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CATERPILLAR LOGISTICS, INC.
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 DAISY CASTRO, on behalf of herself and
11 others similarly situated,

12 Plaintiff,

13 v.

14 CATERPILLAR LOGISTICS, INC., a
15 Delaware corporation; and DOES 1
through 50, inclusive,

16 Defendants.
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Case No. LC105350

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE OF CLAIMS**

Complaint Filed: October 19, 2016
FAC Filed: December 16, 2016
Jury Trial Date: None Set

1 This Joint Stipulation of Settlement and Release of Claims, which includes the Recitals
2 and all Exhibits attached hereto (collectively, the “Agreement”), is entered into by and between
3 Plaintiff (as hereinafter defined), the Settlement Class Members that Plaintiff seeks to represent
4 (as hereinafter defined), and Plaintiff’s Counsel (as hereinafter defined), on the one hand, and
5 Defendant (as hereinafter defined), on the other hand.

6 **RECITALS**

7 **WHEREAS**, on October 19, 2016, Daisy Castro, on behalf of herself and all other non-
8 exempt employees of Defendant Caterpillar Logistics, Inc. who worked in California at any time
9 between October 19, 2012 and the present, filed this action against Defendant in the Superior
10 Court of the State of California, for the County of Alameda, Case Number RG16835754,
11 alleging causes of action for (1) failure to pay minimum wages; (2) failure to pay wages and
12 overtime in violation of Labor Code Section 510; (3) violation of Labor Code Section 226(a); (4)
13 violation of Labor Code Section 203; and (5) unfair business practices based on the foregoing, in
14 violation of Business & Professions Code Section 17200.

15 **WHEREAS**, on December 16, 2016, Daisy Castro filed a First Amended Complaint
16 adding a cause of action under the California Labor Code Private Attorneys General Act
17 (“PAGA”).

18 **WHEREAS**, by order dated January 9, 2017, the action was transferred to Los Angeles
19 County Superior Court and assigned case number LC105350.

20 **WHEREAS**, Defendant denied and continues to deny all of the allegations made by
21 Plaintiff in the Action (as hereinafter defined) and has denied and continues to deny that it is
22 liable or owes damages or other compensation or remedies to anyone with respect to the alleged
23 facts or causes of action asserted in the Action. Defendant denies any liability or wrongdoing of
24 any kind in connection with Plaintiff’s claims, and contends that, during all relevant times, it has
25 paid its employees all wages, overtime wages earned, maintained all required records, provided
26 accurate wage statements, and complied in all other respects with California and federal law.
27 Nonetheless, without admitting or conceding any liability or damages whatsoever, and without
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1 admitting that class certification is appropriate except for settlement purposes alone, Defendant
2 has agreed to settle the Action on the terms and conditions set forth in this Agreement, to avoid
3 the burden, expense, and uncertainty of continuing with litigation of the Action.

4 **WHEREAS**, Plaintiff’s Counsel investigated the claims against Defendant in the Action,
5 which investigation included an analysis of any and all applicable defenses. The investigation
6 also included, *inter alia*, an exchange of information pursuant to informal discovery methods and
7 a full-day mediation with mediator Mark Rudy. Based on the foregoing investigation and
8 evaluation, Plaintiff’s Counsel is of the opinion that the terms set forth in this Agreement are fair,
9 reasonable, adequate, and in the best interests of the Settlement Class Members. This Agreement
10 was reached after extensive arm’s-length negotiations, and it was negotiated in light of all known
11 facts and circumstances, including the risks of significant delay and uncertainty associated with
12 litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

13 **WHEREAS**, on April 10, 2018, the Parties participated in a day-long mediation of the
14 Action before well-known and respected mediator, Mark Rudy.

15 **WHEREAS**, Plaintiff represents that she will file, prior to submission of this Agreement
16 to the Court, a Second Amended Complaint that, in addition to the claims outlined above,
17 includes claims under the Fair Labor Standards Act (“FLSA”) for failure to pay wages, including
18 overtime, and claims for failure to provide meal and rest periods. Defendant will stipulate to the
19 filing of the Second Amended Complaint.

20 **NOW THEREFORE**, in consideration of the mutual covenants and promises set forth in
21 this Agreement, as well as the good and valuable consideration provided for herein, the adequacy
22 of which is hereby acknowledged, the Parties hereto agree to a full and complete settlement of
23 the Action on the following terms and conditions.

24 **1. DEFINITIONS**

25 The defined terms set forth herein shall have the meanings ascribed to them below.
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1 **1.1. “Action”** means all operative Complaints filed in the case titled *Daisy Castro v.*
2 *Caterpillar Logistics, Inc.*, Superior Court of the State of California, Alameda County Superior
3 Court Case No. RG1683574 and Los Angeles County Superior Court Case No. LC105350.

4 **1.2. “Attorneys’ Fees and Costs Award”** means the attorneys’ fees and costs
5 payment from the Gross Settlement Value that is approved by the Court for Plaintiff’s attorneys’
6 fees and costs associated with the Action, including, but not limited to, fees and costs associated
7 with documenting the settlement, preparing any notices required as part of the settlement or by
8 Court order (excluding the third-party Settlement Administration Costs which are separately
9 identified and paid as described in Paragraph 1.22 below), securing the Court’s approval of the
10 settlement, assisting with administering the settlement, and obtaining entry of the Final Judgment
11 terminating the Action. It is agreed by the Parties that Plaintiff’s Counsel shall request attorneys’
12 fees not to exceed one-third of the Gross Settlement Value and shall seek costs not to exceed
13 \$14,000. Defendant has agreed not to oppose Plaintiff’s Counsel’s request for fees and costs if
14 made as set forth above.

15 **1.3. “Class Representative Service Award”** means the amount to be paid to Plaintiff
16 Daisy Castro as set forth in this Agreement from the Gross Settlement Value in addition to any
17 Individual Settlement Payment, subject to Court approval, in recognition of Plaintiff’s efforts and
18 work in prosecuting the Action on behalf of Settlement Class Members. It is agreed by the
19 Parties that Plaintiff’s Counsel may request a Service Award for Plaintiff Daisy Castro not to
20 exceed \$5,000. Defendant has agreed not to oppose Plaintiff’s Counsel’s request for the Class
21 Representative Service Award as set forth above. Any portion of the Class Representative
22 Service Award not approved by the Court shall remain part of the Class Settlement Fund for
23 distribution to the Settlement Class Members.

24 **1.4. “Class Settlement Fund”** means an account created by the Settlement
25 Administrator and funded by Defendant with a deposit of the Gross Settlement Value.

26 **1.5. “Court”** means the Superior Court of the State of California, for the County of
27 Los Angeles, or any other court taking jurisdiction of the Action.

1 **1.6. “Defendant”** means Caterpillar Logistics, Inc.

2 **1.7. “Defendant’s Counsel”** refers to Seyfarth Shaw LLP. For purposes of providing
3 any notices required under this Agreement, Defendant’s Counsel shall refer to Colleen Regan
4 and David D. Jacobson, Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles,
5 California 90067.

6 **1.8. “Effective Date of Agreement.”** The Effective Date of the Settlement Agreement
7 shall be the later of (a) the Court’s final approval of the Settlement Agreement, if no objections
8 have been filed, (b) the time of appeal has expired if an objection has been filed and no appeal
9 was filed, (c) or the final resolution of any appeal that has been filed.

10 **1.9. “Fairness Hearing”** or “Final Approval” means the hearing on Plaintiff’s motion
11 for final approval of the settlement.

12 **1.10. “Final Judgment”** means the Final Judgment entered by the Court consistent
13 with this Agreement.

14 **1.11. “Gross Settlement Value”** means the entire settlement amount of Three Hundred
15 Ninety Five Thousand Dollars (\$395,000) to be paid by Defendant pursuant to this Agreement.
16 The \$395,000 Gross Settlement Value is fully inclusive of all Individual Settlement Payments to
17 Participating Settlement Class Members, the Class Representative Service Award, Settlement
18 Administration Costs to be paid to the Settlement Administrator, the Attorneys’ Fees and Costs
19 Award, and the PAGA payment to the LWDA. The Gross Settlement Value has been agreed to
20 by Plaintiff and Defendant based upon the aggregation of the agreed-upon settlement value of all
21 Settlement Class Member claims. In addition to the Gross Settlement Value, Defendant will
22 separately pay to the Settlement Administrator all necessary and required employer-side taxes on
23 the portion of the Gross Settlement Value that is allocated to wages.

24 **1.12. “Individual Settlement Payment”** means each Settlement Class Member’s share
25 of the Net Settlement Value, which share shall be determined pursuant to the following method:
26 The Net Settlement Value (as defined below) shall be apportioned to employees based on the
27 weeks of employment of each Participating Settlement Class Member by Defendant at the Arvin
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1 distribution center during the Settlement Class Period in proportion to the total number of weeks
2 of employment of all Participating Settlement Class Members employed by Defendant at the
3 Arvin distribution center during the Settlement Class Period.

4 **1.13. “Net Settlement Value”** means the portion of the Gross Settlement Value
5 remaining after deductions for approved Class Representative Service Award, Settlement
6 Administration Costs, the Attorneys’ Fees and Costs Awards and the PAGA payment to the
7 LWDA.

8 **1.14. “Non-Participating Class Members” or “Opt-Outs”** means all Settlement Class
9 Members who execute and timely deliver valid requests to be excluded from the Settlement. The
10 Settlement Shares of all Non-Participating Class Members shall be paid, after Final Approval, to
11 the Participating Settlement Class Members, as defined in this Settlement and according to the
12 formula set forth in this Settlement. Settlement Class Members who choose to be excluded from
13 the Settlement will not receive any payment under the settlement. They also will not be bound
14 by the terms of this Settlement Agreement, including the release of claims.

15 **1.15. “Notice Packet”** means the Notice of Proposed Class Action Settlement,
16 substantially in the form attached as Exhibit 1.

17 **1.16. “Order Granting Preliminary Approval”** means the Order entered by the Court
18 preliminarily approving, *inter alia*, the terms and conditions of this Agreement, the manner and
19 timing of providing notice to the Settlement Class Members, and the time period for opt-outs and
20 objections.

21 **1.17. “Participating Settlement Class Members”** refers to and includes all Settlement
22 Class Members who have not timely submitted a valid request to be excluded from the
23 Settlement.

24 **1.18. “Parties”** means Plaintiff, the Settlement Class Members and Defendant,
25 collectively.

26 **1.19. “Plaintiff”** refers to the named Plaintiff in the Complaint, the First Amended
27 Complaint and the Second Amended Complaint—Daisy Castro.

1 **1.20. “Plaintiff’s Counsel”** is David Yeremian of David Yeremian & Associates, Inc.

2 **1.21. “Settlement,” “Settlement Agreement” or “Agreement”** means this stipulation
3 and agreement to settle all of the claims asserted in the Action.

4 **1.22. “Settlement Administration Costs”** means the costs payable from the Gross
5 Settlement Value to the Settlement Administrator for administering this settlement, including,
6 but not limited to, printing, distributing, and tracking Notice Packets, tax reporting, making tax
7 payments, providing required 1099 and W-2 forms, distributing the Individual Settlement
8 Payments, Class Representative Service Award, Attorneys’ Fees and Costs Award, and the
9 PAGA payment to the LWDA, and providing necessary reports and declarations, as requested by
10 the Parties, including weekly reports on the number of Settlement Class Members who have
11 timely submitted Opt Out requests, and on whether any Settlement Class Member submitted a
12 challenge to the information in their Notice Packet. The Settlement Administration Costs shall
13 be paid from the Gross Settlement Value, including, if necessary, any such costs in excess of the
14 amount estimated by the Settlement Administrator.

15 **1.23. “Settlement Administrator”** means the third-party class action settlement
16 administrator chosen by the Parties and subsequently approved by the Court for the purposes of
17 administering this settlement. The Parties have chosen Atticus Administration to act as the
18 Settlement Administrator. The Parties each represent that they do not have any financial interest
19 in the Settlement Administrator or otherwise have a relationship with the Settlement
20 Administrator that could create a conflict of interest. The Settlement Administrator shall be
21 responsible for executing all duties customary and necessary of a settlement administrator in a
22 class action, including, mailing of the notice packet to class members, processing disputes, opt
23 out forms and objections, handling settlement funds and disbursements, as well as maintaining a
24 website wherein documents pertinent to this settlement shall be posted, including this settlement
25 agreement, the class notice, and notice of final judgment.

26 **1.24. “Settlement Checks”** means the checks sent by the Settlement Administrator to
27 Participating Settlement Class Members. Two checks will be sent. One check will be for
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1 settlement of the California state law claims. The other check shall be for settlement of the
2 FLSA claims and will contain a release of the FLSA claims on the back of the check with an
3 acknowledgement that the Participating Settlement Class Member is opting into the FLSA
4 settlement.

5 **1.25. “Settlement Class Members”** refers to all non-exempt employees who were
6 employed by Defendant and worked at any time at Defendant’s distribution center located in
7 Arvin, California, from October 19, 2012 through June 9, 2018. A member of the Settlement
8 Class is referred to in this Agreement and in the Notice of Proposed Class Action Settlement as a
9 “Settlement Class Member” or “Class Member.”

10 **1.26. “Settlement Class List”** means a list of Settlement Class Members that
11 Defendant will compile and provide to the Settlement Administrator within twenty (20) days
12 after preliminary approval of this settlement. The Settlement Class List shall be formatted in
13 Microsoft Office Excel and include each Settlement Class Member’s full name; most recent
14 known mailing address and telephone number; Social Security Number; dates of employment by
15 Defendant at the Arvin distribution center; and any other information needed to calculate the
16 Individual Settlement Payments for each Participating Settlement Class Member.

17 **1.27. “Settlement Class Period”** means and refers to the period from October 19,
18 2012, through June 9, 2018 or preliminary approval of the Settlement Agreement, whichever
19 comes first.

20 **1.28. “Workweeks”** means the weeks of employment recorded in Defendant’s records
21 for each Settlement Class Member at the Arvin distribution center during the period from
22 October 19, 2012 through June 9, 2018 or preliminary approval of the Settlement Agreement,
23 whichever comes first.

24 **2. APPROVAL AND CLASS NOTICE**

25 **2.1. Preliminary Approval Hearing.** Within 45 days of full execution of this
26 Agreement, Plaintiff shall submit to the Court a Motion for an Order Granting Preliminary
27 Approval of Class Action Settlement (“Plaintiff’s Motion”). Plaintiff’s Motion shall request the
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1 entry of an Order Granting Preliminary Approval, which will, among other things: (i)
2 provisionally certify the Settlement Class for settlement purposes only; (ii) preliminarily approve
3 the proposed settlement; (iii) set a date for the Fairness Hearing; and (iv) provide for the Notice
4 Packet to be sent to all Settlement Class Members as specified herein. To the extent that
5 Plaintiff's Motion is consistent with the terms of this Agreement, and does not seek relief
6 inconsistent with this Agreement, Plaintiff's Motion shall be unopposed by Defendant.
7 Defendant reserves the right to address any factual assertions in Plaintiff's Motion that are not
8 contained in this Agreement.

9 If a mutually-agreed class settlement is not approved, the Action will proceed as if no
10 settlement has been attempted, unless the Parties jointly agree to seek reconsideration of the
11 ruling or seek Court approval of a renegotiated settlement. If the class settlement is not
12 approved, Defendant retains the right to contest whether any aspect of the Action should be
13 maintained as a class action and to contest the merits of the claims being asserted by Plaintiff in
14 the Action.

15 **2.2. Notice Procedures.**

16 (A) **Settlement Class List.** Within 20 calendar days after entry of the Order
17 Granting Preliminary Approval, Defendant shall provide the Settlement Class List to the
18 Settlement Administrator.

19 (B) **Notice by First-Class U.S. Mail.** Within thirty (30) calendar days after
20 entry of the Order Granting Preliminary Approval, or a later date approved by the Court upon
21 good cause shown, the Settlement Administrator shall send a Notice Packet to all Settlement
22 Class Members via First-Class U.S. Mail, using the most current, known mailing addresses for
23 each Settlement Class Member.

24 (C) **Confirmation of Addresses in the Settlement Class List.** Prior to
25 mailing the Notice Packets, the Settlement Administrator will search the National Change of
26 Address Database and update the Settlement Class List to reflect any identifiable address changes.
27 Any Notice Packets returned to the Settlement Administrator as undeliverable on or before the
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1 deadline for postmarking Opt Outs shall be sent promptly via First-Class U.S. Mail to the
2 forwarding address affixed thereto, and the Settlement Administrator shall indicate the date of
3 such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement
4 Administrator shall promptly attempt to determine the correct address using a single skip-trace or
5 other search using the name, address and/or Social Security Number of the Settlement Class
6 Member involved, and it shall then perform a single re-mailing. If after performing a skip-trace
7 search, the Notice Packet is still returned to the Settlement Administrator as undeliverable, that
8 Settlement Class Member will be deemed a Participating Settlement Class Member. Those
9 Settlement Class Members who receive a re-mailed Notice Packet shall have their deadline for
10 postmarking an Opt Out or objecting to the settlement extended by fifteen (15) calendar days
11 from the date of re-mailing or until the original deadline for postmarking an Opt Out, whichever
12 is later. There is no obligation to attempt to locate Settlement Class Members after the Opt Out
13 deadline set forth in the Notice Packet.

14 **2.3. No Claims-Made Process.** Class Members shall not be required to submit a
15 claim form in order to receive an Individual Settlement Payment. Each Settlement Class
16 Member shall automatically receive an Individual Settlement Payment unless they Opt Out.

17 **(A) Notice Packets.** All Settlement Class Members will be mailed a Notice
18 Packet. Each Notice Packet will provide, among other things: (1) information regarding the
19 nature of the Action; (2) a summary of the substance of the settlement; (3) the class definition; (4)
20 the formula for calculating Individual Settlement Payments; (5) the dates the Settlement Class
21 Member was employed by Defendant as a non-exempt employee during the Settlement Class
22 Period; (6) instructions on how Settlement Class Members may Opt Out of the Settlement; (7) the
23 procedure for objecting to the settlement; (8) the deadline by which Settlement Class Members
24 must postmark an objection to the settlement; (9) notice that the Settlement Class Members will
25 permanently forego their right to pursue any and all of their released claims against Defendant
26 unless they Opt Out of the settlement; and (10) notice that Class Members will automatically
27 receive an Individual Settlement Payment unless they timely Opt Out.

1 **(B) Disputed Information in Notice Packets.** If a Settlement Class Member
2 disputes any information in her or her Notice Packet, the Settlement Class Member may produce
3 evidence to the Settlement Administrator substantiating his or her assertion. Defendant's records
4 will be presumed determinative absent evidence which rebuts those records. The Settlement
5 Administrator shall evaluate the evidence submitted by the Settlement Class Member and
6 Defendant's records and make the final decision as to which data should be applied. Any
7 evidence supporting the Settlement Class Member's dispute of any of the information in his/her
8 Notice Packet must be submitted no later than 45 calendar days after the Notice Packet is first
9 mailed.

10 **2.4. Opt Out Procedures.** Any Settlement Class Member who wants to opt out of the
11 settlement must sign and mail a written Opt Out request postmarked no later than 45 calendar
12 days after the Notice Packet is first mailed, or pursuant to Section 2.2 (C) above, whichever is
13 later. The written Opt Out request must (a) contain the name, address, telephone number, and
14 last four digits of the Social Security Number of the Settlement Class Member opting out;
15 (b) state that "I understand that I am requesting to be excluded from the class monetary
16 settlement and that I will receive no money from the Gross Settlement Value. I understand that
17 if I am excluded from the Settlement Class, I may bring a separate action, but I might lose my
18 separate action, or win and recover less than what I would have recovered under the class
19 monetary provisions in this case"; (c) be addressed to the Settlement Administrator at the address
20 indicated in the Notice Packet; (d) be postmarked on or before the deadline set forth above; and
21 (e) be signed by the Settlement Class Member opting out. The Notice Packet shall provide these
22 instructions to all Settlement Class Members who want to Opt Out of the Settlement. The share
23 of the Settlement apportioned to any Settlement Class Member who opts out shall be paid to the
24 Participating Settlement Class Members as defined and according to the formula in this
25 Agreement.

26 **(A)** The date of the postmark on the return-mailing envelope shall be the
27 exclusive means to determine whether an Opt Out request has been timely submitted.

1 **(B)** A Settlement Class Member who does not submit a timely and valid Opt
2 Out shall be deemed a Participating Class Member and shall be bound by all terms of this
3 Settlement and any Final Judgment entered by the Court if the Court grants final approval of the
4 Settlement.

5 **(C)** All Opt Out requests will be submitted to the Settlement Administrator,
6 who shall, within 10 days after the deadline for submitting an Opt Out request, including any
7 extensions for re-mailed Notice Packets, certify jointly to Plaintiff’s Counsel and Defendant’s
8 Counsel the total number of Settlement Class Members who have Opted Out (excluded
9 themselves) from the Settlement.

10 **2.5. Effectuating FLSA Opt-In Release.** To effectuate an FLSA release, one of the
11 two settlement checks sent to Participating Settlement Class Members will contain language
12 expressing a consent to opt into an FLSA collective action. The Settlement Administrator will
13 provide the Parties with a declaration listing the consents that will be filed with the Court in
14 connection with the motion for final approval.

15 **2.6. Revocation of Agreement by Defendant.** If seven (7) or more of the Settlement
16 Class Members Opt Out, Defendant may, at its sole discretion, void this Agreement, and all
17 actions taken in furtherance of it will be thereby null and void.

18 **(A)** Defendant must exercise this right to void this Agreement by filing with
19 the Court a Notice of Withdrawal From Settlement within 15 business days after expiration of the
20 opt-out period.

21 **(B)** If Defendant files a timely Notice of Withdrawal, the Action will proceed
22 as if no settlement had been attempted. In that event, the Court will enter an order voiding the
23 Order Granting Preliminary Approval and Defendant will retain the right to contest whether any
24 aspect of the Action should be maintained as a class action and to contest the merits of the claims
25 being asserted by Plaintiff in the Action.

26 **2.7. Objection Procedures.** Settlement Class Members who want to present
27 objections to the proposed settlement at the Fairness Hearing must first do so in writing. The
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1 objection must set forth the factual and legal bases for the objection. Objections must be mailed
2 to the Settlement Administrator via First-Class U.S. Mail, postage prepaid, and be postmarked by
3 the date specified in the Notice Packet, which shall be 45 calendar days after the initial mailing
4 of the Notice Packet. The Settlement Administrator will notify the Parties of all objections.
5 Plaintiff's counsel shall be responsible for informing the Court of all objections by filing copies
6 of all objections with the Court within 15 calendar days after the end of the Opt Out period set
7 forth above, including any extension set forth in Paragraph 2.2 (C). Settlement Class Members
8 who opt out are not entitled to file objections. An objector has the right to appear at the Fairness
9 Hearing either in person or through counsel. An objector who wants to appear at the Fairness
10 Hearing should state his or her intention to do so at the time he or she submits his or her written
11 objections. An objector may withdraw his or her objections at any time. A Settlement Class
12 Member who submits an objection remains bound by this Agreement.

13 **2.8. Motion for Final Approval.** Not later than 21 calendar days before the Fairness
14 Hearing, or such other time as the Court may require, Plaintiff will submit a motion for final
15 approval of the Settlement.

16 At the Fairness Hearing, the Parties will request that the Court, among other things, (a)
17 grant final certification of the Settlement Class for purposes of settlement; (b) enter Final
18 Judgment in accordance with this Agreement and without further fees or costs to any party
19 except as expressly set forth in this Agreement; (c) approve the Settlement as fair, reasonable,
20 adequate, and binding on all Participating Settlement Class Members who have not timely
21 submitted a valid Opt Out request; (d) enter an order as to Plaintiff's Counsel's request for
22 attorneys' fees and costs; (e) enter an order approving the Class Representative Service Award;
23 and (f) enter an order permanently enjoining all Participating Settlement Class Members from
24 pursuing and/or seeking to reopen claims that have been released by this Agreement. After entry
25 of the Final Judgment, the Court shall have continuing jurisdiction solely for purposes of
26 addressing: (i) the interpretation and enforcement of the terms of the Agreement, (ii) settlement
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1 administration matters, and (iii) such post-Final Judgment matters as may be appropriate under
2 court rules or as set forth in this Agreement.

3 **2.9. Effect of Failure to Grant Final Approval.** In the event the Court fails to enter
4 Final Judgment in accordance with this Agreement, or such Final Judgment does not become
5 Final as defined herein, the Parties shall proceed as follows: The Action will resume unless the
6 Parties jointly agree to (1) seek reconsideration or appellate review of the decision denying entry
7 of Final Judgment, or (2) attempt to renegotiate the settlement and seek Court approval of the
8 renegotiated settlement. In the event any reconsideration and/or appellate review is denied, or a
9 mutually agreed settlement is not approved, the Action will proceed as if no settlement has been
10 attempted. In that event, the Court will enter an order voiding the Order Granting Preliminary
11 Approval and Defendant will retain the right to contest whether any aspect of the Action should
12 be maintained as a class action and to contest the merits of the claims being asserted by Plaintiff
13 in the Action.

14 **3. SETTLEMENT PROCEEDS**

15 **3.1. Gross Settlement Value.**

16 (A) Defendant agrees to pay the Gross Settlement Value, plus the employer's
17 share of payroll taxes on the amounts allocated to wages, to the Settlement Administrator no later
18 than 15 calendar days after the Effective Date. The Administrator will disburse the funds within
19 30 calendar days of the Effective date in accord with the terms of this Settlement.

20 (B) Plaintiff, the Participating Settlement Class Members, and Plaintiff's
21 Counsel shall not seek any further compensation or consideration from Defendant and/or any
22 other Releasee in connection with the Action or any claims encompassed and released by this
23 Settlement.

24 **3.2. Settlement Amounts Payable as Attorneys' Fees and Costs.**

25 Plaintiff's Counsel shall request an award from the Court of up to one-third of the Gross
26 Settlement Value for attorneys' fees, and litigation costs not to exceed \$14,000. Defendant will
27 not oppose such a fee and cost application. Defendant shall have no additional liability for
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1 attorneys' fees and litigation costs in connection with the Action. The attorneys' fees and
2 litigation costs to be paid pursuant to this Agreement are included in, and shall be paid by
3 Defendant from, the Gross Settlement Value, and they will be paid to Plaintiff's Counsel by the
4 Settlement Administrator no later than 30 calendar days after the Effective Date. Within 10
5 calendar days after the Effective Date, Plaintiff's Counsel shall transmit instructions to the
6 Settlement Administrator as to how the Attorneys' Fees and Costs Award shall be paid.
7 Plaintiff's Counsel agrees that they are responsible for allocating this portion of the Gross
8 Settlement Value among themselves and any other counsel for Plaintiff or Settlement Class
9 Members. In the event an attorneys' lien is asserted relating to this Agreement or any portion of
10 the Gross Settlement Value, Defendant shall tender the Gross Settlement Value to the Court and
11 shall thereafter be released from any attorneys' lien claim.

12 (A) Plaintiff's Counsel shall be solely and legally responsible for paying all
13 applicable taxes on their respective Attorneys' Fees and Costs Award payment and shall
14 indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest
15 arising as a result of the payment. The Settlement Administrator shall issue an Internal Revenue
16 Service ("IRS") Form 1099 to Plaintiff's Counsel for their respective Attorneys' Fees and Costs
17 Award payment.

18 (B) The substance of Plaintiff's Counsel's application for attorneys' fees and
19 costs is not part of this Agreement and is to be considered separately from the Court's
20 consideration of the fairness, reasonableness, adequacy, and good faith of the settlement. The
21 outcome of any proceeding related to Plaintiff's Counsel's application for attorneys' fees and
22 costs shall not terminate this Agreement or otherwise affect the Court's ruling on the motion for
23 final approval.

24 (C) If Plaintiff's Counsel's application for attorneys' fees and costs is denied,
25 in whole or in part, Plaintiff's Counsel has the right to appeal such denial. In case of such an
26 appeal, the amount requested by Plaintiff's Counsel for attorney's fees (up to one-third of the
27 Gross Settlement Value), plus the amount sought by Plaintiff's Counsel for costs, shall be held
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1 aside pending such appeal. The balance of the Gross Settlement Value will be distributed to the
2 Participating Settlement Class Members, the Settlement Administrator, the LWDA and for the
3 Class Representative Service Award in accordance with the provisions of this Agreement. If
4 Plaintiff's Counsel's application for attorneys' fees and costs is denied on appeal, in whole or in
5 part, the portion of the requested attorneys' fees and costs denied to Plaintiff's Counsel shall be
6 paid to the Participating Settlement Class Members.

7 **3.3. Class Representative Service Award.**

8 (A) Defendant agrees not to oppose Plaintiff's application to the Court for
9 Class Representative Service Award of \$5,000 for Daisy Castro.

10 (B) The Class Representative Service Award shall be in addition to Daisy
11 Castro's Individual Settlement Payment.

12 (C) No later than 30 days after the Effective Date, the Settlement
13 Administrator will release to Plaintiff the Class Representative Service Award approved by the
14 Court. The Settlement Administrator shall issue an IRS Form 1099 to the Plaintiff for her Class
15 Representative Service Award. Plaintiff shall be solely and legally responsible for paying any
16 and all applicable taxes on her Class Representative Service Award, and shall indemnify and hold
17 harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result
18 of the payments.

19 **3.4. Payment to LWDA.** The Parties agree that \$20,000 of the Gross Settlement
20 Value is allocated to settle PAGA claims. 75% of the \$20,000 shall be paid to the California
21 Labor & Workforce Development Agency ("LWDA") and the remaining 25% shall be part of
22 the Net Settlement Value distributed to Settlement Class Members. Plaintiff's counsel shall send
23 an updated letter to the LWDA advising the LWDA of the additional claims in the Second
24 Amended Complaint and the settlement and advising that Plaintiff intends to settle all claims
25 through June 9, 2018 or preliminary approval of the settlement, whichever comes first.
26 Plaintiff's counsel shall send the updated letter to the LWDA within 5 days after this Settlement
27 Agreement has been fully executed by the Parties. Plaintiff's counsel shall notify the LWDA of
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1 the motion for preliminary approval within 5 days of the filing of the motion and shall, in that
2 notification, provide the LWDA with copies of the Settlement Agreement and the motion for
3 preliminary approval.

4 **3.5. Settlement Administration Costs.** The Settlement Administrator shall be paid
5 the Settlement Administration Costs from the Gross Settlement Value. The Settlement
6 Administration Costs are estimated to be not greater than \$ 8,000. An IRS Form 1099 shall be
7 issued to the Settlement Administrator.

8 (A) **Certification of Completion.** Upon completion of administration of the
9 settlement, the Settlement Administrator shall provide written certification of such completion to
10 counsel for all Parties.

11 (B) **Minimization of Administrative Costs.** The Parties agree to cooperate
12 in the settlement administration process and to make all reasonable efforts to control and
13 minimize the costs and expenses incurred in administration of the Settlement.

14 **3.6. Distribution to Participating Settlement Class Members.**

15 (A) Payments made to Plaintiff and/or Participating Settlement Class Members
16 under the Settlement shall not be considered as a payment of overtime, salary, wages and/or
17 compensation to any Participating Settlement Class Member under the terms of any applicable
18 benefit plan or for any purpose except for tax purposes, as provided in this Agreement. The
19 receipt of payments under the terms of this Settlement shall not affect any Settlement Class
20 Member's participation in, eligibility for, or vesting in, the amount of any past or future
21 contribution to, or level of benefits under any applicable benefit plan. Any amounts paid will not
22 impact or modify any previously credited hours of service or compensation taken into account
23 under any employee benefit plan sponsored or contributed to by Defendant.

24 For purposes of this Settlement, "benefit plan" means each and every "employee benefit
25 plan" as defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any bonus, pension,
26 stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability,
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1 vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other
2 similar benefit plan, practice, program, or policy.

3 (B) Payments to Settlement Class Members shall be calculated as follows:

4 (1) **Net Settlement Value.** The Net Settlement Value is what remains
5 after deducting from the Gross Settlement Value the Attorneys' Fees and Costs Award, Class
6 Representative Service Award, Settlement Administration Costs and the PAGA payment to the
7 LWDA. The Net Settlement Value shall be calculated and distributed to Participating Settlement
8 Class Members pursuant to the method described in the next paragraph.

9 (2) **Calculation of Individual Settlement Payments.** The Net
10 Settlement Value shall be apportioned among Settlement Class Members pro rata based on the
11 Settlement Class Member's number of Workweeks (as defined in paragraph 1.28) in proportion
12 to the total of all Settlement Class Member Workweeks. The Settlement Administrator will
13 calculate the Workweeks based upon the records provided by Defendant showing dates of
14 employment by Defendant at the Arvin distribution center.

15 (3) **Two Checks.** Participating Settlement Class Members shall
16 receive two checks. One check will be for payment of the California state law claims asserted in
17 the Action. The second check shall be for payment of the FLSA claims asserted in the Action,
18 and shall include the following language on the back:

19 My signature on, cashing of, or otherwise negotiating this check
20 constitutes my consent to join the lawsuit entitled, *Castro v.*
21 *Caterpillar Logistics, Inc.*, Los Angeles County Superior Court,
22 Case No. LC105350, pursuant to the provisions of the Fair Labor
23 Standards Act ("FLSA"), 29 U.S.C. Section 216(b), for purposes
24 of participating in a settlement. I further understand that my
25 signature, cashing or negotiating of this check constitutes a full and
26 complete release of Caterpillar Logistics, Inc. and all of its current
27 or former subsidiary or affiliated entities, and their current or
28 former officers, directors, employees and agents for any and all
claims, known or unknown, under the Fair Labor Standards Act
occurring during my employment at any time from October 19,
2012 through **June 9, 2018**. I accept this check as payment in full
for all FLSA claims alleged in the lawsuit.

(C) **Resolution of Disputes Concerning Individual Settlement Payments.**

Should any questions arise regarding the determination of eligibility for, or the amounts of, any

1 Individual Settlement Payments under the terms of this Agreement that are not otherwise resolved
2 by the Settlement Administrator, Plaintiff's Counsel and Defendant's Counsel shall meet and
3 confer in an attempt to reach an agreement. If Plaintiff's Counsel and Defendant's Counsel
4 cannot agree, the Settlement Administrator shall make the final determination, and that
5 determination shall be conclusive, final and binding.

6 (D) The distribution of payments under this Agreement shall be made to
7 Participating Settlement Class Members no later than 30 calendar days after the Effective Date;
8 no payment of any portion of the Gross Settlement Value shall be made prior to the Effective
9 Date. Checks will be sent to Participating Settlement Class Members by First-Class U.S. Mail.

10 (E) In no case will any part of the Gross Settlement Value revert to Defendant.

11 **3.7. Provisions Governing Share of Settlement Class Members Who Opt Out, Un-**
12 **Cashed Checks and Requests for Replacement Checks.**

13 (A) **Share of Those Who Opt Out.** The Settlement Share of Settlement Class
14 Members who timely Opt Out shall be distributed to the Participating Settlement Class Members
15 pursuant to the formula set forth in this Agreement.

16 (B) **Un-cashed Checks.** Any checks issued to Settlement Class Members
17 shall be negotiable for at least 180 calendar days. The proceeds from any uncashed checks will be
18 paid to the California Unclaimed Wages Fund in the name of the Settlement Class Member who
19 failed to cash his or her check after the expiration of the 180-day period and stop-payment orders
20 shall issue regarding the uncashed checks. If the Court refuses to agree with this designation, or if
21 the Department of Industrial Relations refuses to accept the proceeds of any uncashed checks for
22 the California Unclaimed Wages Fund, the parties agree that such funds should be directed to
23 Greater Bakersfield Legal Assistance, Inc., as a *cy pres* beneficiary under Civil Code § 384.
24 Regardless of whether the checks are cashed, this Agreement will be binding on every Settlement
25 Class Member who does not timely Opt Out.

26 (C) **Replacement Checks.** If any Settlement Class Member requests issuance
27 of a replacement check, the request must be received within 120 days of issuance of the initial
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1 check. Any request for a replacement check received more than 120 days after issuance of the
2 initial check shall be denied. Any request for a replacement check must be made by written
3 declaration, under penalty of perjury, that the initially-issued check was lost, stolen or destroyed.
4 However, any replacement checks that are issued will only be issued after the 180-day
5 negotiability period on initially-issued checks has passed and after an additional 60-day hold
6 period has passed to ensure that negotiation of an initial check is not in process at a financial
7 institution. A replacement check will be issued only one time for any particular Settlement Class
8 Member. To avoid the risk of any such double payment, the Settlement Administrator will put a
9 stop payment on any checks to be reissued before reissuing the checks.

10 **3.8. Tax Considerations.**

11 (A) All Individual Settlement Payments shall be allocated as follows: 80%
12 percent of the payments to Settlement Class Members are for settlement of non-FLSA claims, and
13 20% of the payments to Settlement Class Members are for settlement of FLSA claims.

14 Regarding the payments for non-FLSA claims: 25 percent is apportioned for settlement
15 of unpaid wage claims, and 75 percent is apportioned to interest and penalties.

16 Regarding the payment for FLSA claims: 25 percent is apportioned for settlement of
17 unpaid wage claims, and 75 percent is apportioned to interest and liquidated damages.

18 Payments treated as wages shall be made net of all applicable required withholding taxes,
19 including, without limitation, federal, state and local income tax withholding and the employee
20 share of the FICA, SUTA and FUTA taxes, and shall be reported to the IRS and the payee under
21 the payee's name and Social Security Number on an IRS Form W-2. Payments treated as
22 interest, penalties and/or liquidated damages shall be made without withholding and shall be
23 reported to the IRS and the payee, to the extent required by law, by the Settlement Administrator
24 under the payee's name and Social Security Number.

25 (B) The employer's portion of all payroll and unemployment taxes imposed by
26 applicable law shall be paid by Defendant to the Settlement Administrator in addition to the Gross
27 Settlement Value.

1 (C) The Attorneys’ Fees and Costs Award payment shall be made without
2 withholding and reported to the IRS and the payees under the payees’ name and taxpayer
3 identification number, which the payees shall provide for this purpose.

4 (D) To the extent that Defendant incurs liability because a recipient of a
5 payment pursuant this Agreement (including Plaintiff, any individual Settlement Class Member or
6 any of Plaintiff’s counsel) fails to pay all taxes, interest, fees, penalties, or assessments due on
7 that recipient’s respective share of the payments issued pursuant to this Agreement, the recipient
8 so failing to pay such obligations will indemnify, defend, and hold Defendant harmless from and
9 against any and all liability for such failure to pay such obligations, including liability in the form
10 of taxes, interest, fees, assessments, or penalties, attorneys’ fees, and other costs imposed upon
11 Defendant for the recipient’s failure to pay such obligations. Plaintiff and Plaintiff’s counsel
12 acknowledge and agree that Defendant is not giving any tax advice in connection with this
13 Agreement or the payments to be made pursuant to this Agreement and that they have not relied
14 upon any advice from Defendant as to the taxability of the payments received pursuant to this
15 Agreement.

16 **4. RELEASES**

17 **4.1. Release of Claims by Participating Class Members.**

18 (A) **Release of State Claims.** Settlement Class Members who do not opt out
19 will be bound by the following release for all claims except the FLSA claim:

20 On the Effective Date of the Agreement, and except as to such
21 rights or claims as may be created by this Agreement, each
22 Participating Settlement Class Member, and each of their
23 respective executors, administrators, representatives, agents, heirs,
24 successors, assigns, trustees, spouses, or guardians, release
25 Caterpillar Logistics, Inc. and its parent, Caterpillar, Inc.—and
26 their current or former officers, directors, employees and agents—
27 (“Released Parties”) of and from any and all claims, rights,
28 demands, charges, complaints, causes of action, obligations, or
liability of any and every kind, known or unknown, that were or
could have been asserted in any version of the complaints filed in
this Action or are based on or arise out of the facts alleged in any
version of the complaints filed in this Action, including, those for
(1) failure to provide proper or accurate wage statements, (2)
failure to provide meal breaks, (3) failure to provide rest breaks,
(4) failure to pay wages, including overtime, (5) failure to pay all

1 wages due at time of termination, (6) failure to pay wages at the
2 agreed upon rate, (7) failure to pay minimum wage, and (8) unfair
3 competition or unfair business practices under the California
4 Unfair Competition Law and California Business and Professions
5 Code, Sections 17200 et seq. arising at any time between October
6 19, 2012 and June 9, 2018]. This release also includes a release of
7 all claims that were or could have been brought based on the facts
8 asserted in any version of the complaints filed in the Action for
9 violation, known or unknown, of any part of California Industrial
10 Welfare Commission Wage Orders as well as a release of all
11 claims under the California Private Attorneys General Act of 2004
12 (“PAGA”), California Labor Code Section 2698 et seq., arising
13 from any of the underlying claims that were or could have been
14 asserted in any version of the complaints filed in the Action,
15 including claims for restitution and other equitable relief,
16 liquidated damages, punitive damages, waiting time penalties, and
17 any other penalties of any nature whatsoever (collectively the
18 “Class Released Claims”).

19 The Parties’ intent in entering into this settlement is to release
20 Defendant and the Released Parties from any and all claims that
21 arise from the claims alleged in the Action, and preclude
22 Defendant from owing any further monies (beyond the payments
23 set forth in this Settlement) to Participating Settlement Class
24 Members based upon the claims made, or that could have been,
25 made based upon the allegations contained in the Action. This
26 release excludes the release of any claims not permitted to be
27 released by law.

28 (B) **FLSA Release.** Settlement Class Members who sign, cash or otherwise
negotiate the FLSA Check, will be bound by the following release:

By operation of the entry of the Final Approval Order and
judgment, and except as to such rights or claims as may be created
by this Agreement, each Settlement Class Member who signs,
cashes or otherwise negotiates the FLSA Check, and each of
their respective executors, administrators, representatives, agents,
heirs, successors, assigns, trustees, spouses, or guardians, release
Caterpillar Logistics, Inc. and its parent, Caterpillar, Inc., and the
Released Parties, of and from any and all claims, rights, demands,
charges, complaints, causes of action, obligations, or liability of
any and every kind, known or unknown, that were or could have
been asserted in any version of the complaints filed in this Action
or are based on or arise out of the facts alleged in any version of
the complaints filed in this Action, including those for failure to
pay all wages, including overtime wages, under the Fair Labor
Standards Act, 29 U.S.C. Sections 206, 207, and 216 arising at any
time from October 19, 2012 through June 9, 2018.

4.2. Additional Release (Including Section 1542 waiver) by Plaintiff. In addition to
the above releases applicable to the Participating Class Members, Plaintiff also generally releases

1 any and all claims against each of the Released Parties. This general release includes any and all
2 claims arising from her employment relationship with Defendant, including, without limitation,
3 claims for discrimination or harassment pursuant to Title VII of the Civil Rights Act of 1964, 42
4 U.S.C. Section 2000 et seq. or the California Fair Employment and Housing Act, Cal. Gov't
5 Code Section 12900 et seq. This general release by Plaintiff also includes a waiver of California
6 Civil Code Section 1542. Plaintiff expressly waive all rights provided by California Civil Code
7 Section 1542, or other similar statutes, that Plaintiff may have against each of the Released
8 Parties. California Civil Code Section 1542 states:

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

13 **4.3. No Re-employment.** Plaintiff agrees that she will not apply for or accept
14 employment with Defendant or any entity affiliated with Defendant.

15 **4.4. Release of Claims for Fees and Costs Relating to Settled Matters.** Plaintiff's
16 Counsel and Plaintiff, on behalf of themselves and each individual Class Member, hereby
17 irrevocably and unconditionally release, acquit, and forever discharge Defendant and the other
18 Released Parties from any claim that they, or any of them, may have for attorneys' fees or costs
19 associated with the representation of Plaintiff and the Class Members, except for the attorneys'
20 fees and costs sought pursuant to this Agreement. It is the Parties' understanding and agreement
21 that any fee and cost payments approved by the Court in accordance with this Agreement will be
22 the full, final, and complete payment of all attorneys' fees and costs associated with all claims
23 settled in this Agreement.

24 **4.5. Non-Admission of Liability.** By entering into this Agreement, Defendant in no
25 way admits any violation of law or any liability whatsoever to Plaintiff and/or the Settlement
26 Class Members, individually or collectively, all such liability being expressly denied. Likewise,
27 by entering into this Agreement, Defendant in no way admits to the suitability of this case for
28 class action litigation other than for purposes of settlement. Rather, Defendant enters into this

1 Agreement to avoid further protracted litigation and to resolve and settle all disputes with
2 Plaintiff and the Settlement Class Members. The settlement of the Action, the negotiation and
3 execution of this Agreement, and all acts performed or documents executed pursuant to or in
4 furtherance of this Agreement: (a) are not, shall not be deemed to be, and may not be used as an
5 admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of
6 any of the factual allegations in any and all complaints filed in the Action; (b) are not, shall not
7 be deemed to be, and may not be used as an admission or evidence of fault or omission on the
8 part of Defendant in any civil, criminal, administrative, or arbitral proceeding; and (c) are not,
9 shall not be deemed to be, and may not be used as an admission or evidence of the
10 appropriateness of these or similar claims for class certification or administration other than for
11 purposes of administering this Agreement. The Parties understand and agree that this Agreement
12 and all exhibits thereto are settlement documents and shall be inadmissible for any purpose in
13 any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of this
14 Agreement. The Parties agree, however, that to the extent permitted by law, this Agreement may
15 be pleaded as a full and complete defense to, and may be used as the basis for an injunction
16 against any action, suit or other proceeding that may be instituted, prosecuted or attempted in
17 breach of this Agreement.

18 **5. NO PRIOR ASSIGNMENTS OR UNDISCLOSED LIENS**

19 Plaintiff and Plaintiff's Counsel represent and warrant that they have not assigned,
20 transferred, conveyed, or otherwise disposed of, or purported to assign, transfer, convey, or
21 otherwise dispose of any released claims or the Attorneys' Fees and Costs Award to be paid
22 pursuant to this Agreement. Plaintiff and Plaintiff's Counsel further represent and warrant that
23 there are not any liens or claims against any of the amounts being paid by Defendant as provided
24 in this Agreement. Plaintiff and Plaintiff's Counsel agree to defend, indemnify, and hold
25 Defendant harmless from any liability, losses, claims, damages, costs, or expenses, including
26 reasonable attorneys' fees, resulting from a breach of these representations and/or from any lien
27 or assignment.

1 **6. MISCELLANEOUS**

2 **6.1. Cooperation Between the Parties; Further Acts.** The Parties shall cooperate
3 fully with each other and shall use their best efforts to obtain the Court's approval of this
4 Agreement and all of its terms. Each of the Parties, upon the request of any other Party, agrees
5 to perform such further acts and to execute and deliver such other documents as are reasonably
6 necessary to carry out the provisions of this Agreement.

7 **6.2. Papers to Be Filed With the Court.** All papers to be filed with the Court by
8 Defendant or Plaintiff's Counsel in connection with this Agreement shall be submitted to the
9 other Party within a reasonable time prior to filing. The other Party shall have no right to object
10 to the papers unless they do not conform to the terms and conditions of this Agreement.

11 **6.3. Entire Agreement.** This Agreement constitutes the entire agreement between the
12 Parties with regard to the subject matter contained herein, and all prior and contemporaneous
13 negotiations and understandings between the Parties shall be deemed merged into this
14 Agreement.

15 **6.4. Binding Effect.** This Agreement shall be binding upon the Parties and, with
16 respect to Plaintiff and the Settlement Class Members, their spouses, children, representatives,
17 heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.

18 **6.5. Arms'-Length Transaction; Materiality of Terms.** The Parties have negotiated
19 all the terms and conditions of this Agreement at arms' length. All terms and conditions of this
20 Agreement in the exact form set forth in this Agreement are material to this Agreement and have
21 been relied upon by the Parties in entering into this Agreement.

22 **6.6. Captions.** The captions or headings of the sections and paragraphs of this
23 Agreement have been inserted for convenience of reference only and shall have no effect upon
24 the construction or interpretation of any part of this Agreement.

25 **6.7. Construction.** The determination of the terms and conditions of this Agreement
26 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of
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1 this Agreement, and therefore the terms and conditions of this Agreement are not intended to be,
2 and shall not be, construed against any party by virtue of draftsmanship.

3 **6.8. Continuing Jurisdiction.** The Court shall retain jurisdiction over the
4 implementation of this Agreement as well as any and all matters arising out of, or related to, the
5 implementation of this Agreement and of the settlement contemplated thereby. The Court shall
6 not have jurisdiction to modify the terms of the Agreement.

7 **6.9. Changes to Be in Writing.** No waiver, modification or amendment of the terms
8 of this Agreement, whether purportedly made before or after the Court's approval of this
9 Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and
10 then only to the extent set forth in such written waiver, modification or amendment, subject to
11 any required Court approval. Any failure by any Party to insist upon the strict performance by
12 the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future
13 performance of the same provisions or of any of the other provisions of this Agreement, and such
14 Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific
15 performance of any and all of the provisions of this Agreement.

16 **6.10. When Agreement Becomes Effective; Counterparts.** This Agreement shall
17 become effective upon its execution. The Parties may execute this Agreement in counterparts,
18 and execution in counterparts shall have the same force and effect as if Plaintiff and Defendant
19 had signed the same instrument.

20 **6.11. Facsimile or Scanned Signatures.** Any Party may execute this Agreement by
21 signing on the designated signature block below and transmitting that signature page via
22 facsimile or as an attachment to an e-mail to counsel for the other Party. Any signature made
23 and transmitted by facsimile or as an attachment to an e-mail for the purpose of executing this
24 Agreement shall be deemed an original signature for purposes of this Agreement and shall be
25 binding upon the Party whose counsel so transmits the signature page.

1 **6.12. Exhibits Incorporated by Reference.** The terms of this Agreement include the
2 terms set forth in any attached Exhibit, which are incorporated by this reference as though fully
3 set forth herein. Any Exhibit to this Agreement is an integral part of the Settlement.

4 **6.13. Interim Stay of Proceedings.** The Parties agree to refrain from further litigation
5 of this matter, except such proceedings necessary to implement and obtain an order granting final
6 approval of the terms of the Agreement. The Parties further agree that the mutual, voluntary
7 cessation of litigation shall terminate if the motion for final approval of the Agreement is denied
8 by the Court.

9 **6.14. Governing Law.** All terms of this Agreement and Exhibits hereto shall be
10 governed by and interpreted according to the laws of the State of California.

11 **6.15. Invalidity of Any Provision.** Before declaring any provision of this Agreement
12 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
13 consistent with applicable precedents so as to render all provisions of this Agreement valid and
14 enforceable.

15 **6.16. No Solicitation of Opt-Outs.** Defendant and Defendant's Counsel represent and
16 warrant that they have not and will not solicit, encourage or assist in any fashion any effort by
17 any entity or person to object to the settlement set forth in this Agreement or to opt out of the
18 Settlement Class. Plaintiff's Counsel is not in violation of this provision for responding factually
19 to Settlement Class Member questions about the settlement and what they must do to follow
20 available options (including objecting or opting out).

21 **6.17. No Undue Publicity.** Neither Plaintiff nor Class Counsel shall cause to be
22 publicized, directly or indirectly, any discussion resulting in or the existence of this Agreement
23 or its terms in any type of mass media, including, but not limited to, speeches, press conferences,
24 press releases, interviews, television or radio broadcasts, newspapers, website postings, messages
25 on the Internet, Facebook, Twitter or any other social media. Breach of this provision shall
26 entitle Defendant, in the exercise of its sole discretion, to nullify this Agreement and the
27 Settlement Agreement at any time before the Effective Date. Should Plaintiff or Plaintiff's
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1 Counsel at any time breach this provision, Plaintiff shall forfeit to Defendant the full amount of
2 her Service Award. Without limitation by the foregoing, Defendant also may enforce this
3 provision through an action for injunctive relief. Plaintiff waives any obligation by Defendant to
4 file a bond in connection with any such action. After the Effective Date, Plaintiff's Counsel may
5 state on their website that the case has been settled and provide a short and plain description of
6 the claims that were settled, subject to Defendant's approval. This provision does not apply to
7 any publications ordered by the Court. Plaintiff's Counsel may also refer to this Settlement in
8 court filings where prior experience is discussed.

9 **6.18. Integration Clause.** This Settlement Agreement contains the entire agreement
10 between the Parties relating to the settlement, and all prior or contemporaneous agreements,
11 understandings, representations, and statements, whether oral or written and whether by a party
12 or such party's legal counsel, are merged herein. No rights hereunder may be waived except in
13 writing.

14 **6.19. Disputes.** Any dispute between the Parties as to the remaining terms of the
15 settlement agreement shall be decided by Mediator Mark Rudy, whose decision shall be final and
16 binding on the Parties. The Plaintiff, on one side, and Defendant, on the other, will split equally
17 any additional costs of the mediator associated with any dispute and all Parties will bear their
18 own attorneys' fees and other costs incurred.

19 **6.20. Time Periods.** The time periods and dates provided in this Agreement with
20 respect to giving of notices and hearings are subject to Court approval and modification by the
21 Court or by written stipulation of Plaintiff's Counsel and Defendant's Counsel without further
22 notice to the Settlement Class Members.

23 Dated: January____, 2019

CATERPILLAR LOGISTICS, INC.

24
25 By: _____
26 Its: _____
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1 Dated: January __, 2019

SEYFARTH SHAW LLP

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By: _____
Colleen Regan
David D. Jacobson
Attorneys for Defendant
Caterpillar Logistics, Inc.

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Dated: January __, 2019

PLAINTIFF DAISY CASTRO

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Daisy Castro

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Dated: January __, 2019

DAVID YEREMIAN & ASSOCIATES, INC

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By: _____
David Yeremian, Esq.
Attorneys for Plaintiff Daisy Castro

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