

**ARBITRATION**

DEMIS ESPINOZA, on his own and on )  
behalf of all similarly situated individuals, )  
 )  
Plaintiff, )  
vs. ) Civ. No. 2:20-cv-00041-SPC-NPM  
 )  
MANAGED LABOR SOLUTIONS, LLC, )  
And PEOPLEASE, LLC, )  
 )  
Defendants. )  
\_\_\_\_\_)

**SETTLEMENT AGREEMENT**

This matter has been resolved by compromise, and subject to Arbitrator Burruezo’s approval of the terms and conditions of this Settlement Agreement (“**Settlement Agreement**”), is made and entered into, as of Demis Espinoza, by and among (the “**Named Plaintiff**”), on behalf of himself and the putative settlement class as defined below (the “**Settlement Class**” and, with the Named Plaintiff, the “**Plaintiffs**”), and Peoplease, LLC (“Peoplease”) and Managed Labor Solutions, LLC (“MLS”). Plaintiffs and Defendants are collectively referred to herein as the “**Parties.**” This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Action and the Released Claims (as defined below), upon and subject to the terms and conditions hereof (“**Settlement**”) as follows:

**I. HISTORY OF THE ACTION**

On June 1, 2021, Plaintiff filed a Complaint in the Eleventh Judicial Circuit, Miami-Dade County, Florida. The Action alleges that Defendants violated the Fair

Credit Reporting Act, 15 U.S.C. 1681a-1681x (“FCRA”) in connection with procuring background reports for employment purposes. The Action was filed on behalf of the Named Plaintiff, individually, as well as on behalf of employees and job applicants alleging Defendants violated their rights under the Fair Credit Reporting Act when using their consumer reports for employment purposes. Defendants subsequently removed the action to the United States District Court for the Southern District of Florida, and moved to compel Plaintiff to arbitration. Defendants’ motions were denied. Defendants filed notices of appeal at the Eleventh Circuit, staying the district court action. The Parties attended mediation with Mr. Carlos Burruezo, Esq., and reached a mediated settlement agreement, pursuant to which the Parties agreed to a class settlement to be decided in arbitration.

## **II. PLAINTIFF’S CLAIMS**

Plaintiff’s Second Amended Complaint alleged Peoplease was a consumer reporting agency or reseller of consumer reports, and furnished reports to users without obtaining the certifications required by 15 USC §§ 1681b(b)(1)(A) or issuing notice to consumers when reporting information likely to have an adverse effect on a consumer’s ability to obtain employment as required by 15 U.S.C. § 1681k(a). Plaintiff also alleged Peoplease, as a “user” of consumer reports, procured consumer reports from a consumer reporting agency but failed to satisfy the written disclosure and authorization requirements set forth in 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii). Plaintiff alleged MLS violated the FCRA’s pre-adverse action notice requirements set forth in 15 U.S.C. § 1681b(b)(3)(A). The Action seeks to recover statutory damages,

punitive damages, and attorneys' fees and costs. The Named Plaintiff and purported class members in the Action are represented by Marc Edelman of Morgan & Morgan, P.A. (“**Class Counsel**”). Defendants Peoplease is represented by Matthew Simpson of Fisher Phillips LLP and Defendants MLS is represented by Adam Primm, Esq. (“**Defense Counsel**”).

### **III. DEFENDANTS' DENIAL OF ANY WRONGDOING AND LIABILITY**

Defendants deny all charges of wrongdoing or liability arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action and each believe it has a number of legal and factual defenses to the Released Claims asserted by the Named Plaintiff and the purported class members in this Action. Defendants believe that were this lawsuit to proceed, arbitration would be compelled, class certification would be denied and each would prevail on motion for summary judgment and/or at trial. Defendants, however, have agreed to settle this Action to avoid further fees and expenses and to bring closure to this litigation. This Settlement constitutes a compromise settlement of disputed claims and shall not be deemed or construed to be an admission or acknowledgement of liability on any allegations or claim asserted in this Action. Any stipulations or statements by Defendants contained in this Settlement Agreement are made for settlement purposes only.

### **IV. CLAIMS OF PLAINTIFFS AND BENEFITS OF SETTLEMENT**

Plaintiffs believe that the claims asserted in the lawsuit have merit and that if

the case did not settle, they would prevail at trial. However, Plaintiffs and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the case against Defendants through trial and through appeals. Plaintiffs and Class Counsel also have taken into account the uncertain outcome of Defendants' pending appeal, which if successful, would require Plaintiff to pursue his claims individually in arbitration and render impossible class wide resolution. Plaintiffs and Class Counsel believe that the settlement set forth in this Settlement Agreement confers substantial benefits on the Settlement Class and is fair, reasonable, and adequate and in the best interests of Plaintiffs and the Settlement Class.

## **V. TERMS OF THE AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, by and through their respective attorneys, that, subject to the approval of the Arbitrator, the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice upon and subject to the terms and conditions of the Settlement as follows:

### **1. Definitions**

**1.1.** “**Action**” means the case styled Demis Espinoza v. Managed Labor Solutions, LLC and Peoplease, LLC, currently pending in United States District Court for the Southern District of Florida. Case No. 1:21-cv-22684 (S.D. Fla.).

### **1.2. Intentionally Left Blank.**

1.3. “**Claim Form**” means the document in the form attached as Exhibit “2” that will be mailed to class members’ last known addresses and must be signed and returned, or properly submitted online, by the Response Deadline for the class member to receive his or her share of the Settlement Fund.

1.4. “**Class Counsel**” means Marc Edelman of Morgan & Morgan, P.A.

1.5. “**Class Member**” or “**Settlement Class Member**” means any individual who is not validly excluded from the Settlement Class in compliance with all terms and conditions of this Settlement Agreement.

1.6. “**Class Period**” means June 1, 2016 through the date of the Preliminary Approval Order.

1.7. Intentionally Left Blank.

1.8. “**Defendants**” means Defendants Managed Labor Solutions, LLC and Peoplease, LLC, and each of their current and former parents, subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees and/or assigns, and each of their respective present, former, or future officers, directors, shareholders, agents, control persons, advisors, employees, representatives, consultants, insurers and reinsurers, accountants, attorneys, and any representative of the above.

1.9. “**Defense Counsel**” means Matthew Simpson of Fisher & Phillips LLP and Adam Primm of Benesch Friedlander Coplan & Aronoff LLP.

**1.10. “Effective Date” or “Settlement Effective Date”** means the date on which the Judgment approving this Settlement becomes Final.

**1.11. “FCRA”** means the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a-x.

**1.12. “Final”** means the expiration date of the time for filing or noticing any appeal of or petition for review relating to the Judgment entered in this Action, provided there are no objectors to the settlement or appeals in the action made or noted during that period in accordance with Federal Rules of Appellate Procedure 3 and 4. If a Class Member objects to or appeals the Settlement, “Final” means the date on which all appellate rights with respect to the Judgment have expired or have been exhausted in such a manner as to affirm the Judgment, including review by the United States Supreme Court.

**1.13. “Final Approval Hearing”** means the hearing scheduled to consider final approval of the Settlement and award to the Class Representative and Class Counsel.

**1.14. “Final Approval Order” or “Judgment”** means a judgment and order of dismissal with prejudice entered by the Arbitrator in the Action granting final approval of the Settlement and entering a judgment according to the terms set forth in this Settlement.

**1.15. “Named Plaintiff” or “Class Representative”** means Demis Espinoza.

**1.16. “Notice”** means the form of notice to be provided to the Settlement Class after preliminary approval of this Settlement by the Court, as further described

in Section 4.

**1.17. “Opt-Out”** means to timely request exclusion from the Settlement pursuant to Federal Rule Civil Procedure 23(c)(2)(B) and the procedure set forth in Section 4.8.

**1.18. “Person”** means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

**1.19. “Preliminary Approval Order”** means the order proposed and submitted by the Parties as set forth in Section 4.10.

**1.20. “Released Claims”** means all class action and individual claims that were or could have been brought under 15 U.S.C. §§ 1681a-x (including against Defendants’ insurers) and all claims that could have been brought under state law. Plaintiffs and all Class Members, on behalf of themselves and their spouses, agents, representatives, assigns, heirs, executors, administrators, beneficiaries, and trustees, release their right to bring a class action or individual action as well as actual damages of any kind, statutory fines or damages, and punitive damages and any other remedy based upon such Released Claims. With respect to the Released Claims only, the Class Representative and Settlement Class Members expressly

waive all rights provided by California Civil Code Section 1542, or other similar statutes, that they may have against each of the Released Parties. California Civil Code Section 1542 states: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

**1.21. “Released Claims by Named Plaintiff”** means the release, by Plaintiff Demis Espinoza of all claims under any applicable law, whether known or unknown, and whether they be statutory, common law, or based in law or equity, pursuant to the Supplemental Settlement Agreement.

**1.22. “Released Parties”** means Peoplease, LLC and Managed Labor Solutions, LLC, and each of their current and former parents, subsidiaries, affiliates, divisions, associates, , successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees and/or assigns, and each of their respective present, former or future officers, directors, shareholders, agents, control persons, advisors, employees, representatives, consultants, insurers and reinsurers, accountants, attorneys, and any representative of the above. The definition of Released Parties does not include any vendors or consumer reporting agencies that compiled or provided Plaintiff’s consumer report to Defendants.

**1.23. “Response Deadline”** means members of the Settlement Class shall have sixty (60) days after the date the Settlement Administrator mails the Notice to



Settlement Class Members, by which Response Deadline the members of the Settlement Class must postmark written notice of their intent to opt-out of the settlement and/or a written notice of objection to the preliminarily approved settlement, as applicable. Members of the Settlement Class shall have sixty (60) days to postmark a proper Claim Form in compliance with all terms and conditions of this Settlement Agreement in order to receive a *pro rata* share of the Settlement Claim Fund.

**1.24. “Settlement Administrator”** means the settlement administrator American Legal Claims Services, who shall be responsible for mailing of notices (including class notices and CAFA Notices), forwarding of return notices, processing of claim forms, and mailing of the individual checks to Class Members who submit valid Claim Forms.

**1.25. “Service Award.”** Plaintiff is not seeking a service award for his work and effort on behalf of the class.

**1.26. “Settlement”** means the terms and conditions of settlement as described in this Settlement Agreement.

**1.27. “Settlement Claim Fund”** means the amount that will be distributed to the Settlement Class Members who timely submit a proper Claim Form on an individualized *pro rata* basis as further defined and calculated pursuant to sections 2.5.2. and 2.5.3. Any unclaimed portion of the Settlement Claim Fund shall revert to Defendants. Reversionary funds shall be divided equally between Defendants.

**1.28. “Settlement Fund”** means the gross sum of Two Hundred Twenty Thousand Dollars (\$225,000.00). The Settlement Fund includes the Settlement Claim Fund, the general release consideration pursuant to the Supplemental Settlement Agreement, Class Counsel attorney’s fees and costs, and notice and settlement administration costs. The Settlement Fund shall be funded \$127,500.00 by MLS and \$97,500.00 by Peoplease.

Within 7 (seven) days of preliminary approval, MLS shall deposit \$75,000.00 and Peoplease shall deposit \$45,000 with the Settlement Administrator.

**1.29. “Settlement Payment”** means the individualized *pro rata* share of the Settlement Claim Fund, as calculated pursuant to sections 2.5.2. and 2.5.3. below, that will be distributed from the Settlement Claim Fund to Settlement Class Members who timely submit a proper Claim Form in compliance with all terms and conditions of this Settlement Agreement and do not timely and validly opt out of the settlement.

**1.29. Intentionally Left Blank.**

**1.30. “Settling Parties”** means Named Plaintiff and Defendants as described in sections 1.8 and 1.15.

**1.31. “Terminating Events”** shall have the meaning set forth in Section 8 below.

**1.32. “Termination Notice”** shall have the meaning set forth in Section 8 below.

## **2. The Settlement**

**2.1.** For the purposes of effectuating the Settlement only, Class Members and Defendants agree jointly to request that the Arbitrator certify the Settlement Class as set forth herein.

**2.2.** The “**Settlement Class**” consists of: All natural persons residing in the United States (including all territories and other political subdivisions of the United States) for whom MLS procured a consumer report for employment purposes in a co-employment relationship with Peoplease, that was used in whole or in part to take an adverse employment action against an applicant or employee, between June 1, 2016 and January 20, 2022.

Excluded from the class definition are any employees, officers, or directors of the Defendants, any attorney appearing in this case, and any judge assigned to hear this action, together with their immediate family members and any persons employed by him or her.

MLS has represented that the Settlement Class consists of approximately 300 individual members. This is a material term of this Settlement. In the event that the class size exceeds 300 by more than 10%, MLS shall increase its contribution to the Settlement Fund proportionately.<sup>1</sup>

**2.3.** On the Effective Date, the Settlement Class set forth in section 2.2 above shall become permanently certified unless the Judgment does not become

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<sup>1</sup> For example, if the class size is determined to be 330 individuals, MLS shall contribute an additional 10% to the Settlement Fund and attorneys’ fees calculated as a percentage of the adjusted Settlement Fund.

Final.

**2.4.** In the event the Settlement is not preliminarily and finally approved and implemented, or the Judgment does not become Final, the Settlement Class are dissolved without prejudice or inference regarding the appropriateness of class certification and thereafter the issue of class certification will be decided *de novo*, and Defendants are not precluded from challenging class certification.

**2.5.** Defendants agree to a gross settlement of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) to resolve the claims set forth by the Settlement Class, constituting the Settlement Fund.

**2.5.1.** The Settlement Fund shall be disbursed as follows: (a) The Net Settlement Fund shall be distributed to the Settlement Class Members on an individualized *pro rata* basis, with any unclaimed amounts reverting back to Defendants; (b) Attorneys' fees of forty percent (\$90,000.00) of the Settlement Fund, subject to Arbitrator approval; (c) Payment to the Named Plaintiff in the amount of Five Thousand Dollars (\$5,000.00) as consideration for executing a general release of claims and for not seeking-rehire; and (d) notice and settlement administration costs, with any unused portion reverting back to Defendants. .

**2.5.2.** The Settlement Payment shall be calculated by dividing the Net Settlement Fund by the total number of Settlement Class Members. The Settlement Payment will be distributed to each Settlement Class Member who timely submits a proper Claim Form in compliance with all terms and conditions of this Settlement

Agreement. A Settlement Class Member who does not timely submit a proper Claim Form shall not be entitled to a Settlement Payment.

**2.5.3.** Any unclaimed funds of the Settlement Claim Fund and any uncashed Settlement Payments after the expiration of the 90-day period for negotiating checks used to distribute the Settlement Claim Fund shall automatically revert back to Defendants. 50% of any unclaimed Settlement Claim Funds and/or uncashed Settlement Payments shall revert back to MLS, and 50% of any unclaimed Settlement Claim Funds and/or uncashed Settlement Payments shall revert back to Peoplease.

**2.6.** In exchange for the releases and waivers of claims described below, Defendants will pay the amount of the Settlement Fund in settlement of all claims asserted against it in this Action from which Settlement Fund the Settlement Class Members will be paid and the Arbitrator-approved Class Counsel Attorney's fees and costs, Named Plaintiff's general release consideration, and class settlement administration costs will be paid. Defendants shall deposit any additional funds necessary to fulfill the Settlement Agreement with the Settlement Administrator within seven (7) days after the date of the Final Approval Order. The Settlement Fund will be distributed to the Settlement Class Members *pro rata* based as determined pursuant to section 2.5.2, using the timeline set forth below.

a) Initial payments to Settlement Class Members will be mailed by the Settlement Administrator by check and delivered by first-class U.S. mail, postmarked within ten (10) business days of the Effective Date. All initial checks

will expire ninety (90) days after they are issued and will state the expiration date on their faces. If any such payment is returned by the U.S. Postal Service as undeliverable, or is uncashed or not negotiated before it expires, neither Defendants nor the Settlement Administrator nor Class Counsel shall have any further obligations to Plaintiff or any Settlement Class Member, except that:

(i) For any check returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will re-mail the check to the forwarding address;

(ii) If a Settlement Class Member contacts the Settlement Administrator or Class Counsel to request a replacement check before the initial check is negotiated, the Settlement Administrator will comply with that request by cancelling the initial check and issuing a replacement check.

b) The Parties agree that all Settlement Class Members waive and abandon any ownership interest in any such unclaimed, undeliverable, returned, uncashed, or non-negotiated checks and further agree that no obligation has been generated or proven with respect to such undeliverable, returned, uncashed, or non-negotiated checks.

c) After the initial 90-day period for negotiating checks (which total uncashed first check remainder will be calculated by the Settlement Administrator no later than 30 days following the 90-day check expiration date), any unclaimed funds from the Settlement Claim Fund and any uncashed settlement compensation shall automatically revert back to Defendants.

2.7. All taxes on the income of the Settlement Fund and tax-related expenses incurred in connection with the taxation of the Settlement Fund, if any, shall be paid out of the Settlement Fund.

2.8. Members of the Settlement Class shall be solely responsible for the taxes, interest, and penalties due and owing, if any, should the payment of Settlement Funds, or any portion thereof, be determined to be taxable.

### 3. **Releases**

On the Settlement Effective Date, all members of the Settlement Class who have not timely and properly opted out of the settlement, and all those acting or purporting to act on their behalf including, but not limited to, their successors, assigns, legatees, heirs, and personal representatives, fully and forever release, waive, acquit, and discharge Defendants and the Released Parties to the fullest extent permitted by law from any and all Released Claims. Concomitantly, People and MLS release each other from any and all claims that could have been raised against one another as part of the Action, including claims related to the sale or use of consumer reports for employment purposes.

### 4. **Notice, Opt Out, and Settlement Approval**

4.1. Not later than seven (7) calendar days after the Arbitrator has issued the Preliminary Approval Order, MLS shall disclose the names and last known addresses of members of the Settlement Class to the Settlement Administrator and Class Counsel. Class Counsel will have three (3) business days to note any

objections to the content or format of the Class List, which will otherwise be deemed as acceptable and approved for use by the Settlement Administrator.

No later than seven (7) calendar days after receipt of such information, the Settlement Administrator will mail the Notice (attached as Exhibit “2”) via first-class U.S. Mail, postage prepaid and return service requested to such Settlement Class Member’s last known mailing address, as updated by using the U.S. Postal Service’s database of verifiable mailing addresses (the CASS database) and the National Change-of-Address database. The Notice shall bear the Settlement Administrator’s mailing address as the return-mail address. The Notice will include an indication it is an “Arbitrator Approved Settlement Notice” and may also include a bar code.

A Claim Form (Exhibit “1”) will also be included as part of the mailing.

No later than seven (7) calendar days after the Arbitrator has issued the Preliminary Approval Order, the Settlement Administrator shall post a website containing information about the Settlement, including all relevant dates and pleadings and on-line claims form.

**4.2.** For all Notices returned to the Settlement Administrator without forwarding addresses, the Settlement Administrator will use publicly available databases as practicable to update those Settlement Class Members’ addresses and will cause the Notice to be re-mailed by the Settlement Administrator to such Settlement Class Members who can be located.

**4.3.** The Settlement Administrator will establish and staff a toll-free telephone line that members of the Settlement Class can use to contact the



Settlement Administrator with questions about the settlement or to change their addresses.

**4.4.** To receive a portion of the Settlement Claim Fund, all members of the Settlement Class must submit a timely Claim Form by the Response Deadline. Claim forms may be submitted through a claims filing portal on the settlement website, by fax, or by mail. The date of the postmark on the return mailing envelope or the timestamp on the fax or claims filing portal will be the exclusive means to determine whether a Claim Form has been timely submitted. However, it is not the intention of the Parties to exclude Class Members from participating in the Settlement for technical reasons that do not interfere with the orderly administration of the Settlement. Therefore, the Settlement Administrator will compile a list of claims rejected for failure to cure an unsigned Claim Form.

If the Settlement Class Member's Claim Form or Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter ("**Cure Letter**") within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Claim Form or Request for Exclusion valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, to postmark, fax, or electronically submit a revised Claim Form or Request for Exclusion. If a Class Member responds to a Cure Letter by filing a defective claim,

then the Claims Administrator will have no further obligation to give notice of a need to cure. If the revised Claim Form is not postmarked, received by fax, or electronically submitted within the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, it will be deemed untimely.

**4.8.** All members of the Settlement Class will have the right to be excluded from, i.e., to “opt out” of, the Settlement Class. On or before the Response Deadline, each member of the Settlement Class who elects to opt out of the settlement must send, by first-class U.S. mail, written notice addressed to the Settlement Administrator indicating his or her name and address and stating that he or she desires to opt-out of the settlement or otherwise does not want to participate in the settlement. Any member of the Settlement Class who does not timely (as measured by the postmark on that individual’s written notice) opt out of the settlement by written notice directed to the Settlement Administrator and containing the requisite information shall remain a member of the Settlement Class and shall be bound by any Orders of the Arbitrator about the Settlement or the Settlement Class. Any member of the Settlement Class who fails to timely and validly opt out of the Settlement shall be bound by the terms of this Settlement.

**4.9.** Any member of the Settlement Class who wishes to object to the settlement must return to the Settlement Administrator a timely written statement of objection no later than thirty (30) days after the date the Settlement Administrator mails the Notice of Settlement. The Notice of Objection must state (1) the case name and number; (2) the name, address, telephone number, and email address (if any) of

the member of the Settlement Class making the objection; (3) a statement of the objection(s) being asserted; (4) a detailed description of the facts and any legal authorities underlying each objection; (5) a notice of intent to appear at the Final Approval Hearing, if the Settlement Class Member making the objection intends to appear; (6) a list of any witnesses the Settlement Class Member making the objection may call to testify at the Final Approval Hearing, whether in person, by deposition, or affidavit; and (7) a list of any exhibits, and copies of the same, which that objector may offer at the Final Approval Hearing. Any objection must be personally signed by the objector.

No member of the Settlement Class shall be entitled to contest in any way the approval of the terms and conditions of this Agreement or the Arbitrator's Final Approval Order except by filing and serving written objections in accordance with the provisions of this Settlement Agreement and Release. Any member of the Settlement Class who fails to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the settlement.

The Settlement Administrator shall provide any objections and backup information to Defendants' Counsel and Class Counsel, who shall file same with the Arbitrator at least seven (7) days before the Final Approval Hearing or as otherwise ordered by the Arbitrator.

**4.10.** As soon as practicable after the Parties execute this Agreement, Class Counsel will present this Agreement to the Arbitrator for preliminary settlement

approval and will request by unopposed motion that the Arbitrator enter a Preliminary Approval Order.

4.11. The Parties agree to cooperate to work to schedule a Final Approval Hearing as soon as practicable.

**5. Final Approval Hearing Judgment and Notice**

5.1. The Final Approval Hearing, as established in the Notice Order, shall be for the purpose of consideration of Final approval of the Settlement set forth in this Settlement Agreement.

5.2. No later than ten (10) calendar days before the Final Approval Hearing, the Settlement Administrator will certify to the Arbitrator that it has fully complied with the notice provisions set forth in Section 4 herein.

**6. Administration and Supervision of the Settlement Fund**

6.1. A Settlement Administrator will be a neutral third party mutually agreeable to the parties, approved by and responsible to the Arbitrator and shall directly administer the Notice of the Settlement, the claims process, and shall control the Settlement Fund, subject to Arbitrator approval. The Settlement Administrator shall administer and oversee the mailing of the Arbitrator-approved Notices and distribution of funds from the Settlement Fund with mutual approval of both Defendants and Class Counsel. All funds shall be maintained in a bank escrow account unless the Parties jointly agree otherwise. Costs of settlement administration due to Defendants under Paragraph 2.5.1 shall be paid from the Settlement Fund

after the distribution to Class Members and other payments contemplated in Paragraph 2.5.1, and any unused costs shall revert to Defendants. On completion of the administration of the Settlement, the Settlement Administrator shall provide or cause to be provided to the Arbitrator a final report on its administration of the Settlement. The Settlement Administrator shall have and shall provide to Class Counsel and Defense Counsel reasonable access to documents relating to compliance and administration of the Settlement, with the right, but not the obligation, to review and audit the documents to determine full compliance with the terms of the Settlement. The Settlement Administrator shall hold all documents and information received regarding Class Members and Potential Class Members in confidence, and not use such information for any purpose apart from administering the settlement.

**6.2.** No person shall have any claim against the Settlement Administrator, Class Counsel, Defense Counsel and/or Defendants based on the monetary payments made substantially in accordance with this Settlement Agreement, or further order(s) of the Arbitrator or stipulations of the Parties on the record.

**7. Plaintiffs' Counsel's Attorneys' Fees and Reimbursement of Expenses**

**7.1.** Class Counsel shall make an application to the Arbitrator for an award from the Settlement Fund for attorneys' fees, costs, and other expenses in an amount not to exceed \$90,000.00 of the Settlement Fund unless adjusted upwards pursuant to this Agreement. Defendants shall not oppose or object to this application provided that the request for an award of fees and costs is consistent with this

Settlement. The Arbitrator's award of fees and costs shall be payable from the Settlement Fund within three (3) days after the Effective Date.

The Named Plaintiff shall notify the Arbitrator he is receiving consideration for execution a general release pursuant to the Supplemental Settlement Agreement in the amount of \$5,000.00 (the “**General Release**”), which shall be in addition to any other sum he may receive as a Class Member. If approved, the general release consideration shall be payable from the Settlement Fund within ten (10) business days after the Effective Date.

**8. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

**8.1.** Plaintiffs or Defendants, at any of their sole discretion, shall each have the right to terminate the Settlement and this Settlement Agreement, including dissolution of the Settlement Class, if any of the following conditions subsequently occurs (“**Terminating Events**”):

a) the Arbitrator's refusal to preliminarily or permanently approve this Settlement or any material part of it;

b) the Arbitrator requires a notice program in addition to or substantially different from that set forth herein;

c) the Arbitrator orders Defendants to pay attorneys' fees and costs with respect to the litigation greater than as provided herein;

d) the Arbitrator orders Defendants to pay, with respect to the litigation, any amount above the \$225,000.00 required to establish the Settlement

Fund, unless as provided herein;

e) the Arbitrator declines to enter the Judgment in any material respect;

f) the Judgment is reversed, vacated, or modified in any material respect by the Arbitrator, the United States District Court for the Middle District of Florida, the Eleventh Circuit Court of Appeals, the United States Supreme Court, or adverse action being taken by any other trial court or appellate court in any jurisdiction.

**8.2.** The failure of the Arbitrator or any district or appellate court to approve in full the request by Class Counsel for attorneys' fees, incentive awards, costs and other expenses shall not be grounds for Named Plaintiff, the Settlement Class, or Class Counsel to terminate this Settlement.

**8.3.** If any Party exercises its respective rights to terminate this Settlement pursuant to Paragraph 8.1 herein, the Party shall terminate the Settlement, including dissolving the Settlement Class, by delivering written notice of the election to terminate ("**Termination Notice**") to all other parties and their counsel hereto within thirty (30) days of the Terminating Event. In the event that a Termination Notice is so provided, then the Settlement shall be canceled and terminated unless and until Class Counsel and Defense Counsel mutually agree in writing to proceed with the Settlement.

**8.4.** In the event that the Settlement is terminated as provided for herein,

then (a) this Settlement shall be null and void and of no further force and effect, including voiding the Settlement Class; (b) the Settling Parties shall be restored to their respective positions in the Action immediately prior to the execution of this Settlement Agreement; (c) any portion of the Settlement Fund not used to fund notice and administration shall be returned to Defendants; (d) this Settlement shall not be used in the Action or in any other proceeding for any purpose; and; (e) any judgment or order entered by the Arbitrator in accordance with the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc.

**8.5.** Upon the filing of the proposed Settlement with the Arbitrator, all proceedings shall be stayed until further order of the Arbitrator, except such proceedings as may be necessary either to implement the proposed Settlement or to comply with or effectuate the terms of this Settlement Agreement.

## **9. Final Judgment**

The Parties shall jointly seek entry by the Arbitrator of a Final Judgment that includes provisions:

a) granting final approval of this Settlement, and directing its implementation pursuant to its terms and provisions;

b) ruling on Class Counsel's application for attorneys' fees, costs and other expenses, and approval of payment to Plaintiff of \$5,000.00 for executing a general release and agreeing not to seek rehire as detailed in the Supplemental Settlement Agreement;

c) discharging and releasing Defendants and Released Parties from



the Released Claims as provided in Section 3 above;

d) directing that the Action be dismissed with prejudice; and

e) reserving to the Arbitrator continuing and exclusive jurisdiction

over the parties with respect to the Settlement and the Final Judgment.

## **10. Miscellaneous Provisions**

**10.1.** The Parties (a) acknowledge that it is their intent to consummate this agreement, (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement; and (c) agree to exercise their best efforts to accomplish the foregoing terms and conditions of this Settlement.

**10.2.** The Arbitrator shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement, and all Parties hereto submit to the jurisdiction of the Arbitrator for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

**10.3.** This Settlement Agreement may be executed in counterparts, including by signature transmitted by facsimile. Each counterpart, when so executed, shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

**10.4.** Before entry of the Final Approval Order, the Settlement may be modified or amended only by written agreement signed by or on behalf of all Parties with notice to be given to the Arbitrator of the agreed modification or amendment, or by stipulations made on the record. Following entry of the Final Approval Order,

the Settlement may be modified or amended only by written agreement signed by or on behalf of all Parties and approved by the Arbitrator.

**10.5.** The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any of the Parties of any breach of this Settlement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement.

**10.6.** This Settlement binds and inures to the benefit of the Parties, their assigns, affiliates, heirs, administrators, executors, and successors.

**10.7.** Except as otherwise expressly stated herein, the Settlement is not intended to confer any benefits upon any non-party.

**10.8.** This Settlement Agreement constitutes the entire agreement among the Parties pertaining to the settlement of the Action and supersedes any and all prior and contemporaneous undertakings of the Parties in connection therewith. In entering into this Settlement, the Parties have not relied upon any representation or promise made by the other Party not contained in this document.

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

**10.10.** The signatories hereto represent that they are fully authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein. It is agreed that Class Members are so numerous that it is impossible or impractical to have each Class Member execute this Agreement. It is agreed that this Agreement may be executed on behalf of Class Members by Class Representative and Class Counsel, subject to Arbitrator approval.

**10.11.** The Parties understand and agree that this Agreement and all exhibits thereto shall be inadmissible for any purpose in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of this Agreement or to show that the Agreement bars subsequent claims that are released by the Agreement. The Parties agree that, to the extent permitted by law, this Agreement will operate as a full and complete defense to, and may be used as the basis for an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement.

**10.12.** The headings in this document are included for convenience only and shall not be deemed to constitute part of this Settlement or to affect its construction.

**10.13.** Where this Settlement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

**10.14.**        **For the Class:**

Marc Edelman, Esq.  
MORGAN & MORGAN, P.C.

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Tampa, FL 33602  
medelman@forthepeople.com

**10.15. For Defendants:**

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Adam Primm, Esq.  
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Cleveland, OH 44114  
APrimm@beneschlaw.com

**10.16.** Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement, subject to Arbitrator approval.

AGREED:

DEMIS ESPINOZA, Plaintiff

By: \_\_\_\_\_

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*Counsel for Plaintiffs*

PEOPLEPLEASE, LLC, Defendant

By: \_\_\_\_\_

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MANAGED LABOR SOLUTIONS, LLC, Defendant

By: \_\_\_\_\_

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