good faith of the Settlement. The Parties agree that they will accept the determination of the Court with respect to the amount of Class Counsel Fees, Plaintiffs' Litigation Expenses, Class Representative Service Awards, and Claims Administration Expenses to be awarded from the Gross Common Fund. The Parties agree, however, that in no event will a determination of the Court allow Class Counsel Fees, Plaintiffs' Litigation Expenses, Class Representative Service Awards, and Claims Administration Expenses to be awarded from any source other than the Gross Common Fund and in no event will a

determination of the Court allow Defendant to pay for any amounts that are larger than the amounts specified in this Agreement. Any order or proceeding relating to the denial or reduction of an award of Class Counsel Fees and Plaintiffs' Litigation Expenses or Class Representative Service Awards, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Judgment. To the extent the court does not approve the full amount of Class Counsel Fees, Plaintiffs' Litigation Expenses, Claims Administration Expenses, or the Class Representative Service Awards described above, the non-approved amounts will be allocated to all Settlement Class Members proportionately to the amounts otherwise to be paid each Settlement Class Member as part of the Net Common Fund.

(j) **Residue:** This is a non-reversionary settlement after the Effective Date and it is the intention of the Parties that the entire Gross Common Fund will be paid out as described herein, leaving no residue. However, it is possible that after all payments described herein are made, some residue may remain as the result of: (1) one or more Settlement Class Members failing to negotiate Settlement Checks mailed to them, or (2) circumstances that cannot be anticipated. If, after payment of the entire Gross Common Fund has been made as required herein and any residue remains, the Claims Administrator shall direct such unclaimed funds to the appropriate state unclaimed property and/or wages funds (e.g., the California Department of Industrial Relations Unclaimed Wages Fund for unclaimed funds associated with Compensable Hours spent performing Covered Services in California) with, if possible, an identification of the Settlement Class Member. The Parties agree to refer to the National Association of Unclaimed Property Administrators ("NAUPA") (<http://www.unclaimed.org>) as the primary resource for

determining the appropriate state unclaimed property fund. A Settlement Class Member shall have 180 days after issuance to negotiate his or her Settlement Check.

(k) **Settlement of Disputed Amounts.** The Parties recognize that the Claims to be paid to Settlement Class Members reflect settlement of a dispute over the Released Claims. The Parties agree that the Claims are not, and are not intended to be made as a payment with respect to, a penalty or a punishment of the type or kind contemplated by Internal Revenue Service Code Section 162(f), except that the PAGA Payment is a civil penalty. With the exception of the PAGA Payment, no governmental entity is directly or indirectly a recipient of any portion of the payments made pursuant to this Settlement, and no governmental entity has any interest or involvement of any type or kind in the litigation hereby settled. The payments made herein are not made or received with the intention of avoiding or reducing any liability to a governmental entity of any type or kind.

15. Distribution of Net Common Fund:

(a) After the Effective Date, and solely for purposes of this Agreement, the Net Common Fund shall be distributed by the Claims Administrator to Settlement Class Members as set forth in Section III.14(b), above.

(b) Any disputes relating to the amount of any individual Settlement Class Member's Claim shall be submitted to the Claims Administrator. The Claims Administrator's resolution of such disputes shall be conclusive and binding on all Settlement Class Members and Parties, subject to the dispute resolution provisions of this Agreement as set forth in Section III.9(f).

16. Claims Administration:

(a) The Claims Administrator shall regularly and accurately report to the Parties in written form, the substance of the work performed, including the number of Opt-Outs, the

estimated amount of Defendant's share of taxes, and the amounts payable to Settlement Class Members. All disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to the court if they cannot be resolved by the Parties.

17. Release of Claims by Named Plaintiffs:

(a) For and in consideration of the mutual promises contained herein, the Named Plaintiffs, individually and on behalf of each of his or her heirs, estates, trustees, executors, administrators, representatives, agents, successors and assigns, and anyone claiming through him, her, or them, or acting or purporting to act on his, her, or their behalf (collectively the "Named Plaintiff Releasers"), fully and finally release, relinquish and discharge, with prejudice, as of the Effective Date, the Releasees from the "Named Plaintiffs' Released Claims" (as defined below), and including a California Civil Code 1542 waiver as to such "Named Plaintiffs' Released Claims". The "Named Plaintiffs' Released Claims" being released pursuant to this Paragraph are defined as: any and all past, present and future claims, suits, debts, liabilities, rights, demands, obligations, guarantees, costs, expenses, attorneys' fees and costs, damages, penalties, prejudgment interest, actions, or causes of action of whatever kind, description or nature, whether known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, which the Named Plaintiffs Releasers have ever had, or hereafter may claim to have against the Releasees or any Releasee arising on or before the date that the Court enters the Final Approval Order of this Settlement, pursuant to any theory of recovery (including without limitation, any claims based in contract or tort, common law or equity, federal, state or local law, statute, ordinance or regulation, any claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys' fees, costs or disbursements) and for any type of relief that can be released as a matter of law, including

without limitation, claims for unpaid compensation, wages (including claims for minimum wage, regular wages, overtime, final wages, calculation of the correct overtime or regular rate, pay information, payment dates, and meal period and rest period premiums), missed meal breaks, missed rest breaks, time-shaving, wage statements, business expense reimbursement, erroneous recordkeeping or paperwork, misclassification, improper tip pooling, unpaid costs, litigation costs, penalties (including civil and waiting time penalties), damages, liquidated damages, punitive damages, restitution, equitable relief, interest, or attorneys' fees, with the exception of any claims which cannot be released as a matter of law. The "Named Plaintiffs' Released Claims" further include, but are not limited to, the Settlement Class Members' Released Claims, as well as any other claims under any provision of the federal Fair Labor Standards Act, 29 U.S.C. section 2012, *et seq.*, all as amended; any state, county or city law, ordinance, rule or regulation regarding wages or compensation, all as amended, including but not limited to the California Labor Code (including sections 132a, 200 *et seq.*, 500 *et seq.*, 1174, 1194, 1194.2, 1197, 1198, 2753, 2802, 2804, 2699 *et seq.*, 4553 *et seq.*), any applicable California Industrial Welfare Commission Wage Orders; any claims for employee benefits under any state or federal law, including without limitation, any claims under the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1001 *et seq.*, as amended; any claims of discrimination on any basis under any state or federal law, including without limitation, any claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000 *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act, 42 U.S.C. section 12101 *et seq.*, the Family and Medical Leave Act of 1993, the Age Discrimination in Employment Act of 1967, as amended; the California Fair Employment and Housing Act, California Government Code section 12940 *et seq.*, the Unruh Civil Rights Act, California Civil

Code section 51 *et seq.*, the U.S. or California Constitutions, or the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1001 *et seq.*, as amended; and all of their implementing regulations and interpretive guidelines, or any other federal, state, county or city law or ordinance, all as amended. The “Named Plaintiffs’ Released Claims” also include, but are not limited to, any and all claims for attorneys’ fees, costs, or disbursements incurred by Class Counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members, or by the Named Plaintiffs Releasers or Settlement Class Members Releasers, or any of them, in connection with or related in any manner to the Litigation, the Settlement of the Litigation, the administration of such Settlement and/or the Released Claims, except to the extent otherwise specified in this Agreement.

(b) With respect to the above Named Plaintiffs’ Released Claims, the Named Plaintiffs expressly waive any rights or benefits available to them or to the Named Plaintiff Releasers under the provisions of Section 1542 of the California Civil Code and all similar federal or state laws, rights, rules or legal principles of any other jurisdiction that may be applicable herein. The Named Plaintiffs expressly acknowledge that they are familiar with Section 1542 of the California Civil Code and understand fully the statutory language of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Named Plaintiffs expressly acknowledge that they may hereafter discover claims presently unknown or unsuspected or discover facts in addition to or different from those which they now know or believe to be true with respect to matters released herein. Nevertheless, the Named

Plaintiffs acknowledge that a portion of the consideration received herein is for a release with respect to unknown damages and complaints, whether resulting from known injuries and known consequences or from unknown injuries or unknown consequences of known or unknown injuries. With this understanding, the Named Plaintiffs state that they nevertheless elect to, and do, assume all risks for claims that have arisen, whether known or unknown, which they ever had, or hereafter may claim to have, arising on or before the date of their signature to this Agreement, and specifically, knowingly, and voluntarily waive and relinquish, to the fullest extent permitted by law, all rights, benefits and provisions that they may otherwise may have under California Civil Code section 1542.

(c) The Named Plaintiffs also expressly acknowledge that they are familiar with principles of law such as California Civil Code section 1542 and specifically, knowingly, and voluntarily waive and relinquish, to the fullest extent permitted by law, all rights, benefits and provisions that they may otherwise may have under all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction that are similar to California Civil Code section 1542 and may be applicable herein.

(d) Each Named Plaintiff further acknowledges, agrees and understands that: a) he or she has read and understands the terms of this Agreement; b) he or she has been advised in writing to consult with an attorney before executing this Agreement; c) he or she has obtained and considered such legal counsel as he or she deems necessary; and d) he or she has been given the opportunity to consider whether or not to enter into this Agreement.

(e) Each Named Plaintiff further acknowledges, agrees and understands that he or she is expressly, knowingly, and voluntarily waiving and relinquishing, to the fullest extent

permitted by law, all rights or claims arising under the Age Discrimination in Employment Act of 1967 and all rights and claims arising under the Fair Labor Standards Act.

(f) As of the Effective Date, the Named Plaintiffs agree to hold harmless and covenant not to sue each and all of the Releasees from each and all of the Named Plaintiffs' Released Claims and Settlement Class Members' Released Claims. The Named Plaintiffs further agree that they shall not now or hereafter initiate, maintain, or assert any Named Plaintiffs' Released Claims or Settlement Class Members' Released Claims against the Releasees in any other court action or before any administrative body, tribunal, arbitration panel or other adjudicating body.

18. Release of Claims by Settlement Class Members:

(a) For and in consideration of the mutual promises contained herein, all Settlement Class Members who have not been excluded from the Settlement Class as provided in this Agreement, individually and on behalf of each Settlement Class Member's heirs, estates, trustees, executors, administrators, representatives, agents, successors and assigns, and anyone claiming through him, her, or them or acting or purporting to act on his, her, or their behalf (collectively the "Settlement Class Members Releasees"), upon entry of final judgment, shall fully and finally release, relinquish, and discharge, with prejudice, the Releasees from all the "Settlement Class Members' Released Claims" (as defined below). The "Settlement Class Members' Released Claims" being released pursuant to this paragraph are defined as follows:

any and all past, present or future claims, suits, actions, demands, causes of action, suits, debts, obligations, damages, rights, liabilities, guarantees, costs, expenses, attorneys' fees and costs, penalties, prejudgment interest, of any kind, nature and

description whatsoever, whether known or unknown, which the Settlement Class Members Releasors have ever had or may hereafter may claim to have against the Releasees or any Releasee that have arisen during the Class Period, and which are: (i) based on or reasonably related to the claims asserted or alleged against the Releasees or any Releasee in the Litigation; and (ii) claims that were or could have been asserted against the Releasees or any Releasee arising out of, based on, or related to the claims or the facts asserted or alleged in the Litigation, including but not limited to claims for misclassification, wages (including but not limited to claims for and relating to unpaid wages, minimum wage, regular wages, overtime pay, final wages, calculation of pay, including any regular rate of pay, expense reimbursement, kickback violations based on business expenses, spread and call-in pay, service fees, tip crediting and tip pooling violations, and meal and rest period violations, including meal period and rest period premiums), payment dates, wage statements, meal and/or rest periods/breaks, time-shaving, pay information, erroneous recordkeeping or paperwork, expense or cost reimbursement or amounts, misappropriation of tips or service fees, payment of wages when due, unfair competition, record-keeping violations, tortious interference with economic advantage, breach of contract, fraud and intentional misrepresentation, conversion, and any

alleged improprieties with Instacart's Independent Contractor Agreement, regardless of whether such claims are based in contract or tort, common law or equity, federal, state, or local law, constitution, statute, ordinance, rule, or regulation, violations of Industrial Welfare Commission Wage orders, or any other legal theory.

The Settlement Class Members' Released Claims as defined above include a release of claims for any type of relief that can be released as a matter of law, whether under federal law or the laws of the Instacart States, including without limitation any claims for interest, penalties (including but not limited to waiting time penalties, wage statement penalties, record keeping penalties, and any and all other wage and labor-related penalties), civil penalties, attorneys' fees, costs, or disbursements, injunctive or declaratory relief; claims under federal, state or municipal laws, statutes, regulations or ordinances, including but not limited to, the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*; California law (including, without limitation, claims for penalties under California Labor Code §§ 203, 226, claims under the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*) ("PAGA"), claims pursuant to California Labor Code §§ 200-204, 206.5, 210-1174, 1194, 1194.2, 1197, 1198, 2753, 2802, 2804, and 2699 *et seq.*, California Code of Civil Procedure section 1021.5, California Code of Regulations, Title 8, Sections 11010 and 11040, the Industrial Welfare Commission Wage Orders, claims under California Business and Professions Code Section 17200, *et seq.*); New York law (including, without limitation, New York Labor Law §§ 195 and 196-d; 652 and Part 142 of Title 12 of the New York Compilation of Codes, Rules, and Regulations Sections 142-2.2, 142-2.3, and 142-2.4), Pennsylvania law (including, without

limitation, claims under the Pennsylvania Minimum Wage Act of 1968, the Pennsylvania Wage and Payment Collection Law, and the Pennsylvania Code); Colorado law (including, without limitation, claims under the Colorado Wage Claim Act, the Colorado Minimum Wages of Workers Act, and Colorado Minimum Wage Order Number 31); Illinois law (including, without limitation, claims under the Illinois Wage Payment and Collection Act, the Illinois Minimum Wage Law, Title 56 of the Illinois Administrative Code, and the Illinois Consumer Fraud and Deceptive Business Practices Act); Washington law (including, without limitation, claims under the Washington Revised Code §§ 19.86.020, 19.86.090, 49.46.090, 49.46.020 and 49.46.130, and Washington Administrative Code § 296-126-092); Indiana law (including, without limitation, claims under the Indiana Minimum Wage Law, Ind. Code Ann. § 22-2-2-4); Texas law (including, without limitation, claims under the Texas Lab. Code §§ 62.051 and 62.201); Georgia law (including, without limitation, claims under the Georgia Minimum Wage Law, Ga. Code Ann. §§ 34-4-3 and 34-4-6); Oregon law (including, without limitation, claims under the Oregon Revised Statutes §§ 652.120, 652.200, 653.025, 653.055, and 653.261, and Oregon Administrative Rule 839-020-0050); Massachusetts law (including, without limitation, claims under Chapter 151 of the Massachusetts Annotated Laws, §§ 1, 1A, 1B, and 20); Minnesota law (including, without limitation, the Minnesota Fair Labor Standards Act, Minn. Stat. § 177.27, subdiv. 8); North Carolina law (including, without limitation, the North Carolina Wage and Hour Act); Maryland law (including, without limitation, the Maryland Wage and Hour Law and Wage Payment and Collection Act); Arizona law (including, without limitation, the Arizona Wage Act); New Jersey law (including, without limitation, the New Jersey Wage Payment Law and Wage and Hour Law); and Virginia law (including, without limitation, the Virginia Minimum Wage Act and Payment of Wage Law).

(b) With respect to all Settlement Class Members (other than Named Plaintiffs), Settlement Class Members do not release other claims that are not within the definition of Settlement Class Members' Released Claims, including claims for retaliation, wrongful termination, unemployment, disability, worker's compensation, claims outside of the Class Period and claims by in-store shoppers for the time period during which they have been classified by Instacart as Instacart employees, or claims that cannot be released as a matter of law.

(c) Only Settlement Class Members (other than Named Plaintiffs) who cash the Settlement Check and thus opt-in to a release of their FLSA claims against Instacart release their FLSA claims against Instacart as detailed in this paragraph, although Settlement Class Members who do not cash the Settlement Check still release all other Settlement Class Members' Released Claims. The Settlement Class Members' Released Claims include, but are not limited to, any and all claims for attorneys' fees, costs or disbursements incurred by class counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members, or by the Named Plaintiffs or Settlement Class Members or any of them, in connection with or related in any manner to the Litigation, the Settlement of the Action, the administration of such Settlement and/or the Released Claims, except to the extent otherwise specified in this Agreement.

(e) As of the Effective Date, the Settlement Class Members also agree to hold harmless and covenant not to sue each and all of the Releasees from each and all of the Settlement Class Members' Released Claims. The Settlement Class Members further agree that they shall not now or hereafter initiate, maintain or assert any Settlement Class Members' Released Claims against the Releasees in any other court action or before any administrative body, tribunal, arbitration panel or other adjudicating body.

(f) Upon Court approval, the Named Plaintiffs and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be bound by this Settlement Agreement and the applicable Releases stated herein, and all of their claims alleged in the Litigation shall be released, even if they never received actual notice of this Litigation or this Settlement.

19. Notices:

Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the fifth day after mailing by United States mail, addressed as follows:

To Named Plaintiffs, Settlement Class Members & Class Counsel:

Robert S. Arns, Esq.
Jonathan Davis, Esq.
Julie C. Erickson, Esq.
THE ARNS LAW FIRM
515 Folsom, 3rd Floor
San Francisco, CA 94105
Tel: (415) 495-7800 / Fax: (415) 495-7888

To Defendant & Defendant's Counsel:

Rachael E. Meny, Esq.
Benjamin Berkowitz, Esq.
KEKER & VAN NEST LLP
633 Battery Street
San Francisco, California 94111

20. Authorization:

The signatories to this Agreement represent that they are fully authorized to enter into this Settlement Agreement, bind the Parties to its terms and conditions, and take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement.

21. No Publicity:

Prior to the filing of the Motion for Preliminary Approval, the Parties and their respective counsel shall not issue any press release or media release or have any communication with the press or media regarding this settlement. This provision shall not apply to any statements made after the filing of the Motion for Preliminary Approval. This provision shall not apply to press or media releases related to securities filings and notices by Defendant or to any other notice or disclosure by Defendant that is required by law, such as to auditors or counsel.

22. Return of Documents and Data:

Within thirty (30) days after the filing of the Final Judgment pursuant to this Agreement, Class Counsel shall return to Defendant all documents and data designated as confidential received from Defendant or, at Defendant's option, confirm destruction of any such documents and/or data, and further agree that all such documents and data shall not be disclosed to any third parties or be used for any purpose other than to effectuate the terms and conditions of this Agreement.

23. Jurisdiction and Venue:

(a) After entry of the Final Judgment, the Court shall have continuing and exclusive jurisdiction over the Parties to this Agreement and the Litigation solely for purposes of: (i) enforcing this Settlement Agreement, (ii) addressing settlement administration matters, (iii) resolving any dispute which may arise with regard to the terms and conditions of this Agreement, and (iv) addressing such post-Final Judgment matters as may be appropriate under court rules or applicable law, including but not limited to any appropriate injunctive relief. Except where the context indicates otherwise, references to the court shall also include any other courts that take jurisdiction of the Litigation, or any to whom the court has referred the matter.

(b) Any other action based on this Agreement or related to any of its terms, shall be venued in a Superior Court for the County of San Francisco or in a United States District Court for the Northern District of California, which shall have jurisdiction over all such disputes. All Parties to this Settlement Agreement shall be subject to the jurisdiction of the Superior Court for the County of San Francisco and the United States District Court for the Northern District of California, for all purposes related to this Agreement.

24. **Successors:**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns, including any and all Releasees and any corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate or reorganize.

IV. NULLIFICATION OF SETTLEMENT AGREEMENT

1. If more than two and one-half percent (2.5%) of the members of the Settlement Class for any Instacart State (except Arizona, Indiana, Oregon, Maryland, North Carolina, or New Jersey) opt out of the Settlement Class by submitting valid and timely Requests for Exclusion as set forth in Section III.9(d) of this Agreement, Defendant shall have the right in its sole and exclusive discretion to rescind and void this Settlement Agreement at any time before final approval by the Court, by providing written notice to Class Counsel that Defendant revokes the Settlement pursuant to this paragraph within ten (10) business days from the date on which the Claims Administrator furnishes the parties with the number of valid and timely Requests for Exclusion, as set forth in Section III.9(d). If Defendant exercises this option, or if the court fails to approve this Agreement, neither Defendant nor any other Releasee shall have any obligation to make any payments under this Agreement and Defendant shall receive a return of any funds

already paid. In such a case, Defendant shall pay all Claims Administration Expenses incurred up to that date.

2. If more than 10% of the Settlement Class Members for Arizona, Indiana, Oregon, Maryland, North Carolina, or New Jersey opt out of the Settlement Class by submitting valid and timely Requests for Exclusion as set forth in Section III.9(d) of this Agreement, Defendant shall have the right in its sole and exclusive discretion to rescind and void this Settlement Agreement at any time before final approval by the Court, by providing written notice to Class Counsel that Defendant revokes the Settlement pursuant to this paragraph within ten (10) business days from the date on which the Claims Administrator furnishes the parties with the number of valid and timely Requests for Exclusion, as set forth in Section III.9(d). If Defendant exercises this option, or if the court fails to approve this Agreement, neither Defendant nor any other Releasee shall have any obligation to make any payments under this Agreement and Defendant shall receive a return of any funds already paid. In such a case, Defendant shall pay all Claims Administration Expenses incurred up to that date.

3. If the Court does not approve any material condition of this Settlement Agreement or effects a fundamental change of this Settlement Agreement, with the exception of any modifications to the form of Notice(s) as proposed by the Parties, reductions in the award of Class Counsel Fees, reductions in the award of Plaintiffs' Litigation Expenses, and/or reductions in the award of Class Representative Service Awards, then the entire Settlement Agreement will be voidable and unenforceable at the option of either Party hereto. Either Party may void this Settlement Agreement as provided in this Paragraph by giving written notice to all other Parties and the Court at any time prior to final approval of the Settlement Agreement by the Court. In the event this Settlement Agreement becomes void as provided in this Paragraph, the Parties

shall proceed in all respects as if this Agreement had not been executed, Defendant shall have no obligation to make any payment, including payment of the Gross Common Fund, and in that event that Defendant has previously made any payment under this Agreement, such monies shall be returned promptly to Defendant. In such a case, any fees already incurred by the Claims Administrator shall be paid by the Party who exercises the option to void the Settlement Agreement.

4. The Parties agree that court approval of the *Sumerlin* settlement is not a material condition of this Agreement and Settlement. In the event that the *Sumerlin* settlement does not receive court approval, this Agreement and Settlement shall remain in force and the Settlement, Class Period, and Agreement shall be deemed to cover the entire class period and claims of the *Sumerlin* lawsuit.

V. MUTUAL FULL COOPERATION

1. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such documents and preparation of alternative form(s) of Notice(s) as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties and their respective counsel agree that they shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may be necessary by the order of the Court, or otherwise, to effectuate this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the consent, assistance and cooperation of Defendant's Counsel, take all necessary and agreed upon steps to secure the Court's final approval of this Settlement Agreement.

2. Except where this Settlement Agreement itself explicitly provides otherwise, all terms, conditions, and Exhibits are material and necessary to this Settlement Agreement and

have been relied upon by the Parties in entering into this Settlement Agreement. In the event the Parties are unable to reach agreement on the form or content of any non-material document needed to implement the Agreement, or on any supplemental non-material provisions that may become necessary to effectuate the terms of this Agreement, the Parties agree to seek the assistance of the Court in order to determine if agreement can be reached on these matters with the Court's assistance. The Parties agree, however, that this paragraph is not intended to allow the Court to order any Party to agree to such documents or provisions and that this paragraph is not intended to allow any Party to seek the Court's assistance with respect to any material documents or provisions that cannot be mutually agreed upon.

3. The Parties agree that neither they nor their counsel will solicit or otherwise encourage, directly or indirectly, any members of the Settlement Class to request exclusion from the Settlement Class, object to the settlement, or appeal the final judgment.

VI. INTERPRETATION OF THIS AGREEMENT

1. Headings:

The headings contained in this Agreement are for reference only, are not to be construed as a part of the Agreement and shall not affect the meaning or interpretation of this Agreement.

2. Entire Agreement:

(a) After this Agreement is fully executed by all Parties and their attorneys of record, this Agreement, including its Exhibits, shall constitute the entire agreement relating to settlement of this Litigation and the causes of action and defenses asserted therein. This Agreement supersedes any and all prior or contemporaneous agreements, understandings, negotiations, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, with respect to all matters. No rights hereunder may be amended, waived or modified except in a writing signed by all Parties.

(b) Each Party to this Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its counsel, and not in reliance upon any warranty or representation, express or implied, of any nature of any kind by any other party, other than the warranties and representations expressly made in this Agreement.

3. California Law:

All terms of this Agreement and its Exhibits shall be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

4. Counterparts:

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Any executed counterpart shall be admissible in evidence to prove the existence and contents of this Agreement. The Parties agree, however, that all counterparts to this Agreement shall be executed no later than one (1) week after the Agreement has been executed by counsel for the Parties.

5. Incorporation of Exhibits:

All exhibits attached hereto are incorporated by reference and are a material part of this Agreement. Any notice, order, judgment or other exhibit that requires approval of the Court must be approved without material alteration from its current form in order for this Agreement to become effective.

6. Representation by Counsel:

The Parties have each been represented by counsel and have cooperated in the drafting and preparation of this Agreement. This Agreement shall not be construed more strictly against one party than another on the basis that the party was the drafter or participated in the drafting of

this Agreement. The Parties agree that, because of the arms-length negotiations resulting in this Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Agreement.

7. Reasonableness of Settlement:

(a) The Parties believe that this is a voluntary, fair, reasonable and adequate Settlement and that the Parties have arrived at this Settlement in good faith, through arms-length negotiations, based upon adequate information, taking into account all relevant factors, present and potential, and after consultation with experienced legal counsel.

(b) The Named Plaintiffs and Class Counsel acknowledge that an adequate factual basis exists to support the Settlement and that, apart from the limited information described in paragraphs III.9(g) and III.9(c), they hereby waive any right to conduct further discovery to assess or confirm the Settlement.

(c) The Named Plaintiffs and Class Counsel have concluded that the Settlement set forth in this Agreement constitutes a fair, reasonable and adequate resolution of the claims that the Named Plaintiffs have asserted against Defendant, including the claims on behalf of the Settlement Class. The Named Plaintiffs and Class Counsel have also concluded that the Settlement set forth in this Agreement promotes the best interests of the Settlement Class.

8. Waiver:

The Parties agree that the waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

9. Other Provisions:

(a) In construing this Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

(b) Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or California state legal holiday, such date or deadline shall be on the first business day thereafter.

(c) The Parties reserve the right, subject to the Court’s approval where needed, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such extensions must be mutually agreed upon, in writing, to be enforceable.

VII. ADDITIONAL REPRESENTATIONS AND WARRANTIES

Class Counsel represents and warrants, as of the date of this Agreement, that they have ceased all efforts, and have no intention of affirmatively soliciting or seeking additional clients with similar claims against Instacart. This Section is not intended to be, and shall not be construed as, an impermissible limitation on Plaintiffs’ Counsel’s legal or ethical rights or obligations to practice law.

VIII. MODIFICATION:

This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for the Parties.

IT IS SO AGREED,

NAMED PLAINTIFFS

Dated: 3/3, 2017

DocuSigned by:

DOMINIC GOBARRUVIAZ, Plaintiff

Dated: 3/1, 2017

DocuSigned by:

ARLIN GOLDEN, Plaintiff

Dated: 3/1, 2017

DocuSigned by:

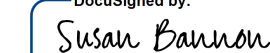
JOHN REILLY, Plaintiff

Dated: 3/2, 2017

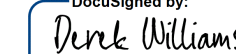
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CHRISTOPHER RUSSELL, Plaintiff

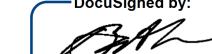
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SUSAN BANNON, Plaintiff

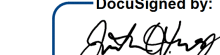
Dated: March 1, 2017

DocuSigned by:

DEREK WILLIAMS, Plaintiff

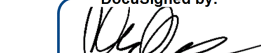
Dated: March 1, 2017

DocuSigned by:

BATYA WEBER, Plaintiff


Dated: March 2, 2017

DocuSigned by:

JONATHAN HUSTING, Plaintiff

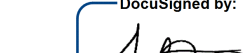
Dated: march 1, 2017

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MATTHEW GAYTON, Plaintiff

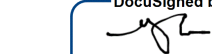
Dated: 3/1, 2017

DocuSigned by:

LADIA ARMSTRONG, Plaintiff

Dated: 3/1, 2017

DocuSigned by:

STEPHANIE WEHNER, Plaintiff

Dated: 3/3, 2017


DocuSigned by:

MARGARET CONNOLLY, Plaintiff

Dated: 03/01, 2017

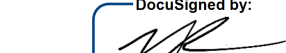
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MATTHEW PARSONS, Plaintiff

Dated: March 3, 2017, 2017

DocuSigned by:

SARAH LESTER, Plaintiff

Dated: March 1, 2017

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Dated: 03/01, 2017

NATHAN RAINES, Plaintiff

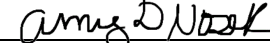
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BENJAMIN BOVEN, Plaintiff

Dated: March 1, 2017

DocuSigned by:



AMY NOSEN, Plaintiff

Dated: 03/01, 2017

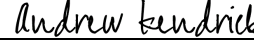
DocuSigned by:



JAMES RICHIE, Plaintiff

Dated: 3/01, 2017

DocuSigned by:



ANDREW KENDRICK, Plaintiff

Dated: March 2, 2017

DocuSigned by:



ANA AREAS, Plaintiff

Dated: March 1st, 2017

DocuSigned by:



AEGEA BARCLAY, Plaintiff

Dated: March 2nd, 2017

DocuSigned by:



KENNETH REILLY BARTON, Plaintiff

Dated: _____, 2017

JAYSON CALENDARIO, Plaintiff

Dated: 3/1, 2017

DocuSigned by:



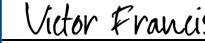
CASEY CAMP, Plaintiff

Dated: _____, 2017

MICHAEL CONNORS, Plaintiff

Dated: March 1st, 2017

DocuSigned by:



VICTOR FRANCIS, Plaintiff

Dated: March 1st, 2017

DocuSigned by:



MODI FRANK, Plaintiff

Dated: March 1st, 2017

DocuSigned by:



STEFANIE GRIZZELL, Plaintiff

Dated: _____, 2017

TACHINA GARRETT, Plaintiff

Dated: March 1st, 2017

DocuSigned by:



SHANNON GOODSSELL, Plaintiff

Dated: March 2, 2017

DocuSigned by:
Mimi Hayes
MIMI HAYES, Plaintiff

Dated: March 1, 2017

DocuSigned by:
Timothy Hearl
TIMOTHY HEARL, Plaintiff

Dated: March 2, 2017

DocuSigned by:
Michael Hearn
MICHAEL HEARN, Plaintiff

Dated: 03/01/17, 2017

DocuSigned by:
Christopher Holmes
CHRISTOPHER HOLMES, Plaintiff

Dated: March. 01, 2017

DocuSigned by:
Marcella Holmes
MARCELLA HOLMES, Plaintiff

Dated: March 1, 2017

DocuSigned by:
Lea Johnson
LEA JOHNSON, Plaintiff

Dated: 03/01/2017, 2017

DocuSigned by:
Kevin Jones
KEVIN JONES, Plaintiff

Dated: 03/01, 2017

DocuSigned by:
Shannon Kitchen-Juarez
SHANNON KITCHEN-JUAREZ, Plaintiff

Dated: March 3, 2017

DocuSigned by:
Lindsay Kreslake
LINDSAY KRESLAKE, Plaintiff

Dated: March, 2, 2017

DocuSigned by:
Jennell Laveque
JENNELL LEVEQUE, Plaintiff

Dated: 03/01/, 2017

DocuSigned by:
Daniel Major
DANIEL MAJOR, Plaintiff

Dated: 3/2, 2017

DocuSigned by:
Christopher Martinez
CHRISTOPHER MARTINEZ, Plaintiff

Dated: March 1, 2017

DocuSigned by:
Carolina Mayorga
CAROLINA MAYORGA, Plaintiff

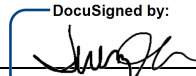
Dated: March 1, 2017

DocuSigned by:
Matthew Moynire
MATTHEW MOYNIERE, Plaintiff

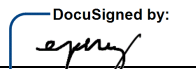
Dated: March 2nd, 2017

DocuSigned by:
Yoshinari Mogi
YOSHINARI MOGI, Plaintiff

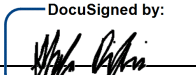
Dated: 3/1, 2017

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JEREMY NAIL, Plaintiff

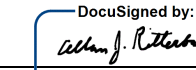
Dated: march 1, 2017

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ELIZABETH PEREZ, Plaintiff

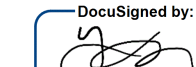
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SKYLA POTODNIC, Plaintiff

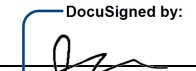
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ALLAN RUTHERFORD, Plaintiff

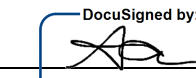
Dated: March 1, 2017

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TRACY ROBERGE, Plaintiff

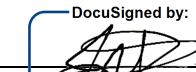
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JASON SKEPEK, Plaintiff

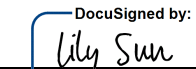
Dated: 03/01/2017, 2017

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AMORA SLAYBAUGH-COLLINS, Plaintiff


Dated: March 1, 2017

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JA'NEEN EATON, Plaintiff

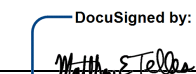
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LILY SUN, Plaintiff

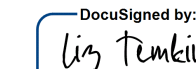
Dated: March 1, 2017

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EBANGHA TANYI, Plaintiff

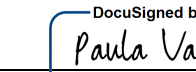
Dated: March 1, 2017

DocuSigned by:

MATTHEW BELLES, Plaintiff


Dated: March 1, 2017

DocuSigned by:

ELIZABETH TEMKIN, Plaintiff


Dated: March 1, 2017

DocuSigned by:

PAULA VAN, Plaintiff


Dated: 03/01/, 2017

DocuSigned by:

MARY ANN VARUGHESE, Plaintiff

Dated: 03/11, 2017

DocuSigned by:

MARKETTA WIDDER, Plaintiff

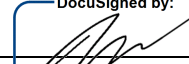
Dated: MARCH 1, 2017

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MARGARET WOLF, Plaintiff


Dated: March 1st, 2017

DocuSigned by:


JUSTIN ZOEPLER, Plaintiff

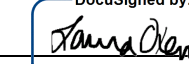
Dated: March 1st, 2017

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BRIAN ZOLENSKI, Plaintiff

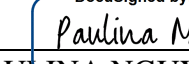
Dated: March 2nd, 2017

DocuSigned by:


LAURA OXENFELD, Plaintiff

Dated: March 1st, 2017

DocuSigned by:


PAULINA NGUYEN, Plaintiff

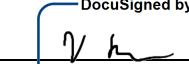
Dated: March 3rd, 2017

DocuSigned by:


JEFF KENDRICK, Plaintiff


Dated: 03/01, 2017

DocuSigned by:


VANESSA BAIN, Plaintiff

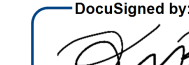
Dated: March 3, 2017

DocuSigned by:


MARY SYLVIA, Plaintiff

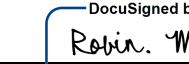
Dated: March 1, 2017

DocuSigned by:


KIMBERT FICKLER, Plaintiff

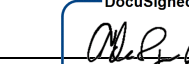
Dated: March 1, 1, 2017

DocuSigned by:


ROBIN DRUMMOND, Plaintiff


Dated: March 3, 2017

DocuSigned by:


ADAN BOTELLO, Plaintiff

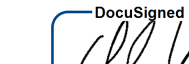
Dated: March 1, 2017

DocuSigned by:


CYNTHIA JENNINGS, Plaintiff

Dated: March 1st, 2017

DocuSigned by:


ALEX RICHTER, Plaintiff


Dated: March 2, 2017

DocuSigned by:


VICKY WILSON, Plaintiff

Dated: March 1, 2017

DocuSigned by:


DAVID SHEPERT, Plaintiff

Dated: March 3, 2017

DocuSigned by:


DEEDRA EVERETT, Plaintiff

Dated: 3-1, 2017

DocuSigned by:
Janota Hill
TENOJA HILL, Plaintiff

Dated: 3-1-2017, 2017

DocuSigned by:
Alfred Mann
ALFRED MANN, Plaintiff

Dated: 3-2-2017, 2017

DocuSigned by:
Tommy Garadis
TOMMY GARADIS, Plaintiff

MAPLEBEAR, INC. dba INSTACART

Dated: _____, 2017

By _____

Name:

Title:

APPROVED AS TO FORM,

CLASS COUNSEL

Dated: _____, 2017

THE ARNS LAW FIRM

By _____

ROBERT S. ARNS
JULIE C. ERICKSON
Attorneys for Plaintiffs

DEFENDANT'S COUNSEL

Dated: _____, 2017

KEKER & VAN NEST LLP

By _____

RACHAEL E. MENY
BENJAMIN BERKOWITZ
Attorneys for Defendant