

1 Jennifer Kramer, SBN 203385
2 Email: jennifer@employmentattorneyla.com
3 HENNIG KRAMER RUIZ & SINGH, LLP
4 3600 Wilshire Blvd., Suite 3600
5 Los Angeles, CA 90010
6 Telephone: (213) 310-8301

7 Angel J. Horacek, SBN 245680
8 Email: angel@horaceklaw.com
9 Law Offices of Angel J. Horacek, PC
10 5701 West Slauson Avenue, Suite 210
11 Culver City, CA 90230
12 Telephone: (310) 774-3945

13 Attorneys for Plaintiff
14 *Giovonnie Smith*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**

13 GIOVONNIE SMITH, as an individual and
14 on behalf of others similarly situated,

15 Plaintiff,
16 vs.

17 PETRA LIVING, INC., a Delaware
18 Corporation d/b/a Oliver Space, and DOES
19 1 through 80, Inclusive,

20 Defendants.

Case No.: CGC-22-599900

**SECOND AMENDED STIPULATION
OF CLASS ACTION SETTLEMENT
AND RELEASE BETWEEN
PLAINTIFF, ON BEHALF OF
HIMSELF AND ALL OTHERS
SIMILARLY SITUATED, AND
DEFENDANT**

21
22
23
24
25
26
27
28

1 compensation; (2) failure to provide lawful meal periods; (3) failure to provide lawful rest periods;
2 (4) failure to reimburse business expenses; (5) failure to provide accurate itemized wage
3 statements; (6) failure to pay all wages upon separation; (7) unfair competition; and (8) civil
4 penalties pursuant to the California Private Attorneys General Act (“PAGA”).

5 2. “Aggrieved Employees” or “Settlement Aggrieved Employees” means all current
6 and former non-exempt drivers and drivers’ assistants employed by Defendant from April 1, 2021
7 to the March 31, 2023, but excluding those individuals who provided Defendant a release of
8 claims.

9 3. “Class” or “Settlement Class” means all current and former non-exempt drivers
10 and drivers’ assistants employed by Defendant in the State of California who worked for
11 Defendant during the Class Period, but excluding those individuals who provided Defendant a
12 release of claims.

13 4. “Class Counsel” means Hennig Kramer Ruiz & Singh, LLP and Law Offices of
14 Angel J. Horacek, PC.

15 5. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
16 (collectively, “Class Counsel Award”) mean the amounts allocated to Class Counsel for
17 reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action, to be paid
18 from the Gross Settlement Amount.

19 6. “Class Information” means information regarding Settlement Class Members that
20 Defendant will in good faith compile from its records and provide to the Settlement Administrator.
21 It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Settlement Class
22 Member’s full name; last-known address; last-known telephone number, if any; email address, if
23 any; Social Security number; start date of employment; and end date of employment. It shall be
24 provided by Defendant to the Settlement Administrator within twenty-one (21) calendar days after
25 the Court issues the Preliminary Approval Order. If the 21st day falls on a Saturday, Sunday, or
26 federal holiday, the deadline will be extended to the next business day.

27 7. “Class Period” means the period from May 31, 2018 through March 31, 2023.

28 8. “Class Representative” or “Plaintiff” means Giovonnie Smith.

1 9. “Class Representative Enhancement Award” means the amount that the Court
2 authorizes to be paid to the Plaintiff from the Gross Settlement Amount, in addition to his
3 Individual Settlement Payment, in recognition of his effort and risk in assisting with the
4 prosecution of the Action.

5 10. “Class Settlement Fund” means the Gross Settlement Amount, minus the PAGA
6 Settlement Fund which comprises of the Individual PAGA Settlement Payments and the LWDA
7 PAGA Payment.

8 11. “Court” means the San Francisco County Superior Court.

9 12. “Defendant’s Counsel” means Jackson Lewis P.C.

10 13. “Effective Date” means the date by when both of the following have occurred: (a)
11 the Court enters a Judgment on its Final Approval Order of the Settlement; and (b) the Judgment
12 is final. The Judgment is final as of the latest of the following occurrences: (a) if no Settlement
13 Class Member objects to the Settlement, sixty-five (65) calendar days after the day the Court
14 enters Judgment; (b) if one or more Settlement Class Members objects to the Settlement, the day
15 after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from
16 the Judgment is filed, ten (10) calendar days after the appellate court affirms the Judgment and
17 issues a remittitur.

18 14. “Final Approval Order” means the Court’s Order granting final approval of the
19 Settlement.

20 15. “Final Approval/Settlement Fairness Hearing” means the Court’s hearing on the
21 Motion for Final Approval of the Settlement.

22 16. “Judgment” shall mean and refer to the final judgment entered by the Court upon
23 Final Approval of the Settlement. The Parties agree to submit as the Judgment the form attached
24 hereto as **Exhibit 1**, subject to the missing information provided by the Parties and any changes
25 required by the Court.

26 17. “Gross Settlement Amount” means Two Hundred Fifteen Thousand Dollars and
27 Zero Cents (\$215,000.00) which is the total amount Defendant agrees to pay under the Settlement.
28 The Gross Settlement Amount will be used to pay Individual Settlement Payments, Individual

1 PAGA Settlement Payments, the LWDA PAGA Payment, Class Counsel Award, Class
2 Representative Enhancement Award, and the Settlement Administrator Costs. The Gross
3 Settlement Amount is exclusive of the employer's share of payroll taxes. In no event will
4 Defendant be liable for more than the Gross Settlement Amount, which is non-reversionary, and
5 the employer's share of payroll taxes.

6 18. "Individual PAGA Settlement Payment(s)" means the Settlement Aggrieved
7 Employees' pro rata share of 25% of the PAGA Settlement Fund, payable from the PAGA
8 Settlement Fund to each Settlement Aggrieved Employee who worked during the PAGA Period.

9 19. "Individual Settlement Payment(s)" means the pro rata share of the Net Settlement
10 Amount paid to each Settlement Class Member who does not submit a timely and valid written
11 Request for Exclusion.

12 20. "Net Settlement Amount" means the Gross Settlement Amount, less Class Counsel
13 Award, Class Representative Enhancement Award, LWDA PAGA Payment, and Settlement
14 Administrator Costs. The Net Settlement Amount is exclusive of the employer's share of payroll
15 taxes, which are the separate responsibility of Defendant.

16 21. "Notice" means the Notice of Pendency of Class Action Settlement (substantially
17 in the form attached as **Exhibit 2**).

18 22. "Notice of Objection" means a Settlement Class Member's submission of a written
19 statement of objection to the Settlement.

20 23. "LWDA PAGA Payment" means 75% of the PAGA Settlement Fund to be paid
21 to the California Labor and Workforce Development Agency ("LWDA") as required by PAGA.

22 24. "PAGA Period" means April 1, 2021 to March 31, 2023.

23 25. "PAGA Settlement Fund" means the Individual PAGA Settlement Payments and
24 the LWDA PAGA Payment, with the total amount of PAGA civil penalties to be paid from the
25 Gross Settlement Amount. The PAGA Settlement Fund shall be Twenty-Five Thousand Dollars
26 and Zero Cents (\$25,000.00), with 25% allocated to the Settlement Aggrieved Employees as
27 Individual PAGA Settlement Payments (\$6,250), with the remaining 75% paid to the LWDA as
28 the LWDA PAGA Payment (\$18,750).

1 26. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean
2 either Plaintiff or Defendant.

3 27. “Payment Ratio” means the respective Total Weeks Worked for each Settlement
4 Class Member divided by the sum of Total Weeks Worked for all participating Settlement Class
5 Members and/or the respective Total Weeks Worked for each Settlement Aggrieved Employee
6 divided by the sum of Total Weeks Worked for all participating Settlement Aggrieved Employees.

7 28. “Preliminary Approval Hearing” means the Court’s hearing on the Motion for
8 Preliminary Approval of the Settlement.

9 29. “Preliminary Approval Order” means the Court’s Order Granting Preliminary
10 Approval and Approval of the PAGA Settlement.

11 30. “Released Claims – Class Settlement” means all Class Members, who have not
12 submitted a Request for Exclusion, are deemed to release, on behalf of themselves and their
13 respective former and present representatives, agents, attorneys, heirs, administrators, successors
14 and assigns, the Released Parties from all claims under state, federal, the Federal Labor Standards
15 Act (“FLSA”), or local law, whether statutory, administrative, or common law arising out of the
16 claims expressly pleaded in the Action and all other claims not pled, such as those under the
17 California Labor Code, applicable Wage Orders, regulations, and/or other provisions of law, that
18 could have been pled based on the facts pleaded in the Action for unpaid wages (including without
19 limitation overtime and double time pay), meal/rest periods, wage statements, business expense
20 reimbursement, violation of Business and Professions Code §17200, et seq., penalties including
21 waiting time penalties and penalties under PAGA (arising out of the facts alleged in the Operative
22 Complaint and PAGA Notice), interest, and attorney’s fees.

23 31. “Released Claims – PAGA Settlement” means all Settlement Aggrieved
24 Employees are deemed to release, on behalf of themselves and their respective former and present
25 representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released
26 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
27 alleged, based on the PAGA Period facts stated in the operative Complaint and PAGA Notice.
28 Settlement Aggrieved Employees cannot opt out of the PAGA portion of the Settlement.

1 32. “Released Parties” means Defendant and all of its present and former parent
2 companies, subsidiaries, divisions, concepts, related or affiliated companies, shareholders,
3 officers, directors, employees, agents, attorneys, insurers, successors and assigns, the assignee for
4 the benefit of creditors of Defendant, Petra (assignment for the benefit of creditors), LLC, a
5 California limited liability company, and its representatives, agents, attorneys, officers, managers,
6 members, and affiliates, and any individual or entity which could be liable for any of the Released
7 Claims and Defendant’s Counsel of record in the Action.

8 33. “Request for Exclusion” means a Settlement Class Member’s submission of a
9 written request to be excluded from the Settlement signed by the Settlement Class Member.

10 34. “Response Deadline” means the date forty-five (45) calendar days after the
11 Settlement Administrator mails the Notice to Settlement Class Members and the last date on
12 which Settlement Class Members may postmark written Requests for Exclusion or a Notice of
13 Objection to the Settlement. If the 45th day falls on a Saturday, Sunday, or federal holiday, the
14 deadline will be extended to the next business day.

15 35. “Settlement” means the disposition of the Action pursuant to this Agreement and
16 Judgment.

17 36. “Settlement Administrator Costs” means the amount to be paid to the Settlement
18 Administrator from the Gross Settlement Amount for reasonable fees and expenses associated
19 with the administration of this Settlement, in accordance with the Administrator’s “not to exceed”
20 bid submitted to the Court in connection with the Motion for Preliminary Approval of the
21 Settlement.

22 37. “Settlement Administrator” means APEX Settlement Administrators.

23 38. “Settlement Class Members” means all current and former non-exempt drivers
24 and drivers’ assistants employed by Petra Living, Inc. dba Oliver Spaces (“Oliver Spaces”) from
25 May 31, 2018 to the March 31, 2023 or the date of preliminary approval, whichever date comes
26 first, except for those individuals who previously signed releases of the claims pled in Plaintiff’s
27 operative Complaint.

28

1 **of a release of a claim or right on account of wages due, or to become due, or made as an**
2 **advance on wages to be earned, unless payment of those wages had been made.”**

3 51. Release As to All Settlement Aggrieved Employees. As of the Effective Date,
4 Plaintiff and the Settlement Aggrieved Employees, on behalf of themselves and each of their heirs,
5 representatives, successors, assigns and attorneys, hereby release Defendant and Released Parties
6 from the Released Claims – PAGA Settlement as consideration for Defendant’s payment of the
7 PAGA Settlement Fund.

8 52. Settlement Aggrieved Employees will be deemed to have acknowledged and
9 agreed that their claims for penalties under PAGA are released pursuant to the Settlement.
10 Settlement Aggrieved Employees cannot opt out of the PAGA portion of the Settlement, even if
11 they properly exclude themselves from the Class Settlement.

12 53. Plaintiff’s Individual General Release. Additionally, Plaintiff, on behalf of himself
13 and his heirs, representatives, successors, and assigns releases Defendant and the Released Parties
14 from any and all claims, demands, rights, liabilities and causes of action of every nature and
15 description whatsoever, known or unknown, asserted or unasserted, whether in tort, contract, or
16 for violation of any state or federal statute, rule, ordinance or regulation arising out of, relating to,
17 or in connection with any act or omission by or on the part of any of the Released Parties prior to
18 the execution of this Agreement. Plaintiff stipulates and agrees that he expressly waives and
19 relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of Section
20 1542 of the California Civil Code, or any comparable provision under federal or state law, which
21 provides:

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

27 Plaintiff may hereafter discover facts in addition to or different from those he now
28 knows or believes to be true with respect to the subject matter of any claims, but shall be
deemed to have, and by operation of the Judgment to have, fully, finally, and forever settled

1 and released any and all claims, whether known or unknown, suspected or unsuspected,
2 contingent or non-contingent, which now exist, or heretofore have existed, upon any theory
3 of law or equity now existing or coming into existence in the future, including, but not limited
4 to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law
5 or rule, without regard to the subsequent discovery or existence of such different or additional
6 facts. Nonetheless, Plaintiff waives and relinquishes any and all rights and protections
7 afforded to him under Section 1542 of the California Civil Code.

8 54. Tax Liability. The Parties make no representations as to the tax treatment or legal
9 effect of the payments called for hereunder, other than that payroll taxes are to be withheld from
10 the portion of the Individual Settlement Payments classified as wages. The responsibility for any
11 taxes withheld from any Individual Settlement Payment lies with the individual Settlement Class
12 Member receiving such Individual Settlement Payment. Except as specifically detailed herein,
13 Settlement Class Members are not relying on any statement or representation by the Parties with
14 respect to the taxability of any other Individual Settlement Payments.

15 55. Notice and Preliminary Approval of Settlement. As part of this Settlement,
16 Plaintiff will request that the Court: (a) grant preliminary approval of the Settlement, (b)
17 certify a Settlement Class, (c) approve distribution of Notice to Settlement Class Members,
18 and (d) grant final approval of the Settlement. Plaintiff shall request a Preliminary Approval
19 Hearing. In conjunction with the Hearing, Plaintiff will submit this Agreement, which sets
20 forth the terms of this Settlement, and will include a proposed Notice, as necessary to
21 implement the Settlement.

22 56. Class Counsel will prepare the Motion for Preliminary Approval. Class
23 Counsel shall also submit this Agreement to the LWDA in compliance with PAGA.

24 57. Settlement Administration. Within twenty-one (21) calendar days of the
25 Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class
26 Information for purposes of mailing the Notice to Settlement Class Members. If the 21st day falls
27 on a Saturday, Sunday, or federal holiday, the deadline will be extended to the next business day.
28

1 a. Notice By E-Mail and First Class U.S. Mail with Business Reply Mail
2 Postage. Within fifteen (15) calendar days of receipt of the Class Information
3 from Defendant, the Settlement Administrator shall send copies of the Notice to
4 all Settlement Class Members via regular First-Class U.S. Mail. The Settlement
5 Administrator shall exercise its best judgment to determine the current mailing
6 address for each Settlement Class Member. The address identified by the
7 Settlement Administrator as the current mailing address shall be presumed to be
8 the best mailing address for each Settlement Class Member. Where available,
9 Notice will also be sent to Settlement Class Members via email at the last known
10 email address in Defendant's possession. If the 15th day falls on a Saturday,
11 Sunday, or federal holiday, the deadline will be extended to the next business
12 day.

13 i. Undeliverable Notices. Any Notice returned to the Settlement
14 Administrator as non-delivered via mail on or before the Response Deadline
15 shall be re-mailed to the forwarding address affixed thereto within five
16 business days. If no forwarding address is provided, the Settlement
17 Administrator shall promptly attempt to determine a correct address by use
18 of skip-tracing, or other search using the name, address and/or Social
19 Security number of the respective Settlement Class Member and perform a
20 re-mailing if another mailing address is identified by the Settlement
21 Administrator. If a Settlement Class Member's Notice is returned to the
22 Settlement Administrator more than once as non-deliverable on or before the
23 Response Deadline, then an additional Notice need not be re-mailed, and the
24 Settlement Class Member is deemed to have received Notice. Those
25 Settlement Class Members who receive a re-mailed Notice, whether by skip
26 trace or by request, will have between the later of (a) fifteen (15) calendar
27 days (unless the 15th day falls on a Saturday, Sunday, or federal holiday, in
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

which case the deadline will be extended to the next business day) or (b) the Response Deadline to submit a Request for Exclusion or Notice of Objection.

b. No Claim Form Necessary. All Settlement Class Members who do not timely submit a Request for Exclusion will receive Individual Settlement Payments from the Net Settlement Amount; submission of a claim form is not necessary to receive an Individual Settlement Payment. Estimated Individual Settlement Payments will be stated in the Notice.

i. Disputes Regarding Individual Settlement Payments. Settlement Class Members will have the opportunity, should they disagree with Defendant’s records regarding their employment dates or Total Weeks Worked, to provide documentation and/or an explanation to the Settlement Administrator to correct the information and seek modification of their estimated Individual Settlement Payments via email or U.S. Mail. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator’s determination of the eligibility for and amount of any Individual Settlement Payment shall be final and binding upon the Settlement Class Members and the Parties. The Settlement Administrator will inform the Settlement Class Member of the final determination of the dispute the same way the Settlement Administrator received the dispute from the Settlement Class Member (via email or mail). The Settlement Administrator shall also inform the Parties of the final determination of the dispute.

ii. Disputes Regarding Administration of Settlement. Any disputes not resolved concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any such

1 involvement of the Court, Counsel for the Parties will confer in good faith to
2 resolve the disputes without the necessity of involving the Court.

3 c. Exclusions. The Notice shall state that Settlement Class Members who
4 wish to exclude themselves from the Class Settlement must submit a written
5 Request for Exclusion by the Response Deadline either by email or by U.S. Mail.
6 The written Request for Exclusion must: (1) contain the name, email address,
7 address, and telephone number of the person requesting exclusion, (2) be signed
8 by the Settlement Class Member; (3) be postmarked or contain an email “sent
9 date” by the Response Deadline and returned to the Settlement Administrator at
10 the specified email or mail address; and (4) state the Settlement Class Member’s
11 intent to request exclusion, opt out, or words to that effect. If a signed Request for
12 Exclusion is not timely submitted stating the name and address of the Settlement
13 Class Member, it will not be deemed valid for exclusion from this Settlement. The
14 email “sent date” or date of the postmark on the return mailing envelope of the
15 Request for Exclusion shall be the exclusive means used to determine whether the
16 Request for Exclusion was timely submitted. Any Settlement Class Member who
17 submits a valid and timely written Request for Exclusion will not be entitled to any
18 recovery under the Class Settlement and will not be bound by the terms of the
19 Settlement or have any right to object, appeal or comment thereon. Settlement
20 Class Members who do not or fail to submit a valid and timely written Request for
21 Exclusion on or before the Response Deadline shall be bound by all terms of the
22 Settlement and any Final Approval Order and Judgment entered in this Action.
23 Settlement Class Members, who are also Aggrieved Employees, who submit a
24 timely written Request for Exclusion from the Class Settlement will still receive
25 their Individual PAGA Settlement Payment as Settlement Class Members cannot
26 opt out of the PAGA Settlement.

27 i. No later than ten (10) calendar days after the Response Deadline,
28 the Settlement Administrator shall provide Counsel for the Parties with a

1 complete list of all Settlement Class Members who have timely submitted
2 valid written Requests for Exclusion. At no time shall any of the Parties or
3 their Counsel seek to solicit or otherwise encourage members of the
4 Settlement Class to submit Requests for Exclusion from the Settlement.

5 ii. No later than thirty (30) calendar days after the Response Deadline,
6 the Settlement Administrator will provide Defendant with an accounting of
7 all payments and awards payable from the Gross Settlement Amount.

8 d. Objections. The Notice shall state that Settlement Class Members who
9 wish to object to the Settlement may email or mail to the Settlement Administrator
10 a written Notice of Objection or appear at the Final Approval Hearing. The Notice
11 of Objection may be sent via email or U.S. Mail to the Settlement Administrator.
12 The Notice of Objection must be signed by the Settlement Class Member and state:
13 (1) the full name of the Settlement Class Member, and (2) the specific basis for the
14 objection. Class Counsel shall include all objections received and Plaintiff's
15 response(s) with Plaintiff's Motion for Final Approval of the Settlement.
16 Settlement Class Members will also have a right to have their objections heard at
17 the Final Approval/Settlement Fairness Hearing even if they do not submit a
18 written Notice of Objection in advance of the Hearing. Class Counsel shall not
19 represent any Settlement Class Members with respect to any such objections.

20 e. No Solicitation of Settlement Objections or Exclusions. The Parties agree
21 to use their best efforts to carry out the terms of this Settlement. At no time shall
22 any of the Parties or their Counsel seek to solicit or otherwise encourage
23 Settlement Class Members to submit either Notices of Objection to the Settlement
24 or requests for exclusion from the Settlement, or to appeal from the Court's
25 Judgment.

26 f. Plaintiff's Waiver of Right to Be Excluded and Object. Plaintiff agrees to
27 sign this Agreement, and by signing this Agreement, is hereby bound by the terms
28 herein. For good and valuable consideration, Plaintiff agrees that he will not

1 request to be excluded from the Settlement, nor object to any terms herein. Any
2 such request for exclusion or objection by Plaintiff will be void and of no force or
3 effect. Any effort by Plaintiff to circumvent the terms of this paragraph will be
4 void and of no force and effect.

5 58. Funding and Allocation of Gross Settlement Amount. Defendant shall pay Two
6 Hundred Fifteen Thousand Dollars and Zero Cents (\$215,000.00) and no more as the Gross
7 Settlement Amount. The Gross Settlement Amount is to be deposited in an interest-bearing
8 account set up by the Settlement Administrator no later than twenty (20) calendar days after the
9 Effective Date. If the 20th day falls on a Saturday, Sunday, or federal holiday, the deadline will be
10 extended to the next business day. Defendant has no obligation to pay the Gross Settlement
11 Amount (or any payroll taxes) prior to twenty-one (21) days after the Effective Date. Payments
12 from the Gross Settlement Amount shall be made, as specified in this Agreement and approved
13 by the Court, by the Settlement Administrator within ten (10) calendar days of receipt of the Gross
14 Settlement Amount for: (1) Individual Settlement Payments to Settlement Class Members who
15 do not submit a timely and valid written Request for Exclusion, (2) Class Representative
16 Enhancement Award, (3) Class Counsel Award, (4) PAGA Settlement Fund, and (5) the
17 Settlement Administrator Costs.

18 a. Individual Settlement Payments. Individual Settlement Payments will be
19 paid from the Net Settlement Amount and shall be paid pursuant to the terms set
20 forth above. Individual Settlement Payments shall be mailed by regular First-Class
21 U.S. Mail to the respective Settlement Class Member's last known mailing
22 address. Individual Settlement Payments will be allocated as follows: 15% as
23 wages (subject to tax withholding and payroll taxes). Defendant shall pay the
24 employer's share of any payroll taxes or withholdings separate and apart from the
25 Gross Settlement Amount, and the balance as penalties and interest (to be reported
26 on 1099 forms). Any checks issued to Settlement Class Members shall remain
27 valid and negotiable for one hundred and eighty (180) days from the date of their
28 issuance. Individual Settlement Payment checks will contain the following printed

1 notice advising Settlement Class Members that by cashing, depositing or otherwise
2 negotiating their Individual Settlement Payment checks they are affirmatively
3 opting into the settlement for purposes of the FLSA: “BY CASHING THIS
4 CHECK YOU ARE AGREEING TO THE TERMS OF THE SETTLEMENT
5 REACHED IN SMITH V. PETRA LIVING, INC. CASE NO. CGC-22-599900,
6 AND AGREE TO OPT-IN TO THE SETTLEMENT AND TO RELEASE
7 CLAIMS UNDER THE FAIR LABOR STANDARDS ACT PURSUANT TO
8 THE SETTLEMENT.” Settlement Class Members, who are also Aggrieved
9 Employees, who submit a timely written Request for Exclusion from the Class
10 Settlement will still receive their Individual PAGA Settlement Payment.

11 i. Calculation of Individual Settlement Payments other than PAGA
12 payments. Defendant will provide the Settlement Administrator with
13 sufficient information to calculate available Individual Settlement
14 Payments other than Individual PAGA Settlement Payments to all
15 Settlement Class Members. This information includes the dates of
16 employment of each Settlement Class Member. For each Settlement Class
17 Member, the Total Weeks Worked in the Class Period will be calculated.
18 The respective Total Weeks Worked for each Settlement Class Member
19 will be divided by the Total Weeks Worked in the Class Period for all
20 Settlement Class Members, resulting in the Payment Ratio for each
21 Settlement Class Member. Each Settlement Class Member’s Payment
22 Ratio is then multiplied by the Net Settlement Amount to determine his or
23 her Individual Settlement Payment. Each Individual Settlement Payment
24 will be reduced by any legally mandated deductions or withholdings for
25 each Settlement Class Member. Settlement Class Members are not eligible
26 to receive any compensation under the Settlement other than Individual
27 Settlement Payments and/or Individual PAGA Settlement Payments. The
28 wage portions are subject to tax withholding and will be reported on IRS

1 W-2 Forms. The non-wage portions are not subject to tax withholding and
2 will be reported on IRS 1099 – MISC Forms.

3 ii. Calculation of Individual PAGA Settlement Payments. Defendant
4 will provide to Plaintiff sufficient information to calculate the Individual
5 PAGA Settlement Payments to all Settlement Aggrieved Employees. This
6 information includes the dates of employment of each Settlement
7 Aggrieved Employee. For each Settlement Aggrieved Employee, the Total
8 PAGA Pay Periods in the PAGA Period will be calculated. The respective
9 Total PAGA Pay Periods for each Settlement Aggrieved Employee will be
10 divided by the Total PAGA Pay Periods in the PAGA Period for all
11 Settlement Aggrieved Employees, resulting in the Payment Ratio for each
12 Settlement Aggrieved Employee. Each Settlement Aggrieved Employee's
13 Payment Ratio is then multiplied by 25% of the PAGA Settlement Fund to
14 determine his or her Individual PAGA Settlement Payment. Settlement
15 Aggrieved Employees are not eligible to receive any compensation under
16 the Settlement other than Individual Settlement Payments and/or
17 Individual PAGA Settlement Payments. The Individual PAGA Settlement
18 Payments are not subject to tax withholding and will be reported on IRS
19 1099 – MISC Forms. Settlement Aggrieved Employees cannot opt out of
20 the PAGA Settlement.

21 b. Cy Pres Charity. In accordance with California Rule of Civil Procedure
22 section 384, any unpaid cash residue or unclaimed or abandoned class member
23 funds, plus any accrued interest that has not otherwise been distributed pursuant to
24 order of this Court within 180 calendar days from the date the check was issued,
25 shall be paid to Legal Aid at Work, a nonprofit organization that furthers the
26 objectives and purposes underlying this Action and that provides civil legal
27 services to the indigent.
28

1 c. Class Representative Enhancement Award. Subject to Court approval, in
2 exchange for the release of all Released Claims, a general release under
3 Section 1542 of the California Civil Code, and for his time and effort in bringing
4 and prosecuting this matter, Plaintiff shall be paid from the Gross Settlement
5 Amount up to Five Thousand Dollars and Zero Cents (\$5,000.00), subject to Court
6 approval. Any portion of the requested Class Representative Enhancement Award
7 that is not awarded to the Class Representative shall be part of the Net Settlement
8 Amount and shall be distributed to Settlement Class Members as provided in this
9 Agreement. The Settlement Administrator shall issue an IRS Form 1099 – MISC
10 to Plaintiff for his Class Representative Enhancement Award. Plaintiff shall be
11 solely and legally responsible to pay any and all applicable taxes on his Class
12 Representative Enhancement Award and shall hold harmless Defendant and
13 Released Parties from any claim or liability for taxes, penalties, or interest arising
14 as a result of the Class Representative Enhancement Award. The Class
15 Representative Enhancement Award shall be in addition to Plaintiff's Individual
16 Settlement Payment as a Settlement Class Member.

17 d. Class Counsel Award. Class Counsel may apply for a Class Counsel Fees
18 Payment not to exceed Seventy-One Thousand Six Hundred Sixty-Six Dollars and
19 Sixty-Seven Cents (\$71,666.67), or one-third of the Gross Settlement Amount.
20 Class Counsel may apply for a Class Counsel Litigation Expenses Payment for the
21 reimbursement of actual costs incurred in prosecuting the Action up to Ten
22 Thousand Dollars and Zero Cents (\$10,000.00), subject to: (i) submission of
23 records to the Court, associated with Class Counsel's prosecution of this Action
24 from the Gross Settlement Amount, and (ii) Class Counsel's agreement not to
25 appeal any award of attorneys' fees or costs. Any portion of the requested Class
26 Counsel Award that is not awarded to Class Counsel shall be part of the Net
27 Settlement Amount and distributed to Settlement Class Members as provided in
28 this Agreement. Class Counsel shall be solely and legally responsible to pay all

1 applicable taxes on the payment made pursuant to this paragraph. The Settlement
2 Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the
3 payments made pursuant to this paragraph. This Settlement is not contingent upon
4 the Court awarding Class Counsel any particular amount in attorneys’ fees and
5 costs.

6 e. PAGA Payment. Twenty-Five Thousand Dollars and Zero Cents
7 (\$25,000.00) shall be allocated to the release of Plaintiff and the Settlement
8 Aggrieved Employee’s PAGA claims. From that allocation, the Settlement
9 Administrator shall make the PAGA Payment to the LWDA in the amount of
10 Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (\$18,750.00).
11 The remaining Six Thousand Two Hundred Fifty Dollars and Zero Cents
12 (\$6,250.00) of the PAGA Payment shall be included in the Individual PAGA
13 Settlement Payments to be paid to the Settlement Aggrieved Employees.
14 Settlement Aggrieved Employees cannot opt out of the PAGA Settlement.

15 f. Settlement Administration Costs. The Settlement Administrator shall be
16 paid for the costs of administration of the Settlement from the Gross Settlement
17 Amount. The capped cost of administration for this Settlement is \$5,000 Dollars
18 (\$5,000). Any portion of the requested Settlement Administration Costs that is not
19 awarded to Apex shall be part of the Net Settlement Amount and distributed to
20 Settlement Class Members as provided in this Agreement. The Settlement
21 Administrator shall provide the Parties with a declaration to support the cost of
22 administration. The Settlement Administrator, on Defendant’s behalf, shall have
23 the authority and obligation to make payments, credits and disbursements,
24 including in the manner set forth herein, to Settlement Class Members and
25 Settlement Aggrieved Employees, calculated in accordance with the methodology
26 set out in this Agreement and orders of the Court.

27 i. The Parties agree to cooperate in the Settlement administration
28 process and to make all reasonable efforts to control and minimize the costs

1 and expenses incurred in administration of the Settlement. The Parties each
 2 represent they do not have any financial interest in the Settlement
 3 Administrator or otherwise have a relationship with the Settlement
 4 Administrator that could create a conflict of interest.

5 ii. The Settlement Administrator shall be responsible for: processing
 6 and mailing payments from Defendant to the Plaintiff, Class Counsel,
 7 Settlement Class Members, Settlement Aggrieved Employees, the LWDA,
 8 and cy pres recipient; printing and mailing and emailing the Notice to the
 9 Settlement Class Members and Settlement Aggrieved Employees, as
 10 directed by the Court; receiving and reporting the Requests for Exclusion
 11 and Notices of Objection submitted by Settlement Class Members;
 12 distributing all tax forms for payments under this Agreement; providing
 13 declaration(s) and reports as necessary in support of preliminary and final
 14 approval of this Settlement; and other tasks as the Parties mutually agree
 15 or the Court orders the Settlement Administrator to perform both before
 16 and after distribution of the Gross Settlement Amount. The Settlement
 17 Administrator shall keep the Parties timely apprised of the performance of
 18 all Settlement Administrator responsibilities.

19 g. No person shall have any claim against Defendant, Defendant’s Counsel,
 20 Plaintiff, Settlement Class Members, Settlement Aggrieved Employees, Class
 21 Counsel or the Settlement Administrator based on distributions and payments
 22 made in accordance with this Agreement.

23 59. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration
 24 of the Response Deadline, with the Court’s permission, a Final Approval/Settlement Fairness
 25 Hearing shall be conducted to determine final approval of the Settlement along with the
 26 amount properly payable for (i) the Class Counsel Award, (ii) the Class Representative
 27 Enhancement Award, (iii) Individual Settlement Payments, (iv) the Settlement Administrator
 28 Cost, and (v) the PAGA Payment. Pursuant to California Rule of Court 3.769(h), after

1 granting Final Approval, the Court shall retain jurisdiction over the Parties to enforce the
2 terms of the Judgment.

3 60. Option to Terminate Settlement. If more than ten percent (10%) of all
4 Settlement Class Members submit timely and valid written Requests for Exclusion from the
5 Settlement, Defendant shall have, in its sole discretion, the option to terminate this
6 Settlement. In such case, Defendant's Counsel will notify Class Counsel of the decision to
7 terminate the Settlement within ten (10) calendar days following a final report by the
8 Settlement Administrator of the number of Requests for Exclusion. Further, to the extent
9 Defendant has made any payments under this Agreement, all payments shall be fully
10 refunded to Defendant, except that any fees already incurred by the Settlement Administrator
11 shall be paid by Defendant, and the Parties shall proceed in all respects as though this
12 Agreement had not been executed.

13 61. Nullification of Settlement Agreement. In the event: (i) the Court does not
14 enter an order for preliminary approval; (ii) the Court does not enter an order for final
15 approval; (iii) the Court does not enter a judgment; (iv) the Effective Date is not triggered;
16 or (v) the Settlement does not become final for any other reason, this Settlement Agreement
17 shall be null and void and any order or judgment entered by the Court in furtherance of this
18 Settlement shall be treated as void from the beginning. In such case, Defendant shall not
19 make any payment under this Agreement, and the Parties shall proceed in all respects as if
20 this Agreement had not been executed, except that any fees already incurred by the
21 Settlement Administrator shall be paid by the Parties in equal shares. In such a case, this
22 Agreement or its related exhibits shall not be admissible in evidence, nor may they be used
23 in discovery.

24 62. No Effect or Trigger on Employee Benefits. Amounts paid to Plaintiff,
25 Settlement Class Members, or Settlement Aggrieved Employees pursuant to this Agreement
26 shall be deemed not to be pensionable earnings and shall not trigger or have any effect on
27 the eligibility for, or calculation of, any of the employee earnings, benefits (e.g., vacations,
28

1 holiday pay, retirement plans, etc.) or bonuses of the Plaintiff, Settlement Class Members, or
2 Settlement Aggrieved Employees.

3 63. No Admission by Defendant. Defendant denies any and all claims alleged in
4 this Action and denies all wrongdoing whatsoever. This Agreement is not a concession or
5 admission of any liability or wrongdoing by Defendant, and it shall not be used against
6 Defendant as an admission with respect to any claim of fault, concession or omission by
7 Defendant in this or any other proceeding.

8 64. Exhibits and Headings. The terms of this Agreement include the terms set forth
9 in the attached exhibits, which are incorporated by this reference as though fully set forth
10 herein. The exhibits to this Agreement are an integral part of the Settlement; however, the
11 terms of this Agreement control in case of conflict. The descriptive headings of any
12 paragraphs or sections of this Agreement are inserted for convenience of reference only.

13 65. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
14 Action, except such proceedings necessary to implement and complete the Settlement,
15 pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

16 66. Amendment or Modification. This Agreement may be amended or modified
17 only by a written instrument signed by Counsel for all Parties or their successors-in-interest.

18 67. Entire Agreement. This Agreement and the attached exhibits constitute the
19 entire Agreement among these Parties, and no oral or written representations, warranties or
20 inducements have been made to any Party concerning this Agreement or its exhibits other
21 than the representations, warranties and covenants contained and memorialized in the
22 Agreement and its exhibits.

23 68. Authorization to Enter into Settlement Agreement. While the decision to enter
24 this Agreement is the Parties' alone, Counsel for the Parties warrant and represent they have
25 been and are expressly authorized by the Party whom they each represent to negotiate this
26 Agreement, and to take all appropriate actions required or permitted to be taken by such
27 Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents
28 required to effectuate the terms of this Agreement, following the Parties' execution of this

1 Agreement. The Parties and their Counsel will cooperate with each other and use their best
2 efforts to effect the implementation of the Settlement. In the event the Parties are unable to
3 reach an agreement on the form or content of any document needed to implement the
4 Settlement, or on any supplemental provisions that may become necessary to effectuate the
5 terms of this Settlement, the Parties may seek the assistance of the Court or mediator to
6 resolve such disagreement. The person signing this Agreement on behalf of Defendant
7 represents and warrants that he/she is authorized to sign this Agreement on behalf of
8 Defendant. The person signing this Agreement on behalf of Plaintiff represents and warrants
9 that he/she is authorized to sign this Agreement and that he/she has not assigned any claim,
10 or part of a claim, covered by this Settlement to a third-party.

11 69. Binding on Successors and Assigns. This Agreement shall be binding upon,
12 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
13 defined.

14 70. California Law Governs. All terms of this Agreement and the exhibits hereto
15 shall be governed by and interpreted according to the laws of the State of California.

16 71. Counterparts. This Agreement may be executed in one or more counterparts
17 and/or electronically. All executed counterparts together shall be deemed to be one and the
18 same instrument.

19 72. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
20 Settlement is a fair, adequate and reasonable settlement of this Action under the
21 circumstances unique to the Parties and have arrived at this Settlement after extensive arms-
22 length negotiations, taking into account all relevant factors, documents, and information,
23 present and potential.

24 73. Jurisdiction of the Court. In accordance with California Rule of Court
25 3.769(h), the Parties agree that the Court shall retain jurisdiction with respect to the
26 interpretation, implementation and enforcement of the terms of this Agreement and all orders
27 and judgments entered in connection therewith, and the Parties and their counsel hereto
28 submit to the jurisdiction of the Court for purposes of interpreting, implementing and

1 enforcing the Settlement embodied in this Agreement and all orders and judgments entered
2 in connection therewith.

3 74. Invalidity of Any Provision. In the event that any word, paragraph, clause, or
4 portion of this Agreement is deemed illegal or unenforceable, it shall be stricken, and the
5 remainder of the Agreement shall be enforced. Before declaring any provision of this
6 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
7 extent possible consistent with applicable precedents so as to define all provisions of this
8 Agreement valid and enforceable.

10 **PLAINTIFF**

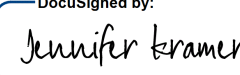
11
12 Date: 8/12/2024 _____

DocuSigned by:

F0ECC09D578C4AD...
GIOVONNIE SMITH

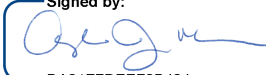
15 **CLASS COUNSEL**
16 HENNIG KRAMER RUIZ & SINGH, LLP

17 Date: 8/12/2024 _____

DocuSigned by:

76A477A47C154AF...
Jennifer Kramer

20 LAW OFFICES OF ANGEL J. HORACEK, PC

21 Date: 8/12/2024 _____

Signed by:

DA21E7DEEF2B424...
Angel J. Horacek

23 Attorneys for Plaintiff, the Settlement Class
24 Members, and the Settlement Aggrieved
25 Employees

26 **DEFENDANT**

27 Date: 8/21/2024 _____



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Michael A. Maily
Petra (assignment for the benefit of creditors), LLC
Solely in its capacity as Assignee for the benefit
of creditors of Petra Living, Inc.

DEFENDANT’S COUNSEL

Date: 8/21/2024

Andrea F. Oxman

Nicky Jatana
Andrea F. Oxman
Kishaniah Dhamodaran
Attorneys for Defendant,
Petra Living, Inc. d/b/a Oliver Space