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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JESUS HERNANDEZ CUEVAS,
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

GALE PACIFIC USA, INC., a Florida
corporation; INSPIRITY PEO SERVICES,
L.P., Delaware limited partnership; OASIS
OUTSOURCING, INC., a Florida corporation;
and DOES 1 through 100 inclusive,

Defendants.

CASE NO. CIVDS1509246

Assigned to the Hon. David Cohn
Dept. S26 – Complex Litigation

CLASS ACTION SETTLEMENT
AGREEMENT

Complaint Filed: June 30, 2015

First Amended
Complaint Filed: December 3, 2015

Trial Date: None

1 This Class Action Settlement Agreement ("Settlement Agreement"), dated as of January 31,
2 2017 is made by and between Plaintiff JESUS HERNANDEZ CUEVAS ("Plaintiff"), on behalf of
3 himself and others similarly situated, and Defendant GALE PACIFIC USA, INC. ("GPUSA"), a
4 Florida Corporation, with regard to the civil action filed against GPUSA on June 30, 2015 in the
5 Superior Court of California for the County of San Bernardino, captioned *JESUS HERNANDEZ*
6 *PLAINTIFF, individually, and on behalf of all others similarly situated, vs. GALE PACIFIC USA,*
7 *INC., a Florida corporation, et al.*, Case No. CIVDS1509246. Plaintiff and GPUSA may be
8 collectively referred to herein as "parties" or individually as "party."

9 **I. BACKGROUND AND RECITALS**

10 1. On June 30, 2015, Plaintiff filed a class action complaint in the Superior Court of
11 California for the County of San Bernardino, in Case No. CIVDS1509246, and on December 3,
12 2015, filed the operative first amended class action complaint ("FAC") against GPUSA,
13 INSPERITY PEO SERVICES, L.P. ("Insperity"), and OASIS OUTSOURCING, INC. ("Oasis").
14 The FAC alleged the following seven causes of action, respectively: (1) "Failure To Provide Meal
15 Periods"; (2) "Failure to Pay Minimum Wage And Straight Time Wages"; (3) "Failure To Pay
16 Overtime Compensation"; (4) "Failure To Provide Accurate Itemized Wage Statements And
17 Maintain Required Records"; (5) "Failure to Timely Pay All Wages Upon Termination Of
18 Employment"; (6) "Unfair Business Practices"; and (7) "Representative Action Under the Private
19 Attorneys General Act of 2004 for Civil Penalties, Labor Code §§ 2698-2699.5 ['PAGA']"
20 (collectively, the "Action").

21 2. On February 23, 2016, Plaintiff filed a request for dismissal of the Action against
22 Insperity without prejudice and, on February 25, 2016, the Court ordered Insperity dismissed from
23 the Action without prejudice. On April 1, 2016, Plaintiff filed a request for dismissal of the Action
24 against Oasis without prejudice and, on April 7, 2016, the Court ordered Oasis dismissed from the
25 Action without prejudice.

26 3. Plaintiff is a former GPUSA employee who worked in the Warehouse LTL
27 department for GPUSA during a portion of the relevant class period; the parties agree that Plaintiff
28 may be appointed by the Court as class representative ("Class Representative").

1 4. Plaintiff's counsel are Farzad Rastegar and Thomas S. Campbell of the Rastegar
2 Law Group, APC, whom the parties agree may be appointed by the Court as class counsel ("Class
3 Counsel").

4 5. Prior to settlement, the parties conducted pre-mediation discovery which involved
5 the production of a substantial amount of GPUSA electronic data and more than one thousand
6 GPUSA business records relating to the claims in this litigation. Class Counsel and GPUSA's
7 counsel expended a significant amount of time and resources reviewing electronic data and business
8 records relating to worker time data, payroll summaries, GPUSA's meal and rest period policies
9 and signed acknowledgments, as well as other GPUSA policies and procedures relevant to the
10 claims in this Action.

11 6. On January 31, 2017, the parties participated in a full-day mediation with Lynn
12 Frank of Frank and Feder. After considering all of the various factors at issue, the parties agreed to
13 settle the entire Action and entered into a Memorandum of Understanding (MOU) setting forth the
14 material economic and non-economic terms of the settlement, with the understanding that a long-
15 form settlement agreement would be executed by the parties. This is the long-form settlement
16 agreement contemplated by the MOU, and it supersedes the MOU upon the approval of the Court of
17 the settlement.

18 7. Plaintiff and Class Counsel concluded, after taking into account the sharply disputed
19 factual and legal issues involved in this Action, the risks attendant to further prosecution and the
20 substantial benefits to be received pursuant to the compromise and settlement of the Action as set
21 forth in this Agreement, that settlement on the terms set forth herein is in the best interests of
22 Plaintiff and the putative Class, and is fair and reasonable.

23 8. Similarly, GPUSA concluded, after taking into account the sharply disputed factual
24 and legal issues involved in the Action, the expense and burden of protracted litigation and its
25 desire to put the controversy to rest, that settlement on the terms set forth in this Agreement is in
26 GPUSA's best interest, and is fair and reasonable.

1 9. Each of the parties understands and acknowledges that each party is waiving legal
2 rights or claims by signing the Agreement, and that each party voluntarily enters into the
3 Agreement with a complete understanding of its terms and with the intent to be bound thereby.

4 10. This settlement contemplates (i) entry by the Court of an Order preliminarily
5 approving the settlement and certifying the proposed settlement class (and sub-classes), as
6 hereinafter described, solely for purposes of settlement, and (ii) entry by the Court of an Order
7 granting final approval of the settlement as of the date of the final approval order.

8 **NOW, THEREFORE**, in consideration of the mutual covenants and promises contained
9 herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the
10 parties agree as follows:

11 **II. CONSIDERATION FOR THE SETTLEMENT AND RELEASE OF CLAIMS**

12 11. Subject to Court approval pursuant to Section 382 of the California Code of Civil
13 Procedure and Rule 3.769, *et seq.* of the California Rules of Court, Plaintiff and GPUSA have
14 mutually agreed to settle the Action upon the terms and conditions, release of claims with prejudice,
15 and other consideration set forth in this Agreement. A summary of the terms of the Settlement is as
16 follows:

17 A. The parties stipulate to certification of a provisional settlement class ("Settlement
18 Class"), for purposes of this settlement only. The putative class members also be referred to herein
19 collectively as "Members of the Settlement Class" or individually as "Member of the Settlement
20 Class. The Settlement Class shall consist of three Subclasses:

- 21 i. Subclass # 1 – The "Regular GPUSA Employee Subclass": The Regular
22 GPUSA Employee Subclass consists of thirty-one (31) persons, including
23 Plaintiff, who were employed by GPUSA at GPUSA's Rancho Cucamonga,
24 California location at various times during the period June 30, 2011 through
25 December 31, 2016. These employees may also be referred to herein
26 collectively as "Members of the Regular GPUSA Employee Subclass" or
27 individually as a "Member of the Regular GPUSA Employee Subclass." The
28 approximate number of collective weeks worked by Members of the Regular

GPUSA Employee Subclass is Three Thousand Seven Hundred Nineteen (3,719) weeks.

ii. Subclass # 2 – The “PAGA Subclass”: The PAGA Subclass shall consist of twenty (20) persons, including Plaintiff, employed by GPUSA at GPUSA’s Rancho Cucamonga, California location at various times during the period June 30, 2014 through December 31, 2016. These employees may also be referred to herein collectively as “Members of the PAGA Subclass” or individually as a “Member of the PAGA Subclass.”

iii. Subclass # 3 – The “Temporary Worker Subclass”: The Temporary Worker Subclass shall consist of approximately two hundred fifty (250) persons who were provided by temporary staffing agencies to perform services at GPUSA’s Rancho Cucamonga, California worksite on a casual, temporary basis, at various times during the period June 30, 2011 through December 31, 2016. These temporary workers may also be referred to herein collectively as “Members of the Temporary Worker Subclass” or individually as a “Member of the Temporary Worker Subclass.” The approximate number of collective weeks worked by Members of the Temporary Worker Subclass is approximately Four Thousand Four Hundred Thirty Six (4,436) weeks.

B. Twelve (12) of the thirty-one (31) Members of the Regular GPUSA Employee Subclass, including Plaintiff, were at various times provided by temporary staffing agencies to perform services at GPUSA’s Rancho Cucamonga, California worksite before becoming regularly employed by GPUSA. The approximate number of collective weeks worked by these twelve (12) employees are factored solely into the approximate number of collective weeks worked by Members of the Regular GPUSA Employee Subclass, as set forth above in Section 11.A.i.

C. In sum, the approximate number of collective weeks worked by Members of the Settlement Class is Eight Thousand One Hundred Fifty-Five (8,155) weeks.

1 D. Gross Settlement Value: On behalf of GPUSA and the GPUSA Released Parties,
2 GPUSA will pay a maximum of Two Hundred Fifty Thousand Dollars (\$250,000.00), which is
3 referred to herein as the Gross Settlement Value ("GSV"), inclusive of, and in full and final
4 settlement of, Plaintiff's individual and representative claims as well as all Settlement Class claims,
5 PAGA claims, attorneys' fees, costs (including expert witness fees and related costs), expenses and
6 interest, and the Employer Portion of Payroll Taxes. The parties agree that the following sums may
7 be deducted from the GSV, to attain a Net Settlement Amount ("NSA"):

- 8 i. PAGA Penalties: The parties agree that the sum of Five Thousand Dollars
9 (" \$5,000.00") of the GSV shall be allocated as and for settlement of the
10 PAGA Subclass, which shall be distributed as follows: 75% of the PAGA
11 penalties, *i.e.*, Three Thousand Seven Hundred Fifty Dollars (\$3,750.00)
12 shall be paid to the LWDA, and 25% of the PAGA penalties, *i.e.*, One
13 Thousand Two Hundred Fifty Dollars (\$1,250.00) shall be distributed equally
14 to the Members of the PAGA Subclass, *i.e.*, Forty Dollars and Thirty-Two
15 Cents (\$40.32) to each Member of the PAGA Subclass. The PAGA penalties
16 sum shall be deducted from the GSV.
- 17 ii. Enhancement Payment: Class Representative Plaintiff shall be paid the total
18 sum of Five Thousand Dollars (\$5,000.00), without deductions, as an
19 Enhancement Payment for serving diligently and responsibly as the Class
20 Representative in recognition of the additional time and resources expended
21 by Plaintiff. This sum shall be deducted from the GSV.
- 22 iii. Attorneys' Fees: Subject to Court approval, GPUSA has agreed not to object
23 to a request by Class Counsel to be designated as Class Counsel and to be
24 paid any accounts for a reasonable lodestar which the Court may grant, but in
25 no event shall the total payment of attorneys' fees exceed the sum of 35% of
26 the GSV, *i.e.*, Eighty-Seven Thousand Five Hundred Dollars (\$87,500.00),
27 which sum shall be deducted from the GSV. In the event that Class Counsel
28 should be awarded less than the amount it shall request to be approved, the

1 delta between what is awarded and what GPUSA had agreed to pay shall be
2 equally distributed to the Members of the Regular GPUSA Employee
3 Settlement Subclass and the Temporary Worker Subclass.

4 iv. Attorneys' Costs: Subject to Court approval, GPUSA has agreed not to
5 object to a request by Class Counsel to be paid any accounts for reasonable
6 costs, but in no event shall the total payment of attorneys' costs exceed the
7 sum of Eleven Thousand Dollars (\$11,000.00), which sum shall be deducted
8 from the GSV. In the event that Class Counsel should be awarded less than
9 the amount it shall request to be approved, the delta between what is awarded
10 and what GPUSA had agreed to pay shall be equally distributed to the
11 Members of the Regular GPUSA Employee Settlement Subclass and the
12 Temporary Worker Subclass.

13 v. Class Administrative Costs: The class administrative costs (the
14 "Administrative Costs") shall be deducted from the GSV, up to a maximum
15 of Ten Thousand Dollars (\$10,000.00). In the event that the final
16 Administrative Costs are less than Eleven Thousand Dollars (\$10,000.00),
17 the delta between what the actual cost and the agreed-upon charge shall be
18 equally distributed to the Members of the Regular GPUSA Employee
19 Settlement Subclass and the Temporary Worker Subclass.

20 E. Net Settlement Amount: The NSA is estimated to be One Hundred Thirty One
21 Thousand Five Hundred Dollars (\$131,500.00), *i.e.*, GSV minus PAGA Penalties, Enhancement
22 Payment, Attorneys' Fees, Attorneys' Costs, and Administrative Costs. The parties agree that the
23 NSA shall be allocated and paid to Members of the Regular GPUSA Employee Subclass and
24 Members of the Temporary Worker Subclass, as follows:
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i. The Regular GPUSA Employee Subclass

a. Wages: As an estimate only, and to be confirmed by the Third Party Administrator, the approximate sum of Fourteen Thousand Nine Hundred Ninety-One Dollars (\$14,991.00) shall be allocated and paid, less payroll taxes, from the NSA as and for wages to the Regular GPUSA Employee Subclass. Each Member of the Regular GPUSA Employee Subclass is estimated to receive wages in the approximate amount of Four Hundred Eighty-Three Dollars and Fifty-Eight Cents (\$483.58). The parties acknowledge and agree, however, that these sums are estimates, and that they will be reduced by payment of the employer's and employee's respective share of payroll taxes. Thus, Members of the Regular GPUSA Employee Subclass will be responsible for paying their portion, if any, of taxes attributed to wages, as well as any applicable tax on the portion attributed to interest/penalties/liquidated damages, if any. The Third Party Administrator shall be tasked with the responsibility for deducting and remitting the employee's portion of the payroll taxes. Employer payroll taxes shall be deducted from the wage portion of the NSA, and remitted through the Third Party Administrator.

b. Interest: The parties agree that the estimated sum of Twenty-Two Thousand Four Hundred Eighty-Six Dollars and Fifty Cents (\$22,486.50) of the NSA shall be allocated and paid as and for interest to the Regular GPUSA Employee Subclass. Each Member of the Regular GPUSA Employee Subclass shall be paid Seven Hundred Twenty-Five Dollars and Thirty-Seven Cents (\$725.37), without deductions, as and for interest.

c. Non-PAGA Penalties: The parties agree that the estimated sum of Twenty-Two Thousand Four Hundred Eighty-Six Dollars and Fifty Cents (\$22,486.50) of the NSA shall be allocated as and for statutory penalties and liquidated damages for violations that are not otherwise covered under PAGA ("Non-PAGA Penalties") to the Regular GPUSA Employee Subclass. Each Member of the Regular GPUSA Employee Subclass shall be paid Seven Hundred Twenty-Five Dollars and Thirty-Seven Cents (\$725.37), without deductions, as and for Non-PAGA Penalties.

ii. Temporary Worker Subclass

a. Non-PAGA Penalties: The parties agree that the sum of Seventy Seventy-One Thousand Five Hundred Thirty-Six Dollars (\$71,536.00) shall be allocated and paid from the NSA as and for Non-PAGA Penalties to the Temporary Worker Subclass. Each Member of the Temporary Worker Subclass shall be paid Two Hundred Eighty-Six Dollars and Fourteen Cents (\$286.14), without deductions, as and for non-PAGA penalties.

12. The parties recognize that the average number of weeks worked by each Member of the Regular GPUSA Employee Subclass, approximately One Hundred Twenty (120) weeks, is substantially higher than the average number of weeks worked by each Member of the Temporary Worker Subclass, approximately Eighteen (18) weeks, which is consistent with the casual, temporary nature of the Members of the Temporary Worker Subclass. The parties also recognize that the collective weeks worked by the Members of the Regular GPUSA Employee Subclass make up 45.6% of the approximate number of collective weeks worked by all Members of the Settlement Class, Eight Thousand One Hundred Fifty-Five (8,155) weeks, and that the collective weeks worked by the Members of the Temporary Worker Subclass make up the remaining 54.5%.

13. The above distributions to each of the Members of the Regular GPUSA Employee Subclass reflect an equal distribution of 45.6% of the NSA, *i.e.*, 45.6% of the NSA is Fifty-Nine

1 Thousand Nine Hundred Sixty-Four Dollars (\$59,964.00), subject to the allocation of 25% wages
2 (less applicable payroll withholdings), 37.5% interest, and 37.5% non-PAGA penalties of the NSA.
3 The gross recovery for each of the Thirty-One (31) Members of the Regular GPUSA Employee
4 Subclass is approximately One Thousand Nine Hundred Thirty-Four Dollars and Thirty-Two Cents
5 (\$1,934.32), less applicable payroll deductions.

6 14. The net recovery for each of the Twenty (20) members of the PAGA Subclass is
7 approximately Forty Dollars and Thirty-Two Cents (\$40.32), without deductions.

8 15. The above distributions to each of the Members of the Temporary Worker Subclass
9 reflect an equal distribution of 54.4% of the NSA (*i.e.*, 54.4% of the NSA is Seventy-One Thousand
10 Five Hundred Thirty-Six Dollars (\$71,536.00)). The net recovery for each of the approximately
11 Two Hundred Fifty Members of the Temporary Worker Subclass is approximately Two Hundred
12 Eighty-Six Dollars and Fourteen Cents (\$286.14), without deductions.

13 16. The parties agree that the allocations above use a fair and reasonable methodology
14 given the nature of each of the three Subclasses, given the sharply disputed factual and legal issues
15 involved in this Action, and given the risks attending further prosecution and the substantial
16 benefits to be received pursuant to the compromise and settlement of the Action as set forth in this
17 Agreement.

18 17. Other than payment of the GSV, under the terms and conditions set forth herein,
19 Plaintiff and the putative members of each of the settlement subclasses identified herein
20 acknowledge and agree that no other payment(s), including without limitation for wages, piece
21 rates, overtime, bonus, vacation pay, premium pay for the alleged missed meal or rest breaks, travel,
22 expenses, failure to provide meal or rest periods, failure to provide accurate itemized wage
23 statements and to maintain records, failure to timely pay wages upon termination, restitution,
24 PAGA penalties, and civil or statutory penalties, interest, or benefits, are or shall be due and owing
25 from GPUSA or any of the GPUSA Released Parties, individually or as members of an identified
26 settlement subclass, or to Class Counsel, for the relevant period of time covered by the FAC, or for
27 any other period.
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18. Pursuant to the IRS Circular 230 Disclaimer, the parties acknowledge and agree that

(1) no provision of this Agreement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);

(2) the acknowledging part(ies) (a) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

III. RELEASE OF CLAIMS

19. The term "GPUSA Released Parties" means and shall include the following: GPUSA (as defined herein), Insperity PEO Services, L.P., Oasis Outsourcing, Inc., DBS Inc., Kamran Staffing, Inc., Caliber Group Staffing, Inc., Apex Personnel, Inc., Contemporary HR, Inc.; each of their respective current or former owners, officers, directors, shareholders, investors, partners, members, employees, servants, managing agents, partnerships, trustees, predecessors, successors, assigns, affiliates, parent corporations, and/or subsidiaries (whether or not wholly owned); any other entity or company operated, affiliated with, controlled by, or under common control with any one of the foregoing; each of their respective trustees, directors, officers, attorneys, insurers or reinsurers, accountants, lenders, investors, agents, servants, representatives, employees and former employees (in their respective capacities as such, in their individual and personal capacities, and in any and all other capacities); any person who would otherwise be deemed to be a "Doe defendant" to whom the

1 allegations of the FAC are or were directed; and all other related entities of any type, scope or
2 existence, of each of the foregoing.

3 20. The term "Class Released Claims" means any and all liabilities, demands, claims,
4 causes of action, complaints and obligations arising during June 30, 2011 through the Settlement
5 Effective Date (as defined herein) that were alleged or which could have been alleged in the FAC,
6 and each and every material allegation alleged therein, including without limitation the following:
7 (1) "Failure To Provide Meal Periods"; (2) "Failure to Pay Minimum Wage And Straight Time
8 Wages"; (3) "Failure To Pay Overtime Compensation"; (4) "Failure To Provide Accurate Itemized
9 Wage Statements And Maintain Required Records"; (5) "Failure to Timely Pay All Wages Upon
10 Termination Of Employment"; (6) "Unfair Business Practices"; and (7) "Representative Action
11 Under the Private Attorneys General Act of 2004 for Civil Penalties, Labor Code §§ 2698-2699.5"
12 against GPUSA, the GPUSA Released Parties, and each of them.

13 21. The term "Plaintiff Released Claims" means any and all Class Released Claims and
14 claims under the California Fair Employment and Housing Act ("FEHA"), California Family Rights
15 Act ("CFRA") (Cal. Gov't Code section 12940 *et seq.*), Title VII of the 1964 Civil Rights Act, as
16 amended ("Title VII") (42 U.S.C. section 2000e *et seq.*), the Consolidated Omnibus Benefits
17 Reconciliation Act of 1985 ("COBRA"), the Americans with Disabilities Act ("ADA") (42 U.S.C.
18 section 12101 *et seq.*), as amended, the Vocational Rehabilitation Act of 1973 (29 U.S.C. section
19 701, *et seq.*), the California Labor Code; claims for disputed wages and penalties under federal or
20 state law; claims for compensation, severance, employee benefits and vacation pay (*excluding*
21 workers' compensation or unemployment insurance claims); attorneys' fees, costs, expenses and
22 expert witness fees and expenses; tort damages or personal injury damages; breach of implied or
23 express contract; failure to accommodate; failure to engage in an interactive process; wrongful
24 termination in violation of public policy; breach of fiduciary duty; declaratory relief; injunctive
25 relief; public policy breach; intentional or negligent infliction of emotional distress; breach of
26 employment contract (whether express, implied in law or fact, oral or written); breach of implied
27 covenant of good faith and fair dealing; interference with contract; intentional or negligent
28 interference with prospective economic advantage; intentional or negligent misrepresentation,

1 promissory fraud, or fraud; conversion; defamation; libel or slander; discrimination, retaliation,
2 harassment or hostile work environment on the basis of any statutorily protected class including but
3 not limited to disability, engagement in protected activity; failure to prevent discrimination,
4 retaliation, harassment or hostile work environment; negligent hiring; constructive discharge;
5 disparagement of any kind or nature; invasion of privacy; civil assault; malicious prosecution; abuse
6 of process; declaratory or injunctive relief, whether known or unknown, suspected or unsuspected,
7 fixed or contingent, apparent or concealed, at law or in equity, which Plaintiff ever had or held, now
8 has or holds, or hereafter can, shall, or may have or hold at any time in the future, in any capacity,
9 individually or as a member of a class, collective or representative action, or an action for the public
10 good or as a private attorneys general, with respect to Plaintiff's employment with GPUSA, the
11 terms and conditions and working environment of his employment, and the termination thereof, the
12 compensation paid to Plaintiff, the subject matter of the Agreement, or any other matters with, by,
13 between or among GPUSA, or any of the GPUSA Released Parties, and Plaintiff from the
14 beginning of the World through the Settlement Effective Date.

15 22. In consideration of the terms and provisions of the Agreement, the Members of the
16 Settlement Class (including the members of the three identified Settlement Subclasses, the Regular
17 GPUSA Employee Settlement Subclass, the Temporary Worker Subclass, and the PAGA Penalty
18 Subclass) shall and do hereby and forever fully, finally and forever generally remise, release, waive
19 and discharge, with prejudice, GPUSA and the GPUSA Released Parties, and each of them, from
20 any and all known or unknown, suspected or unsuspected, whether or not concealed or hidden,
21 claims, rights, actions and causes of action, at law or in equity, *relating to the Class Released*
22 *Claims only*, which the Members of the Settlement Class (including the members of each of the
23 identified Settlement Subclasses, the Regular GPUSA Employee Settlement Subclass, the
24 Temporary Worker Subclass, and the PAGA Penalty Subclass) ever had or held, now have or hold,
25 or hereafter can, shall, or may have or hold against GPUSA and the GPUSA Released Parties or any
26 one of them, based on any occurrences, transactions, events, acts, or omissions of any kind
27 whatsoever from the beginning of the World through the Settlement Effective Date. Any eligible
28

1 Class Member who does not elect to exclude himself or herself from the Settlement Class will be
2 deemed to have entered into this release of claims and to have released the claims.

3 23. In consideration of the terms and provisions of the Agreement, and without limiting
4 the foregoing release in Paragraph 22, Plaintiff shall and does hereby and forever fully, finally and
5 forever generally remise, release, waive and discharge, with prejudice, GPUSA and the GPUSA
6 Released Parties, and each of them, from any and all known or unknown, suspected or unsuspected,
7 whether or not concealed or hidden, claims, rights, actions and causes of action, at law or in equity,
8 including but not limited to the Plaintiff Released Claims, which Plaintiff ever had or held, now has
9 or holds, or hereafter can, shall, or may have or hold against GPUSA and the GPUSA Released
10 Parties or any one of them, based on any occurrences, transactions, events, acts, or omissions of any
11 kind whatsoever from the beginning of the World through the Settlement Effective Date.

12 24. GPUSA shall not reinstate, re-hire, or hire Plaintiff. Plaintiff shall not apply for
13 employment with GPUSA. Plaintiff understands and agrees that, should he apply for employment,
14 GPUSA shall have the right to terminate the processing of his application, and Plaintiff shall have
15 no rights, claims or causes of action against GPUSA as a result.

16 **IV. WAIVER OF SECTION 1542 RIGHTS**

17 25. Plaintiff and the Members of the Settlement Class acknowledge and agree that they
18 have been informed of and understand the provision of California Civil Code section 1542 which
19 provides as follows:

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

26 26. Plaintiff expressly waives and relinquishes any and all rights and benefits under
27 Section 1542 of the Civil Code of the State of California and under any statute, rule, or principle of
28 common law or equity, of any jurisdiction, that is similar to Section 1542.

1 27. The Members of the Settlement Class expressly waive and relinquish any and all
2 rights and benefits under Section 1542 of the Civil Code of the State of California and under any
3 statute, rule, or principle of common law or equity, of any jurisdiction, that is similar to Section
4 1542, relating to the Class Released Claims only.

5 28. Plaintiff and each Member of the Settlement Class further acknowledge and agree
6 that if the facts or law with respect to which the foregoing releases are given hereafter turn out to be
7 other than or different from the facts or law in that connection not known to be or believed by each
8 of them to be true, each of them expressly assumes the risk of the facts or law turning out to be so
9 different, and agrees that the foregoing releases shall be in all respects effective and not subject to
10 termination or rescission based upon any such differences in facts or law.

11 **V. NO ADMISSION OF LIABILITY**

12 29. This Agreement represents a settlement of disputed rights and claims and, by
13 entering into the Agreement, GPUSA does not admit or acknowledge the existence of any liability
14 or wrongdoing to Plaintiff or any of the Members of the Settlement Class, all such liability or
15 wrongdoing being specifically and expressly denied.

16 **VI. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE**

17 30. The parties agree to a "no-claims made" redemption process whereby each Class
18 Member will receive their settlement share if he or she does not object or opt-out of the Settlement.
19 Members of the Settlement Class have one hundred eighty (180) days from the date of the issuance
20 to cash their checks.

21 31. Class Administrator: The parties have agreed to appoint Phoenix Settlement
22 Administrators ("Phoenix") as the class administrator for the purpose of administering the
23 settlement contemplated by this Agreement (the "Class Administrator"). The Class Administrator's
24 duties include, but are not limited to, printing, distributing, and tracking notices and forms for this
25 settlement, calculating Individual Settlement Amounts, tax reporting, distributing payments, and
26 providing necessary reports and declarations, and other duties set forth herein to process this
27 Agreement, as requested by the parties. If for any reason Phoenix does not become the Class
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1 Administrator, then all references to the Class Administrator and to Class Action Administration in
2 this Agreement shall be deemed to refer to the Class Administrator actually appointed.

3 32. GPUSA To Provide Contact Information for Members of the Settlement Class:

4 Within twenty-one (21) calendar days after the Court's preliminary approval of the Settlement,
5 GPUSA shall provide on a confidential basis the Class Administrator with the Class List Data
6 consisting of the following: i) a spreadsheet containing the names, most recent known mailing
7 addresses, telephone numbers, and Social Security numbers of the Members of the Settlement
8 Class, to the extent that GPUSA has such information in its records. GPUSA will contact the
9 temporary staffing agencies that provided the Members of the Temporary Worker Subclass to
10 determine Class List Data for said Members, as needed.

11 33. Confidentiality Of Class List Data: The Class Administrator shall keep confidential

12 all Class List Data provided by GPUSA, as well as any other information exchanged between the
13 parties as part of the settlement.

14 34. Class Notice of Settlement: Within twenty-one (21) calendar days after receipt of the

15 Class List Data, the Class Administrator shall mail the class notice (the "Class Notice"), attached as
16 Exhibit A and incorporated herein by this reference as though set forth herein, to the Members of
17 the Settlement Class via first-class U.S. Mail. The Class Notice will be in a form substantially
18 identical to Exhibit "A" attached hereto, with any modifications as the Court may order. The
19 purpose of the Class Notice is to, *inter alia*, inform Members of the Settlement Class of the nature
20 of the Action, provide a summary of the proposed settlement, define the Settlement Class, describe
21 how to submit Requests for Exclusion, and describe how to submit Objections.

22 35. Verification of Contact Information: Before the mailing of the Class Notice, the

23 Class Administrator will perform a search based on the National Change of Address Database, or
24 any other similar services available, to correct for any identifiable address changes. After mailing,
25 if a new address is obtained, then the Class Administrator shall promptly forward the original Class
26 Notice to the updated address via first-class U.S. Mail, indicating on the original Class Notice the
27 date of such remailing. GPUSA agrees to cooperate with the Class Administrator to locate a more
28 recent address for Members of the Settlement Class where necessary.

1 36. Deadline for Response by Members of the Settlement Class: Members of the
2 Settlement Class will have sixty (60) calendar days from the mailing of the Class Notice (the "Opt-
3 Out Period") to submit Requests for Exclusion or objections to the proposed settlement. As to
4 Members of the Settlement Class whose notices are re-mailed because of a new address, the new
5 deadline for submitting an Exclusion Request or an Objection will be either (i) sixty (60) calendar
6 days from the second mailing or (ii) forty-five (45) calendar days before the hearing on Final
7 Approval, whichever date is earlier.

8 37. Opting Out by Exclusion Request: Within the Opt-Out Period, Members of the
9 Settlement Class who wish to opt-out of the proposed settlement must sign and fax or postmark to
10 the Class Administrator a written Exclusion Request. An Exclusion Request is a writing submitted
11 within the Opt-Out Period that expresses an intent to not participate in the proposed settlement and
12 that (1) is signed by the Member of the Settlement Class requesting exclusion, (2) contains the
13 name, address, telephone number and the last four digits of the Social Security number of the
14 Member of the Settlement Class requesting exclusion, (3) clearly states that the Member of the
15 Settlement Class does not wish to be included in the proposed settlement, (4) is returned by fax or
16 mail to the Class Administrator at the specified address, and (5) is faxed or postmarked on or before
17 the 60-day deadline. The date of the fax or the postmark on the Member of the Settlement Class's
18 mailing envelope shall determine whether an Exclusion Request is timely. A Member of the
19 Settlement Class who does not timely submit an Exclusion Request shall be deemed a Member of
20 the Settlement Class and will benefit by and be bound by all terms of the settlement contemplated
21 by this Agreement, if the Court grants Final Approval.

22 38. Objections: To object to the settlement proposed by this Agreement, a Member of
23 the Settlement Class must file with the Court and serve Plaintiff's counsel and Defendant's counsel,
24 within the Opt-Out Period, an objection to the Agreement. An objection is a written document that
25 is signed by a Member of the Settlement Class who has not filed an Exclusion Request and that
26 includes (a) the objecting Member of the Settlement Class' full name, address, and telephone
27 number, (b) a written statement of factual and legal grounds for the Objection, (c) copies of any
28 papers, briefs, or other documents on which the Objection relies, (d) a list of all persons who will be

1 called to testify in support of the Objection, (e) a statement whether the objector intends to appear at
2 the hearing on Final Approval, and (f) a list of all cases in which the objector or the objector's
3 counsel has filed objections to a class action settlement in the preceding five years. Any Member of
4 the Settlement Class who does not file a timely Objection and a notice of an intention whether to
5 appear at the hearing on Final Approval, or who otherwise fails to substantially comply with the
6 requirements of this paragraph, may be foreclosed from objecting to the proposed settlement and
7 seeking any adjudication or review of the settlement, by appeal or otherwise.

8 39. Class Administrator Responsibilities Before Final Approval: If any Class Notice is
9 returned to the Class Administrator as nondelivered, then the Class Administrator may use skip
10 tracing, address verification of returned mail, or other methodology as the Class Administrator
11 deems to be appropriate to locate Members of the Settlement Class. As soon as practicable after the
12 Opt-Out Period, the Class Administrator shall report simultaneously to the parties' counsel the
13 following information: (1) the number of timely and untimely Exclusion Requests, if any, (2) the
14 name of each Member of the Settlement Class, if any, who submitted an Exclusion Request, (3) the
15 number of timely and untimely Objections, if any, and (4) the name of each Settlement Class
16 Member, if any, who submitted an Objection, and the stated grounds therefor. No later than seven
17 (7) calendar days before the hearing on Final Approval, the Class Administrator shall prepare a Due
18 Diligence Declaration stating the steps the Class Administrator has taken to administer this
19 Agreement, including the dissemination of the Class Notice and the receipt of any Requests for
20 Exclusion or Objections. Class Counsel shall be responsible for filing the Due Diligence
21 Declaration with the Court.

22 40. Motion for Final Approval: Following the expiration of the Opt-Out Period, Class
23 Representative Plaintiff will move for Final Approval ("Motion for Final Approval"), and will
24 submit a proposed order to approve this Agreement, which would adjudge that the terms thereof to
25 be fair, adequate, and reasonable, rule on the request for attorneys' fees, rule on the request for the
26 Enhancement Payment, rule on the request for the PAGA Settlement, and call for judgment to be
27 entered on the Action with a provision for the retention of the Court's jurisdiction over the parties to
28 enforce the terms of the judgment pursuant to Rule 3.769(h) of the California Rules of Court. The

1 Class Representatives shall provide a draft of the Motion for Final Approval for GPUSA's review
2 and comment. Upon agreement by the parties as to the language to be included in the Motion for
3 Final Approval, GPUSA will file a notice of non-opposition to the Motion for Final Approval.

4 41. Class Administrator Responsibilities After Settlement Effective Date: As soon as
5 practicable after the Settlement Effective Date, the Class Administrator shall (1) effect individual
6 settlement payment amounts and issue the appropriate tax reporting, (2) pay the Enhancement
7 Payment to Class Representative Plaintiff and issue the appropriate tax reporting, and (3) pay the
8 award of attorneys' fees and costs to Class Counsel and issue the appropriate tax reporting. The
9 Class Administrator shall monitor the cashing of settlement checks by Members of the Settlement
10 Class. The Class Administrator shall make settlement checks negotiable for 180 days from their
11 issuance and will thereafter have them automatically cancelled if not cashed. As soon as
12 practicable after the 180-day check cashing period, the Class Administrator shall prepare for the
13 parties a Final Report – a document summarizing relevant events to date and advising the total
14 dollar amount paid to Members of the Settlement Class, and the status of any uncashed checks. The
15 Class Administrator shall comply, on behalf of the parties, with any orders of the Court concerning
16 class administration.

17 42. Cy Pres:

- 18 a. Regular GPUSA Employee Subclass: Any aggregate amount of One Thousand
19 Dollars (\$1,000.00) or less in uncashed and/or returned checks from the Members of
20 the Regular GPUSA Employee Subclass shall be distributed as a cy pres award to
21 the Counsel for Justice ("CFJ"), the charitable arm of the Los Angeles County Bar
22 Association which provides equal access to legal services in the community by
23 raising funds for, and directly contributing to, projects involving domestic violence,
24 support of veterans, immigration assistance, and AIDS services. Any aggregate
25 amount in excess of One Thousand Dollars (\$1,000.00) in uncashed and/or returned
26 checks from the Members of the Regular GPUSA Employee Subclass shall be
27 divided equally (i.e., 50% / 50%) between the Members of the Regular GPUSA
28 Employee Subclass, on the one hand, and CFJ, on the other hand.

- 1 b. PAGA Subclass: Any aggregate amount of One Thousand Dollars (\$1,000.00) or
2 less in uncashed and/or returned checks from the Members of the PAGA Subclass
3 shall be distributed as a cy pres award to CFJ. Any aggregate amount in excess of
4 One Thousand Dollars (\$1,000.00) in uncashed and/or returned checks from the
5 Members of the PAGA Subclass shall be divided equally (i.e., 50% / 50%) between
6 the Members of the PAGA Subclass, on the one hand, and CFJ, on the other.
- 7 c. Temporary Worker Subclass: Any aggregate amount of One Thousand Dollars
8 (\$1,000.00) or less in uncashed and/or returned checks from the Members of the
9 Temporary Worker Subclass shall be distributed as a cy pres award to CFJ. Any
10 aggregate amount in excess of One Thousand Dollars (\$1,000.00) in uncashed and/or
11 returned checks from the Members of the Temporary Worker Subclass shall be
12 divided equally (i.e., 50% / 50%) between the Members of the Temporary Worker
13 Subclass, on the one hand, and CFJ, on the other.

14 **VII. LIMITATIONS ON USE OF THIS SETTLEMENT**

15 43. **No Admission.**

16 Neither the acceptance nor the performance by GPUSA of the terms of this Agreement nor
17 any of the related negotiations or proceedings is or shall be claimed to be, construed as, or deemed a
18 precedent or an admission by GPUSA of the truth of any allegations in the Complaint.

19 44. **Non-Evidentiary Use.**

20 Neither this Agreement nor any of its terms, nor any statements or conduct in the
21 negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member
22 (including any individual who requested to be excluded from the Class), GPUSA, or their
23 respective counsel, in the Action.

24 45. **Nullification.**

25 If the Court for any reason does not approve this Settlement, this Agreement shall be
26 considered null and void and all parties to this settlement shall stand in the same position, without
27 prejudice, as if the settlement had been neither entered into nor filed with the Court.

VIII. MISCELLANEOUS PROVISIONS

46. Non-Disclosure.

Plaintiff agrees that if asked about this Action or Settlement, Plaintiff shall refer such inquiries to Class Counsel. Class Counsel agrees not to publicize this Action or settlement on their website(s) or in a jury, or case reporting service or in any way.

47. Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement which is both (1) signed by named Plaintiff, Class Counsel, GPUSA, and Counsel for GPUSA; and (2) approved by the Court.

48. No Inducements.

Plaintiff and GPUSA acknowledge that each of them is entering into this Agreement as a free and voluntary act without duress or undue pressure or influence of any kind or nature whatsoever with the intent to be bound thereby, and that neither Plaintiff nor GPUSA have relied on any promises, representations or warranties regarding the subject matter hereof other than as set forth in this Agreement.

49. No Prior Assignment.

The parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

50. Severability.

If any provision (or portion thereof) of the Agreement is declared by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remaining provisions (including other portions of a provision having an invalid portion) shall remain in full force and effect and, to the extent possible, the disputed provision shall be construed so that it may be valid and enforceable.

51. Integrated Agreement.

The Agreement constitutes an integrated written contract expressing the entire agreement of Plaintiff and GPUSA, and each of them, as to its subject matter. All prior and contemporaneous

1 discussions, negotiations and writings, have been and are merged with and integrated into, and are
2 superseded by, the Agreement. No representations, promises, agreements or understandings,
3 written or oral, not contained herein shall be of any force or effect. The Agreement cannot be
4 modified except by a writing executed by the parties.

5 **52. Governing Law.**

6 Construction and interpretation of the Agreement shall at all times and in all respects be
7 governed by the laws of the State of California, without regard to the rules or principles of conflicts
8 or choice of law that might look to any jurisdiction outside of California.

9 **53. Waiver.**

10 No failure or delay in exercising any right, power or privilege in respect of the Agreement
11 shall act as a waiver to a later demand for full and complete performance.

12 **54. Independent Legal Advice.**

13 The parties have each received prior independent legal advice from their counsel of record
14 with respect to the advisability of entering into the Agreement; and each material term of this
15 Agreement was explained to them in a manner which allowed them to understand the terms of the
16 Agreement and the releases of claims set forth herein to the extent necessary or desirable.

17 **55. Construction of Agreement.**

18 As each of the parties to the Agreement was assisted by their respective attorneys in
19 reviewing and agreeing to the terms hereof, no ambiguity shall be resolved against any of the
20 parties by virtue of having participated in the drafting of the Agreement.

21 **56. Counterparts.**

22 This Agreement, and any amendments hereto, may be executed in any number of
23 counterparts, each of which when executed and delivered shall be deemed to be an original and all
24 of which taken together shall constitute but one and the same instrument.

25 **57. Settlement Effective Date.**

26 The effective date of the Agreement ("Settlement Effective Date") means the date when the
27 following conditions have been satisfied: (1) The Agreement is executed by all parties, Class
28 Counsel, and GPUSA's counsel; (2) the Court has given preliminary approval of the Agreement;

(3) notice has been given to the Members of the Settlement Class providing them with an opportunity to opt-out of the Agreement; (4) the Court held a final approval hearing and entered a final order and judgment approving the Agreement; (5) in the event there are written objections filed prior to the final approval hearing that are not withdrawn or overruled, the later of the following events: (i) when the period for filing any appeal, writ, or other appellate proceeding opposing the Agreement has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding opposing the Agreement has been dismissed finally and conclusively with no right to pursue further remedies or relief, or (ii) any appeal, writ, or other appellate proceeding has upheld the Court's final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Agreement is completely final and there is no further recourse by an appellant or objector who seeks to contest the Agreement. In the event that no objections are filed, the Effective Date shall be upon the completion of steps (a) through (d) above. If any foregoing conditions described in this paragraph has failed to occur, then, absent further agreement of the parties, this Agreement shall be null and void.

IN WITNESS WHEREOF, the parties have executed the Agreement on the date and year written below.

Dated: _____, 2017

JESUS HERNANDEZ CUEVAS
On behalf of himself and all others similarly situated

Dated: _____, 2017

GALE PACIFIC USA, INC.

By: _____


Title: _____

(3) notice has been given to the Members of the Settlement Class providing them with an opportunity to opt-out of the Agreement; (4) the Court held a final approval hearing and entered a final order and judgment approving the Agreement; (5) in the event there are written objections filed prior to the final approval hearing that are not withdrawn or overruled, the later of the following events: (i) when the period for filing any appeal, writ, or other appellate proceeding opposing the Agreement has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding opposing the Agreement has been dismissed finally and conclusively with no right to pursue further remedies or relief, or (ii) any appeal, writ, or other appellate proceeding has upheld the Court's final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Agreement is completely final and there is no further recourse by an appellant or objector who seeks to contest the Agreement. In the event that no objections are filed, the Effective Date shall be upon the completion of steps (a) through (d) above. If any foregoing conditions described in this paragraph has failed to occur, then, absent further agreement of the parties, this Agreement shall be null and void.

IN WITNESS WHEREOF, the parties have executed the Agreement on the date and year written below.

Dated: 5-26, 2017

JESUS HERNANDEZ CUEVAS
On behalf of himself and all others similarly situated



Dated: _____, 2017

GALE PACIFIC USA, INC.

By: _____

Title: _____

Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel: 213.896.2400 Fax: 213.896.2450

(3) notice has been given to the Members of the Settlement Class providing them with an opportunity to opt-out of the Agreement; (4) the Court held a final approval hearing and entered a final order and judgment approving the Agreement; (5) in the event there are written objections filed prior to the final approval hearing that are not withdrawn or overruled, the later of the following events: (i) when the period for filing any appeal, writ, or other appellate proceeding opposing the Agreement has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding opposing the Agreement has been dismissed finally and conclusively with no right to pursue further remedies or relief, or (ii) any appeal, writ, or other appellate proceeding has upheld the Court's final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Agreement is completely final and there is no further recourse by an appellant or objector who seeks to contest the Agreement. In the event that no objections are filed, the Effective Date shall be upon the completion of steps (a) through (d) above. If any foregoing conditions described in this paragraph has failed to occur, then, absent further agreement of the parties, this Agreement shall be null and void.

IN WITNESS WHEREOF, the parties have executed the Agreement on the date and year written below.

Dated: _____, 2017

JESUS HERNANDEZ CUEVAS
On behalf of himself and all others similarly situated

Dated: June 16, 2017

GALE PACIFIC USA, INC.

By: [Signature]

Title: Secretary