

Kane Moon, SBN 249834
 Allen Feghali, SBN 301080
 Enzo Nabiev, SBN 3322118
 MOON & YANG, APC
 1055 W. Seventh Street, Suite 1880
 Los Angeles, CA 90017
 Telephone: (213) 232-3128
 Facsimile: (213) 232-3125

Attorneys for Plaintiff,
 ROMULO CABRITO

GRACE Y. HOROUPIAN, SBN 180337
 REBECCA S. KING, SBN 305902
 FISHER & PHILLIPS LLP
 2050 Main Street, Suite 1000
 Irvine, California 92614
 Telephone: (949) 851-2424
 Facsimile: (949) 851-0152

Attorneys for Defendant,
 ENVIRONMENTAL SERVICE CONCEPTS, LLC

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

ROMULO CABRITO, individually, and
 on behalf of all others similarly situated,

Plaintiff,

v.

ENVIRONMENTAL SERVICE
 CONCEPTS, LLC, a limited liability
 company; and DOES 1 through 10,
 inclusive,

Defendants.

CASE NO.: CGC-20-582061
[Unlimited Jurisdiction-CLASS ACTION]

*Assigned for all purposes to the
 Honorable Judge Garrett L. Wong, Dept. 610*

**LABOR CODE PRIVATE ATTORNEYS
 GENERAL ACT SETTLEMENT
 AGREEMENT**

Complaint Filed: January 7, 2020
 Trial Date: None

This Labor Code Private Attorneys General Act (Labor Code §§ 2698, *et seq.*)
 Settlement Agreement ("Settlement Agreement") is made by and between ROMULO
 CABRITO ("Plaintiff"), on his own behalf and on behalf of all members of the PAGA Group

(as defined below) and the State of California, on the one hand, and ENVIRONMENTAL SERVICE CONCEPTS, LLC, ("Defendant") on the other hand (collectively the "Parties"), in the lawsuit entitled *ROMULO CABRITO v. ENVIRONMENTAL SERVICE CONCEPTS, LLC and Does 1 to 10*, filed in San Francisco County Superior Court, Case No. CGC-20-582061. This Settlement Agreement resolves all claims under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, based on or arising out of alleged violations of the Labor Code including all claims that could have been alleged based on the factual allegations and identified Labor Code sections in the operative pleading for the Litigation.

I. DEFINITIONS

A. Administrative Costs. The term "Administrative Costs" as used herein means all administrative costs of settlement, including cost of notice to the PAGA Group, administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Settlement Agreement.

B. Agreement or Settlement Agreement. The terms "Agreement" or "Settlement Agreement" are used synonymously herein to mean this Labor Code Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement.

C. Plaintiff's Counsel. The term "Plaintiff's Counsel" as used herein means MOON & YANG, APC.

D. PAGA Release Period. The term "PAGA Release Period" as used herein shall refer to the time period from January 6, 2019 through the date of approval, or November 1, 2020 (whichever is earlier), inclusive.

E. Court. The term "Court" as used herein means the Superior Court of the State of California for the County of San Francisco.

F. Defendant. The term "Defendant" as used herein means ENVIRONMENTAL SERVICE CONCEPTS, LLC.

G. Litigation. The term "Litigation" as used herein means the action entitled filed in San Francisco County Superior Court, Case No. CGC-20-582061.

1 **H. Plaintiff.** The term "Plaintiff" as used herein means ROMULO CABRITO.

2 **I. Net Settlement Amount.** The term "Net Settlement Amount" as used herein
3 means the Settlement Amount minus any award of attorneys' fees and litigation costs to
4 Plaintiff's Counsel, Administrative Costs, and Plaintiff's enhancement award. Based on the
5 statutory requirement that seventy-five percent (75%) of PAGA civil penalties be paid to the
6 California Labor and Workforce Development Agency ("LWDA") and twenty-five percent
7 (25%) of PAGA civil penalties be distributed to the aggrieved employees, seventy-five percent
8 (75%) of the Net Settlement Amount will be paid to the LWDA and twenty-five percent (25%) of
9 the Net Settlement Amount will be paid to the PAGA Group based on the distribution formula
10 set forth below.

11 **J. Individual Settlement Payment.** The term "Individual Settlement Payment" as
12 used herein means the payment that each member of the PAGA Group will receive as his or her
13 share of the Net Settlement Amount. The portion of the Net Settlement Amount to be distributed
14 to the PAGA Group shall be divided by the total number of full pay periods, with partial pay
15 periods rounded up to the next whole number, as determined by Defendant's records, for all
16 times during the PAGA Release Period which the PAGA Group worked for Defendant. This
17 amount shall be known as the "Pay Period Value." Each member of the PAGA Group shall be
18 paid an amount equal to the number of individual pay periods he or she worked for Defendant
19 during the PAGA Release Period multiplied by the Pay Period Value.

20 **K. LWDA Payment.** The term "LWDA Payment" as used herein means the
21 seventy-five percent (75%) of the Net Settlement Amount payable to the LWDA.

22 **L. Settlement Administrator.** The term "Settlement Administrator" as used herein
23 means ILYM Group, Inc. which will be responsible for the administration of the settlement
24 embodied in this Agreement and all related matters.

25 **M. Settlement Amount.** The term "Settlement Amount" as used herein means a
26 fund in the sum of Two Hundred Fifty Thousand dollars and zero cents (\$250,000.00) which
27 shall be paid by Defendant. The Settlement Amount shall cover, resolve, and fully satisfy the
28 Administrative Costs and any and all amounts owed to Plaintiff, the PAGA Group, the LWDA,

1 and Plaintiff's Counsel, including all amounts allocated to attorneys' fees and litigation costs.

2 **N. PAGA Group.** The PAGA Group is defined as: All persons within the State of
3 California who are or were employed by Defendant in the State of California as an hourly, non-
4 exempt employee at any time within the PAGA Release Period. Defendant represents, based on
5 a reasonable investigation of its records, that as of September 29, 2020 there are estimated to be
6 approximately 8,200 pay periods for employees in the PAGA Group.

7 a. Should the final number of pay periods increase by more than 10%, the
8 Settlement Amount shall increase proportionately for each pay period over
9 the 10% (i.e. meaning if the number of pay periods increases by 11% the
10 Gross Settlement will increase 1%). The Settlement Amount shall not be
11 reduced as a result of the total workweeks falling below Defendant's estimate
12 of 8,200.

13 **II. BACKGROUND**

14 **A.** On January 9, 2020, Plaintiff filed a complaint against Defendant for wage and
15 hour claims for alleged failures to pay all time worked including minimum, overtime and double
16 time wages, meal break violations, rest break violations, failure to timely pay wages on
17 termination, failure to provide accurate wage statements and for alleged unfair business
18 practices. Plaintiff subsequently filed his First Amended Complaint adding a cause of action
19 for penalties pursuant to Labor Code § 2699(f) for alleged violations and penalties under Labor
20 Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, as
21 well as the IWC Wage Order. The operative First Amended Complaint alleges that Defendant
22 failed to provide meal breaks, failed to authorize and permit legally compliant rest breaks, and
23 failed to provide premium pay for the alleged meal and rest break violations.

24 Following the filing of the action, counsel for the Parties met and conferred with respect
25 to the potential settlement of the Litigation. Pursuant to these discussions, the Parties agreed to
26 exchange informal discovery and engage in private mediation. The Parties subsequently
27 exchanged informal discovery, including: a sampling of the timekeeping and payroll records;
28 information and documentation concerning the claims set forth in the Litigation, such as

1 Defendant's employee handbooks and policies and procedures regarding the payment of wages,
2 meal and rest breaks, and time keeping; information regarding the number of PAGA Group
3 members and the total workweeks and pay periods worked by the PAGA Group during the
4 PAGA Release Period.

5 B. Plaintiff and Defendant and their respective counsel have engaged in good faith,
6 arms-length negotiations. On September 29, 2020, the Parties participated in a mediation with
7 Kelly Knight, Esq. which resulted in reaching a resolution of this matter through a mediator's
8 proposal. The Parties have now entered into a more detailed, formalized Settlement Agreement
9 for submission to the Court for approval.

10 C. Plaintiff's counsel has conducted an investigation of the law and facts relating to
11 the claims asserted in the Litigation and has concluded, taking into account the sharply contested
12 issues involved, the expense and time necessary to pursue the Litigation through trial and any
13 appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
14 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
15 the Plaintiff, the State of California, and the members of the PAGA Group pursuant to this
16 Agreement, that a settlement with Defendant on the terms and conditions set forth herein is fair,
17 reasonable, adequate, and in the best interests of the State of California and the PAGA Group.
18 Plaintiff, on his own behalf and as a representative pursuant to PAGA, has agreed to settle the
19 Litigation with Defendant on the terms set forth herein.

20 D. Defendant has concluded that, because of the substantial expense of defending
21 against the Litigation, the length of time necessary to resolve the issues presented herein, the
22 inconvenience involved, and the concomitant disruption to its business operations, it is in its
23 best interests to accept the terms of this Agreement. Defendant denies each of the allegations
24 and claims asserted against it in the Litigation. However, Defendant nevertheless desires to
25 settle the Litigation for the purpose of avoiding the burden, expense and uncertainty of
26 continuing litigation and for the purpose of putting to rest the controversies engendered by the
27 Litigation.
28

1 E. This Agreement is intended to and does effectuate the full, final and complete
2 resolution of all allegations and claims under the California Labor Code Private Attorneys
3 General Act of 2004 ("PAGA"), Labor Code §§ 2698, et seq., based on or arising out of alleged
4 violations of the Labor Code including all claims that could have been alleged based on the
5 factual allegations and identified Labor Code sections in the operative pleading for the
6 Litigation.

7 //

8 **III. JURISDICTION**

9 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
10 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
11 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
12 approval of this Agreement, pursuant to California Code of Civil Procedure § 664.6 the Court
13 shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and
14 enforcing this Agreement consistent with the terms set forth herein, and the Parties and their
15 counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and
16 enforcing this Agreement and all orders and judgments entered in connection therewith.

17 **IV. STATEMENT OF NO ADMISSION**

18 A. Defendant denies liability to Plaintiff and to the PAGA Group upon any claim or
19 cause of action. This Agreement does not constitute, and is not intended to constitute, an
20 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims
21 made against it in the Litigation.

22 B. Nothing in this Agreement, nor any action taken in implementation thereof, nor
23 any statements, discussions or communications, nor any materials prepared, exchanged, issued
24 or used during the course of the negotiations leading to this Agreement is intended by the Parties
25 to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
26 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum
27 or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
28 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties

1 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this
2 case or any other judicial, arbitral, administrative, investigative or other forum or proceeding,
3 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,
4 regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other
5 purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before
6 the Court that has as its purpose the interpretation, implementation, or enforcement of this
7 Agreement or any orders or judgments of the Court entered in connection with the Agreement.

8 C. None of the documents produced or created by Plaintiff or his counsel in
9 connection with the approval of this settlement or administration of this settlement constitute,
10 and they are not intended to constitute, an admission by Defendant of any violation of any
11 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
12 obligation or duty at law or in equity.

13 D. Nothing in this Agreement will be construed as an admission or
14 acknowledgement of any kind that any group should or would be given collective treatment in
15 the Litigation or in any other action or proceeding. Further, neither this Agreement nor the
16 Court's actions with regard to this Agreement will be admissible in any court or other tribunal
17 regarding the propriety of collective treatment. In the event that this Agreement is not approved
18 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff
19 will not be deemed to have waived, limited or affected in any way any claims, rights or remedies
20 in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any
21 way any of their objections or defenses in the Litigation.

22 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

23 **A. Scope of Release.**

24 Upon approval of this settlement by the Court, Plaintiff, individually and as the
25 representative acting as a proxy or agent of the LWDA, a State of California Executive Branch
26 Agency, in this Litigation, agrees to release Defendant and Defendant's parents, subsidiaries,
27 affiliates, their insurers, attorneys, and all agents thereof (collectively, the "Released Parties"),
28 of and from any and all claims under the California Labor Code Private Attorneys General Act

1 of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, including all claims that could have been
2 alleged based on the factual allegations and identified Labor Code sections in the operative
3 pleading for the Litigation, including, but not limited to, California Labor Code sections §§ 201-
4 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, as well as the
5 IWC Wage Order, during the time period from January 6, 2019 through the date of preliminary
6 approval or November 1, 2020, whichever is earlier (the "Released Claims"). For the avoidance
7 of doubt, the Parties agree that the Released Claims include claims for any and all PAGA civil
8 penalties. The Parties further agree to release any and all claims for costs, fees, and interest
9 related to the Released Claims. The Parties further agree that this Agreement and judgment to
10 be entered by the Court following approval of this settlement forever bars Plaintiff and the
11 LWDA, directly or through any other proxy or agent, from any future prosecution of any of the
12 Released Claims against any of the Released Parties.

13 **B. Dismissal of Class Claims Without Prejudice.**

14 Named Plaintiff and his counsel agree that they will file an amended operative pleading
15 which only asserts claims under PAGA and dismisses the class claims. Plaintiff and his counsel
16 agree to file the amended complaint by or before filing the motion for Approval.

17 **C. Publicity.**

18 The Named Plaintiff and his counsel agree that they have not and will not publish the
19 Agreement. Plaintiff's counsel shall not issue any press releases or press statements regarding
20 the Agreement, identify Defendant or their counsel by name in any media including Plaintiff's
21 Counsel's website, or have any communications with the press or media about the Lawsuit or
22 the Agreement. However, nothing in the provision shall be construed from as preventing the
23 Parties from taking following actions: (a) Plaintiff's counsel shall be allowed to refer to the
24 Litigation and Agreement in other litigations to support their adequacy as attorneys for a putative
25 class or to justify an award of attorney's fees; (b) the Parties shall have the right to disclose the
26 Agreement as may be required under federal or state tax and/or securities laws or under
27 Generally Accepted Accounting Principles; (c) the Parties shall have the right to disclose the
28 Agreement to third parties without identifying the case name, case number, or names of any of

1 the Parties or Released Entities; (d) the Parties may refer to the Agreement, describe its terms,
2 and file the settlement agreement with the Court, the California LWDA, and the Settlement
3 Administrator in connection with any proceedings which are reasonably necessary to obtain
4 Approval of the Settlement; (e) the Parties or their representatives may communicate with
5 accountants or legal advisors regarding the Agreement, and (f) the Parties or their
6 representatives may discuss the Agreement with any member of the PAGA Group. Except for
7 the previously listed exceptions, in response to any inquiries about the Lawsuit, the Parties may
8 state that "the matter has been resolved."

9 **VI. SETTLEMENT ADMINISTRATOR**

10 Plaintiff and Defendant, through their respective counsel, have selected ILYM Group,
11 Inc. as the Settlement Administrator to administer the Settlement Agreement, which includes
12 but is not limited to distributing and responding to inquiries about the Notice of Settlement and
13 calculating all amounts to be paid from the Settlement Amount, including the Individual
14 Settlement Payments. Charges and expenses of the Settlement Administrator, estimated to be
15 no more than Fifteen Thousand Dollars (\$15,000.00), will be paid from the Settlement Amount.
16 Any charges and expenses of the Settlement Administrator greater than the allocated Fifteen
17 Thousand Dollars (\$15,000.00) will come from the Settlement Amount. If the actual Settlement
18 Administrator fees are less than the Parties' estimation, the difference between the actual and
19 estimated Settlement Administrator fees will be included in the Net Settlement Amount.

20 **VII. NOTICE**

21 Plaintiff and Defendant, through their respective attorneys, have jointly prepared a Notice
22 of Settlement (the "Notice"), in the form attached hereto as Exhibit "A" which in substance will
23 be provided to the members of the PAGA Group as follows:

24 As soon as practicable following approval of the settlement, but no later than 15 calendar
25 days after the Court's approves the settlement, Defendant will provide to the Settlement
26 Administrator the following information about each PAGA Group member: (1) name; (2) last
27 known home address; (3) number of pay periods as a PAGA Group member during the PAGA
28 Release Period; and (4) social security number (collectively referred to as the "PAGA List").

1 The Settlement Administrator shall run all the addresses provided through the United
2 States Postal Service NCOA database (which provides updated addresses for any individual who
3 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding
4 address) to obtain current address information. Within 15 calendar days after the Settlement
5 Administrator's receipt of the PAGA List, the Settlement Administrator will mail the Notice
6 together with the Individual Settlement Payments to all PAGA Group members by first-class
7 United States mail, postage prepaid, with directions to the Postmaster to forward the Notice and
8 return all undeliverable Notices to the Settlement Administrator. For each Notice and Individual
9 Settlement Payment that is returned as undeliverable, the Settlement Administrator shall
10 promptly attempt to locate the PAGA Group member by performing an additional skip trace and
11 shall re-mail the Notice and Individual Settlement Payment no later than 10 calendar days
12 following receipt of the undeliverable Notice. The Notice will be provided in English.

13 **VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

14 **A. Distribution Formula.**

15 The portion of the Net Settlement Amount to be distributed to the PAGA Group shall be
16 divided by the total number of full pay periods, with partial pay periods rounded up to the next
17 whole number, as determined by Defendant's records, for all times during the PAGA Release
18 Period which the PAGA Group worked for Defendant. This amount shall be known as the "Pay
19 Period Value." Each member of the PAGA Group shall be paid an amount equal to the number
20 of individual pay periods he or she worked for Defendant during the PAGA Release Period
21 multiplied by the Pay Period Value.

22 **B. Funding of Agreement.**

23 The funding of the Settlement Amount by Defendant will be completed at one time with
24 funds provided to and escrowed by the Settlement Administrator. The Settlement Amount shall
25 be paid to the Settlement Administrator by Defendant within 15 calendar days of its receipt of a
26 notice of entry of the Court's approval order.

27 If a PAGA Group member is deceased at the time of distribution, the Settlement
28 Administrator shall distribute the deceased PAGA Group member's Individual Settlement

1 Payment to the deceased PAGA Group member's legal heir(s). In the event of a dispute as to the
2 legal heir(s), the Settlement Administrator shall notify the executor of the deceased PAGA Group
3 member's estate and attempt to place the deceased PAGA Group member's payment in escrow
4 or similar disposition such that any competing heirs may take whatever action they wish to
5 resolve ultimate disposition of such money and the Settlement Administrator and the Parties
6 hereto may disclaim any further interest in or obligation in relation to such money.

7 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
8 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip
9 trace search and, if another address is identified, shall mail the check to the newly identified
10 address. If the Settlement Administrator is unable to obtain a valid mailing address through this
11 process, the monies represented by the check shall be turned over according to the California
12 State Controller for deposit in the Unclaimed Property Fund in the name of the PAGA Group
13 member to whom the uncashed Individual Settlement Payment was drafted.

14 Settlement checks will specifically indicate that they are void if not negotiated within
15 180 days of their issuance. Any settlement checks that remain uncashed 180 or more calendar
16 days after issuance by the Settlement Administrator shall be voided. The Settlement
17 Administrator will remit the entire amount of each PAGA Group member's uncashed Individual
18 Settlement Payment to the California State Controller for deposit in the Unclaimed Property
19 Fund in the name of the PAGA Group member to whom the uncashed Individual Settlement
20 Payment was drafted.

21 **C. Time for Distribution of the Enhancement to Plaintiff, Attorneys' Fees and**
22 **Litigation Costs to Plaintiff's Counsel, the LWDA Payment and**
23 **Administrative Costs.**

24 The Settlement Administrator shall cause the Court approved enhancement to Plaintiff,
25 attorney's fees and litigation costs awarded to Plaintiff's Counsel, and the LWDA Payment to
26 be paid within 15 days of the funding of the Settlement Amount. The Settlement Administrator
27 may pay itself the Court-approved administrative costs once the Individual Settlement Payments
28 have been mailed out.

1 **IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

2 The amounts paid under this Agreement do not represent a modification of any
3 previously credited hours of service under any employee benefit plan, policy or bonus program
4 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
5 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)
6 sponsored by Defendant, policies or bonus programs. Any payments made under the terms of
7 this Agreement shall not be applied retroactively, currently or on a going forward basis as salary,
8 earnings, wages, or any other form of compensation for the purposes of Defendant's benefit
9 plan, policy or bonus program. Defendant retains the right to modify the language of its benefit
10 plans, policies and bonus programs to effect this intent and to make clear that any amounts paid
11 pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," or any
12 similar measuring term as defined by applicable plans, policies and bonus programs for purpose
13 of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or
14 benefits are not required by this Agreement.

15 **X. PLAINTIFF'S COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

16 Defendant shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's
17 Counsel shall not seek or receive an amount in excess of Eighty-Three Thousand Three Hundred
18 and Fifty Dollars and Zero Cents (\$83,350.00), which represents 33 1/3% of the Settlement
19 Amount, for all past and future attorneys' fees necessary to prosecute, settle and administer the
20 Litigation and this Agreement. Additionally, Defendant shall not oppose an application by
21 Plaintiff's Counsel for, and Plaintiff's Counsel shall not seek or receive an amount in excess of,
22 Fifteen Thousand Dollars (\$15,000.00), which represents all past and future litigation costs and
23 expenses necessary to prosecute, settle and administer the Litigation and this Agreement. Any
24 attorneys' fees or litigation costs awarded to Plaintiff's Counsel by the Court shall be deducted
25 from the Settlement Amount for the purpose of determining the Net Settlement Amount. This
26 amount shall include all attorneys' fees, litigation costs and expenses for which Plaintiff and
27 Plaintiff's Counsel could claim under any legal theory whatsoever. Should the Court approve a
28 lesser percentage or amount of fees and/or litigation costs than the amount that Plaintiff's

Counsel ultimately seeks, then the unapproved portion or portions shall revert to the Net Settlement Amount.

XI. ENHANCEMENT TO PLAINTIFF

Defendant shall not oppose an application by Plaintiff, and Plaintiff shall not seek or receive an amount in excess of Seven Thousand Five Hundred Dollars (\$7,500.00) for his participation in and assistance with the Litigation and his Individual Settlement Payment to which he is entitled as member of the PAGA Group. Any enhancement awarded to Plaintiff by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff, then the unapproved portion or portions shall revert into the Net Settlement Amount.

XII. TAXATION AND ALLOCATION

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"): 100% as penalties.

PAGA Group members may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

XIII. COURT APPROVAL

This Agreement is contingent upon approval by the Court. Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure approval of this Agreement, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining Court approval of this Agreement in all respects.

XIV. APPRAISAL AND CERTIFICATION BY THE SETTLEMENT ADMINISTRATOR.

The Settlement Administrator shall keep Plaintiff's Counsel and Defendant's Counsel apprised of all distributions from the Settlement Amount. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such

1 completion to Plaintiff's Counsel and Defendant's Counsel. The Settlement Administrator shall
2 also provide Defendant with a final accounting, including the names of payees and the amounts
3 of the Individual Settlement Payments.

4 **XV. MISCELLANEOUS PROVISIONS**

5 **A. Stay of Litigation.**

6 Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending
7 approval of this Agreement by the Court.

8 **B. Interpretation of the Agreement.**

9 This Agreement constitutes the entire agreement between Plaintiff and Defendant.
10 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
11 other written or oral representations or terms, and no such extrinsic oral or written
12 representations or terms shall modify, vary or contradict its terms. In entering into this
13 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
14 may not be varied or contradicted by extrinsic evidence. This Agreement will be interpreted
15 and enforced under the laws of the State of California, both in its procedural and substantive
16 aspects, without regard to its conflict of law's provisions. Any claim arising out of or relating
17 to this Agreement, or the subject matter hereof, will be resolved solely and exclusively in the
18 Superior Court of the State of California for the County of Napa, and Plaintiff and Defendant
19 hereby consent to the personal jurisdiction of the Court over them solely in connection
20 therewith. Plaintiff, on his own behalf and on behalf of the PAGA Group and the State of
21 California, and Defendant participated in the negotiation and drafting of this Agreement and had
22 available to them the advice and assistance of independent counsel. As such, neither Plaintiff
23 nor Defendant may claim that any ambiguity in this Agreement should be construed against the
24 other.

25 The terms and conditions of this Agreement constitute the exclusive and final
26 understanding and expression of all agreements between Plaintiff and Defendant with respect to
27 the resolution of the Litigation. This Agreement may be modified only by a writing signed by
28 counsel for all Parties or their successors-in-interest.

1 **C. Further Cooperation.**

2 Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare
3 and execute all documents, to seek approval of this Agreement from the Court, and to do all
4 things reasonably necessary or convenient to consummate this Agreement as expeditiously as
5 possible.

6 **D. Counterparts.**

7 This Agreement may be executed in one or more actual or non-original counterparts, all
8 of which will be considered one and the same instrument and all of which will be considered
9 duplicate originals.

10 **F. Authority.**

11 Each individual signing below warrants that he or she has the authority to execute this
12 Agreement on behalf of the party for whom or which that individual signs.

13 **G. No Third-Party Beneficiaries.**

14 Named Plaintiff, members of the PAGA Group, the State of California, Defendant and
15 Released Parties are direct beneficiaries of this Agreement. The Parties are not aware of any
16 third party beneficiaries.

17 **H. Deadlines Falling on Weekends or Holidays.**

18 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
19 or legal holiday, that deadline shall be continued until the following business day.

20 **J. Severability.**

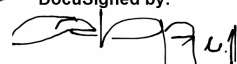
21 In the event that any one or more of the provisions contained in this Agreement shall for
22 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
23 unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiff's
24 Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as
25 if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

26 **K. Defendant's Fees and Costs**

27 All of Defendant's own legal fees, costs and expenses incurred in this Litigation shall
28 be borne by Defendant.

1
2 APPROVED AS TO CONTENT

3 DATED: October ²⁶, 2020

DocuSigned by:

4C3DFD8DEEB495...

ROMULO CABRITO

5
6 DATED: October ¹⁹, 2020

By: 

For: ENVIRONMENTAL SERVICE
CONCEPTS, LLC

10 APPROVED AS TO FORM

11
12 DATE: [Date] 10/26/2020

MOON & YANG, APC

DocuSigned by:


89521E71A9E14D8...

13
14 BY: KANE MOON
ALLEN FEGHALI
ATTORNEYS FOR PLAINTIFF,
ROMULO CABRITO

15
16
17
18 DATE: [Date]

FISHER & PHILLIPS LLP

19
20 By: 

GRACE Y. HOROUPIAN
REBECCA S. KING
Attorneys for Defendant,
ENVIRONMENTAL SERVICE CONCEPTS, LLC

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