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Attorneys for Plaintiff, the Class, and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SAKHOEUTH “KURT” SAO, individually
and on behalf of all others similarly situated,

Plaintiff,

vs.

AUTOMATED GATE SERVICES, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. RIC2001904

[Assigned for all purposes to the Hon. Sunshine
S. Sykes, Dept. 6]

**DECLARATION OF MAI TULYATHAN
IN SUPPORT OF PLAINTIFF’S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: October 20, 2021
Time: 8:30 A.M.
Dept.: 6

Complaint Filed: June 1, 2020
Trial Date: None Set

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I, Mai Tulyathan, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Named Plaintiff Sakhoeuth “Kurt” Sao (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

PROCEDURAL HISTORY

2. On March 16, 2020, Plaintiff filed his written notice with the California Labor & Workforce Development Agency (“LWDA”), alleging violations of Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1194, and 2802. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff’s PAGA notice to the LWDA.

3. On June 1, 2020, Plaintiff filed the operative Complaint in Riverside County Superior Court. The Complaint alleges class and representative PAGA claims for violations of Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1194, 2698, 2802, and the UCL. In addition to the class and PAGA claims, Plaintiff also asserts individual claims for violations of the FEHA in the Complaint.

4. As alleged in the operative Complaint, Plaintiff's class and representative claims are predicated upon the following allegations. With respect to Plaintiff's failure to pay wages claim, Plaintiff alleges that Defendant underpaid overtime wages based on the incorrect overtime regular rate of pay. In particular, whenever any non-discretionary incentives, such as prevailing wage pay, were paid to Plaintiff and employees, Defendant does not include said non-discretionary incentives into the calculation of the overtime regular rate of pay.

5. With respect to Plaintiff's meal and rest break claims, Plaintiff contends that Defendant routinely denied requests to take meal and rest breaks. Notwithstanding the lack of meal breaks provided to its employees, Defendant had a practice of falsely deducting time from employees' work hours and claimed it as purported meal break times. As such, Plaintiff alleges that additional wages are owed for the improper deduction of time, as well as unpaid meal and rest premium compensation.

1 6. Plaintiff also alleges that Defendant failed to reimburse business expenses in
2 violation of Labor Code § 2802. In particular, Defendant failed to reimburse the costs of
3 specialized tools that Plaintiff and other employees were required to purchase on their own to
4 perform their jobs.

5 7. With respect to Plaintiff's claims under Labor Code § 226(a), Plaintiff alleges
6 derivative wage statement violations resulting from the overtime regular rate violations, and
7 meal and rest period violations.

8 8. As a result of the alleged violations above, Plaintiff seeks damages and penalties
9 under the California Labor Code, the California Business & Professions Code, and the PAGA,
10 as well as attorneys' fees and costs.

11 **PLAINTIFF'S DISCOVERY AND INVESTIGATION**

12 9. Shortly after the filing his Complaint, Plaintiff's counsel was contacted by
13 Defendant's counsel regarding informal settlement discussions. The Parties subsequently
14 engaged in informal discovery in order for Plaintiff to assess the claims, as well as the
15 maximum exposure of damages and penalties.

16 10. On October 6, 2020, Plaintiff commenced formal discovery and propounded
17 written discovery upon Defendant, including requests for production of documents and form
18 and special interrogatories. Defendant has also informally produced data and documents
19 pertaining to the putative class members, including without limitation, the number of current
20 and former putative class members during the class period and PAGA period at issue, the
21 number of wage statements at issue, the hourly rates of pay during the class period, numerous
22 spreadsheets containing time and payroll records for putative class members, Defendant's
23 employee handbook and payroll policies pertaining to payment of overtime wages, prevailing
24 wage pay, meal and rest break, reimbursement of business expenses, and the issuance of wage
25 statements. This data and information produced by Defendant allowed Plaintiff to assess
26 liability and maximum exposure of class and PAGA penalties.

27 11. The Parties continued informal settlement negotiations over the course of several
28 months. After thorough investigation and evaluation of the facts and claims, and as a result of

1 the arm's-length negotiation, the Parties and their counsel ultimately reached the current
2 settlement. In resolution of Plaintiff's class and PAGA claims, the Parties entered into the Joint
3 Stipulation of Class Action Settlement ("Settlement," "Stipulation," or "Settlement
4 Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as
5 **Exhibit B.**

6 12. Each side has apprised the other of their respective factual contentions, legal
7 theories and defenses, resulting in negotiations taking place between the Parties. The Parties
8 recognize the risk, expense, and delay in continuing litigation with the class and PAGA claims,
9 and believe the Settlement to be fair, reasonable, and adequate.

10 13. With respect to Plaintiff's individual FEHA claims, the Parties entered into a
11 separate, confidential settlement agreement to resolve Plaintiff's individual claims.

12 14. Pursuant to the Court's Class Action Case Management Order #1, dated August
13 25, 2020, Plaintiff has *not* filed a Notice of Settlement of Entire Case (Form CM-200).

14 **SUMMARY OF THE MONETARY SETTLEMENT TERMS**

15 15. The Settlement Agreement seeks to resolve the claims of "all current and former
16 non-exempt employees of Defendant in the State of California at any time during the Class
17 Period" (the "Class"). (*See* Settlement Agreement at ¶ 2.) The Class Period is defined as the
18 period from "April 1, 2016 through December 31, 2020." (*Id.* at ¶ 6.) The Class Period end
19 date of December 31, 2020 is based on the cut-off date of the data produced by Defendant. As
20 part of the Settlement, the Parties have agreed to cut-off the Class Members' release period
21 through the end of the Class Period.

22 16. Pursuant to the Settlement Agreement, Defendant has represented that there are
23 no more than 48 individuals that comprise this Class, and that the number of workweeks worked
24 by Class Members during the Class Period does not exceed 3,217 workweeks. (Settlement
25 Agreement at ¶ 14.)

26 17. The Settlement provides for One Hundred Sixty-Two Thousand Five Hundred
27 Dollars (\$162,500.00) as the Gross Settlement Amount. (*See* Settlement Agreement at ¶ 29.)
28 The Net Settlement Amount, calculated after deduction of attorneys' fees (up to \$54,166.67),

litigation costs (up to \$15,000.00), the Class Representative Enhancement Payment (up to \$5,000.00), payment to the LWDA pursuant to the PAGA (\$11,250.00), and settlement administration costs (up to \$2,845.00), is estimated to be approximately **\$74,238.33**. (*Id.* at ¶¶ 16, 31-34.)

18. Subject to Court approval, \$15,000.00 of the Gross Settlement Amount will be allocated to PAGA penalties. (*See* Settlement Agreement at ¶ 34.) Seventy-five percent of this amount (\$11,250.00) shall be paid to the LWDA pursuant to the PAGA, Labor Code § 2699 *et seq.* The remaining twenty-five percent (\$3,750.00) will remain as part of the Net Settlement Amount to be distributed to Participating Class Members. (*Id.* at ¶¶ 16, 34.)

19. Each Participating Class Member who does not opt-out of the Settlement will be awarded a portion of the Net Settlement Amount on a *pro rata* basis, based upon the number of eligible workweeks each respective Participating Class Member worked during the Class Period. (Settlement Agreement at ¶ 35.) Based thereon, on a raw average, each Participating Class Member may potentially recover approximately **\$1,546.63**. The amount actually paid to each Participating Class Member may increase or decrease depending on the actual number of workweeks he or she worked during the Class Period.

20. As the amount paid to each Participating Class Member will vary, Plaintiff cannot provide estimated high and low individual settlement payments at this time but will do so in her final approval motion, after class data has been transmitted to the Settlement Administrator.

21. Finally, the terms of the Settlement provide that uncashed checks (upon the expiration date) shall be distributed to the Legal Aid at Work (LAAW). (*See* Settlement Agreement at ¶ 55.) Plaintiff's counsel proposed LAAW as the *cy pres* beneficiary for uncashed settlement funds in compliance with Code of Civil Procedure § 384, which provides, in part, that the unpaid residue of settlement funds shall be directed to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the

1 indigent.” (Code of Civ. Proc. § 384, subd. (b).) Plaintiff’s counsel believes that LAAW’s
2 objectives fully comply with Code of Civil Procedure § 384.

3 22. Neither Plaintiff nor Plaintiff’s counsel have any relationship with or connection
4 to Legal Aid at Work. I have made reasonable inquiry of attorneys of my law firm and of
5 Plaintiff regarding any such relationship with LAAW, and I am not aware of any such
6 relationship between myself, members of my law firm, or Plaintiff.

7 **POTENTIAL STATUTORY AND CIVIL PENALTIES**

8 23. I was able to estimate the potential damages and penalties based on the data and
9 documents provided by Defendant, including the number of current and former putative class
10 members during the class period and PAGA period at issue, the number of wage statements at
11 issue, the hourly rates of pay during the class period, and numerous spreadsheets containing
12 time and payroll records for putative class members.

13 24. Based on the class data provided by Defendant, Plaintiff estimated that
14 Defendant would face potential liability of up to approximately \$507,943.33 for Plaintiff’s class
15 claims if Plaintiff succeeded at trial. Specifically, the breakdown for the damages/penalties for
16 each class claim is as follows:

- 17 • \$63,824.25 for unpaid wages, calculated based on payroll data provided by
18 Defendant for all Class Members;
- 19 • \$138,578.40 in waiting time penalties for unpaid wages, calculated based on
20 payroll data provided by Defendant for approximately 28 former employees;
- 21 • \$138,395.34 of premium pay owed for missed meal periods, calculated based on
22 an average pay rate of Class Members’ from 2017 to 2020 of \$21.51, over 3,217
23 workweeks at issue during the Class Period, and assuming on average 2 meal
24 period violations each workweek;
- 25 • \$138,395.34 of premium pay owed for missed rest periods, calculated based on
26 an average pay rate of Class Members’ from 2017 to 2020 of \$21.51, over 3,217
27 workweeks at issue during the Class Period, and assuming on average 2 meal
28 period violations each workweek;

- \$23,950.00 for Labor Code § 226(e) penalties for derivative wage statement violations; and
- \$4,800.00 for reimbursement of business expenses (assuming \$100 in unpaid expenses for specialized tools per Class Member).

This amounts to a total of approximately \$507,943.33 if Plaintiff were to prevail on the class claims.

25. Based on the data provided by Defendant, I also calculated potential civil penalties for Plaintiff's PAGA claims. I estimated that Defendant could face civil penalties of up to \$312,400.00. The breakdown for the calculation of Plaintiff's PAGA penalties is as follows:

- \$21,300.00 for PAGA penalties with respect to the unpaid wages violations (approximately 213 pay periods with payment for overtime and non-discretionary incentives during the PAGA period x \$100 initial violation per pay period);
- \$64,000.00 for PAGA penalties with respect to meal period violations (approximately 640 pay periods at issue during the PAGA period x \$100 initial violation per pay period);
- \$64,000.00 for PAGA penalties with respect to rest period violations (approximately 640 pay periods at issue during the PAGA period x \$100 initial violation per pay period);
- \$3,100.00 for PAGA penalties with respect to business reimbursement violations (31 aggrieved employees during the PAGA period x \$100 initial violation); and
- \$160,000.00 for PAGA penalties with respect to wage statement violations under Labor Code § 226(a) (approximately 640 pay periods at issue during the PAGA period x \$250 violation penalty under Labor Code § 226.3 pursuant to *Raines v. Coastal Pac. Food Dist.* (2018) 23 Cal. App. 5th 667).

26. Based on the damages and penalties above, the collective total amount of class and PAGA recovery is approximately \$820,434.33.

1 27. Defendant denies liability as to all of Plaintiff's claims and it has raised several
2 defenses that presented risk. In this regard, Defendant asserts that it has maintained lawful
3 policies and practices in place throughout the class period in relation to Plaintiff's claims,
4 including that it has provided opportunities to take meal and rest periods and that its meal and
5 rest period policies and practices were facially compliant. Defendant also argues that it
6 correctly calculates the overtime regular rate of pay based on a weighted average method. In
7 this regard, Defendant contends that it has complied with Department of Industrial Relations'
8 guidelines in paying prevailing wage pay and incorporating such into the payment of overtime
9 wages, such that some employees actually received overpayments of overtime wages.
10 Additionally, it is also Defendant's position that Plaintiff cannot prove willfulness and thus it
11 would not be subject to waiting time penalties under Labor Code § 203. Defendant further
12 maintains that it would be unjust for the Court to award maximum PAGA penalties as it has
13 made good faith efforts to comply with the Labor Code. With respect to the 2802 claim,
14 Defendant maintains that it does not place any requirement on Plaintiff or any similarly situated
15 employees to purchase any specialized tools for jobs and/or projects. Furthermore, Defendant
16 contends that since Plaintiff would not be able to prove any of the claims above, his wage
17 statement claims, which are entirely derivative in nature, would fail.

18 28. Furthermore, although Plaintiff believes in the merits of the alleged claims and
19 maintains that there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant
20 may raise defenses to the claims and further with respect to the reduction of PAGA penalties
21 and that it could be persuasive to the Court. Thus, even if Plaintiff were to successfully prove
22 his claims at trial, there is a possibility that the Court may only award a small percentage of
23 PAGA penalties, as the Court has discretion to do so. Pursuant to Labor Code § 2699(e)(2), the
24 Court can decline to award PAGA penalties where "if, based on the facts and circumstances of
25 the particular case, to do otherwise, would result in an award that is unjust, arbitrary and
26 oppressive, or confiscatory."

27 29. The Gross Settlement Amount was premised with these risks above in mind,
28 associated with the possibility of the Court significantly reducing Plaintiff's PAGA penalties,

1 along with other attendant risks, even if Plaintiff was to prevail at trial.

2 30. Although Plaintiff believes that a class can be certified, Plaintiff also believes in
3 the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
4 involved in not prevailing on one or more of the causes of action or theories alleged in the
5 operative Complaint, the possibility of non-certification, and the potential for appeals.

6 31. Here, the Gross Settlement Amount is fair and reasonable as it is approximately
7 **19.8%** of the potential recovery of Plaintiff's class and PAGA claims if Plaintiff were to fully
8 succeed at trial.

9 **THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

10 32. From the inception of the case, Class Counsel has zealously represented the
11 interests of the Class. The Settlement was obtained for the benefit of the Class, as opposed to
12 the individual Class Representative. Further, Class Counsel has been approved as class counsel
13 on a number of prior cases, have litigated numerous other class action cases, and are competent
14 to represent the Class.

15 33. I have spent significant time researching and pursuing the claims that have been
16 alleged in this action. Based on my review of all the information, and based on my experience
17 in class action litigation, I believe this settlement to be fair, adequate, and reasonable.

18 34. I am *not* aware of any related class, representative, or other collective action
19 pending in this Court or in any other jurisdiction that asserts claims against Defendant that are
20 similar to those asserted in this action on behalf of a class or group of individuals some or all of
21 whom would also be members of the class defined in this action. I have consulted with the
22 attorneys of my law firm, as well as met and conferred with counsel for Defendant, and have not
23 encountered any such related class, representative, or other collective action.

24 **CLASS NOTICE, SETTLEMENT ADMINISTRATION AND BIDDING PROCESS**

25 35. Attached hereto as **Exhibit C** is a true and correct copy of the proposed Notice of
26 Class Action Settlement ("Class Notice") to be sent to Class Members. The proposed Class
27 Notice explicitly sets forth Class Members' options in responding to the settlement, provides for
28 their estimated individual settlement payment amounts, instructions on how to submit Request

1 for Exclusion Forms and/or Objection Forms, and the deadlines by which to do so, the claims to
2 be released, further detail regarding the final approval hearing, the Court's address and further
3 instructions regarding accessing documents in the case, and Class Counsel and the Settlement
4 Administrator's contact information for further questions.

5 36. The Class Notice will also be accompanied by a Request for Exclusion Form and
6 an Objection Form that Class Members may use. Attached hereto as **Exhibit D** is a true and
7 correct copy of the proposed Request for Exclusion Form to be sent to Class Members.
8 Attached hereto as **Exhibit E** is a true and correct copy of the proposed Objection Form to be
9 sent to Class Members. Both forms also include the deadline and return address for submission.

10 37. I obtained three quotes for settlement administration from (1) Phoenix Settlement
11 Administrators, (2) Simpluris Class Action Settlement Administration, and (3) Rust Consulting.
12 The quotes included notice distribution in English and Spanish, mailing and re-mailing of
13 notices and exclusion and objection forms, no claim forms, establishing a toll-free number for
14 class members, processing and tracking any opt outs and written objections received, and
15 calculation of disbursements and distribution of checks pursuant to the Settlement Agreement.
16 Phoenix Settlement Administrators provided the lowest quote for settlement administration, and
17 thus the Parties agreed to use Phoenix Settlement Administrators to administer the settlement.

18 38. Pursuant to the quote Plaintiff's counsel received from Phoenix Settlement
19 Administrators, settlement administration costs are estimated not to exceed \$2,845.00. Class
20 Counsel believes that this amount is reasonable in relation to the value of the settlement.

21 **ATTORNEY EXPERIENCE**

22 39. I am one of the primary attorneys on this matter. My qualifications are as
23 follows: I received my JD from Loyola Law School in 2017. I received the First Honors
24 Award in Legal Research and Writing, First Honors Award in Appellate Advocacy, and First
25 Honors Award in Civil Litigation Practicum I for achieving the highest grade in those classes.
26 During law school, I was a Staff Editor for Loyola Law Review. I was also an extern at the U.S.
27 District Court, Central District of California, for the Honorable Christina A. Snyder, and a
28 certified law clerk at the San Diego County District Attorney's Office, Collaborative Courts

1 Division, and the Los Angeles County District Attorney's Office, Consumer Protection and
2 Environmental Crimes Division. In 2016, I participated in Loyola Law School's Scott Moot
3 Court Competition, where I placed Top 16 and was awarded the Top Ten Brief Award. In
4 2017, I participated in the Employment Rights Clinic, an extension of the Division of Labor
5 Standards Enforcement created to investigate retaliation complaints. Upon graduation from law
6 school, I was admitted to the California Bar in December 2017.

7 40. I am currently an associate at the law firm Diversity Law Group, P.C., an
8 employment law firm that has handled numerous wage and hour class and individual actions, on
9 both plaintiff and defense sides. The firm currently has cases in numerous state courts,
10 including the Santa Clara Superior Court, Los Angeles Superior Court, Orange County Superior
11 Court, San Diego County Superior Court, Monterey County Superior Court, as well as the
12 United States District Courts for the Central, Northern, Southern, and Eastern Districts of
13 California. I have handled and am currently handling numerous wage and hour class action and
14 PAGA lawsuits, including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case Number 5:17-cv-
15 00062-LHK); *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-
16 MDD); *Arroyo v. Int'l Paper Company* (Case Number 5:17-cv-06211-BLF); *Baker v.*
17 *California Forensic Medical Group, Inc., et al.*, Judicial Council Coordination Proceeding No.
18 4999 (Lead Case No. 17CV003723); *Westmoreland v. KinderCare Education LLC* (Case
19 Number CGC-19-573125); *Arrington v. Automatic Data Process Insurance Agency, Inc.* (Case
20 Number 30-2019-01099994-CU-OE-CXC); *Garcia v. Apex Systems, LLC, et al.* (Case Number
21 RG19014709); *Martin v. Wells Fargo Bank* (Case Number 19-cv-01969-JAK).

22 41. In 2018, I argued before the California Court of Appeal, Second Appellate
23 District, in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case
24 Number B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.*
25 (California Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In
26 that same year, I also assisted the firm in successfully obtaining class certification and partial
27 summary judgment by the United States District Court, Central District of California in the case
28 of *Magadia v. Wal-Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired

1 the bench trial in that same case in December 2018.

2 42. I have also been certified and/or approved as class counsel in numerous other
3 wage/hour class actions. Most recently, I was certified and/or approved as class counsel in the
4 cases *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD),
5 *Richert v. Samaritan, LLC, et al.* (Case Number 17CV314186), *Song v. THC – Orange County,*
6 *Inc.* (Case No. 8-17-cv-965-JLS (DFM)), and *Hernandez v. Wells Fargo Bank National Ass’n,*
7 *et al* (Case No. 16-CV-299319). Moreover, I was granted final approval as class counsel in *Lao*
8 *v. H & M Hennes & Mauritz, L.P.* (Case No. 5:16:cv-333 EJD), *Abarca v. El Estero Car Wash,*
9 *Inc. et al* (Case No. 18CV003398), *Valles v. Community Hospital of the Monterey Peninsula*
10 *(Case No. 17CV003452), Chavez v. Hugo Boss Retail, Inc.* (Case No. 18CV322644),
11 *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319); *Baker v.*
12 *California Forensic Medical Group, Inc., et al.,* Judicial Council Coordination Proceeding No.
13 4999 (Lead Case No. 17CV003723); *Mendez v. Falcon Trading Company* (Case No.
14 19CV004512); *Truong v. DS Services of America, Inc.* (Case No. FCS054399).

15 43. My co-counsel and I will adequately represent the Class Members in this action.
16 Plaintiff’s counsel have and will zealously represent Plaintiff and the Class and pursue this
17 lawsuit to its conclusion.

18 44. I have no conflicts with the Class and will adequately represent the Class.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

21 Executed on this 27th day of September, 2021, at Los Angeles, California.

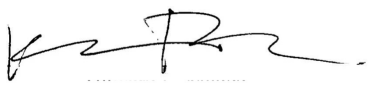
22 
23 _____
24 Mai Tulyathan

EXHIBIT A

SAKHOEUTH K. SAO

c/o DIVERSITY LAW GROUP, P.C.
515. S. Figueroa St., Suite 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

March 13, 2020

VIA ON-LINE FILING WITH LWDA AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED TO EMPLOYER

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

Re: *Sao v. Automated Gate Services, Inc.*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of the claims asserted on behalf of myself and all similarly aggrieved employees against my former employer, Automated Gate Services, Inc. (the "Company"). Specifically, I allege that the Company:

1. Violated Labor Code §§ 510, 558, and 1194 by failing to correctly calculate the regular rate of pay for purposes of paying overtime wages to myself and other non-exempt employees by not properly calculating all non-discretionary compensation into the regular rate, including without limitation, prevailing wage pay. Therefore, the Company owes me and other employees additional overtime pay based on the correct regular rate of pay. Further as a result of such violations, the Company violated Labor Code §§ 201-203 by not paying employees all of their wages upon separation of employment due to the underpaid overtime wages and Labor Code § 226(a) as the overtime wage rates, and net/gross wages earned shown on the wage statements were inaccurate due to the overtime violations set forth above.

2. Violated Labor Code § 226.7 by failing to provide proper meal and rest breaks to myself and other similarly situated aggrieved employees. Due to the nature of the business, the Company routinely refused to provide off-duty meal and rest breaks. Rather, because of time constraints to finish projects, we were routinely denied requests to take meal and rest breaks. Despite this, the Company automatically deducted half hour of time from each day of work and claimed it as our meal break time. In that regard, I further allege violations of Labor Code §§ 201-204, 510, 558, and 1194 as to failing to pay all earned wages.

3. Violated Labor Code § 2802 by failing to reimburse myself and other similarly situated aggrieved employees the costs of the tools we were required to purchase in order to perform our jobs. While the Company provided simple tools for us to use, many of the projects required specialized tools, which the Company did not provide. Rather, I and other employees were required to purchase such tools on our own, which the Company did not reimburse us for.

March 13, 2020

Page 2

The address for the Company is:

Automated Gate Services, Inc.
526 Princeland Court
Corona, CA 92879

Please contact my attorneys at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,


Sakhoeth K. Sao

cc: Automated Gate Services, Inc. (by certified mail)

EXHIBIT B

Howard L. Magee (State Bar No. 185199)
Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SAKHOEUTH "KURT" SAO, individually
and on behalf of all others similarly situated,

Plaintiff,

vs.

AUTOMATED GATE SERVICES, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. RIC2001904

[Assigned for all purposes to the Hon. Sunshine
S. Sykes, Dept. 6]

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

Complaint Filed: June 1, 2020

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class Action Settlement is made and entered into by and between
3 Plaintiff Sakhoeuth "Kurt" Sao ("Plaintiff" or "Sao"), individually and on behalf of others
4 similarly situated, and Defendant Automated Gate Services, Inc. ("Defendant"). Plaintiff and
5 Defendant will at times be referred to collectively as the "Parties" and may individually be referred
6 to as a "party."

7 **RECITALS**

8 WHEREAS, Plaintiff was employed by Defendant during the alleged Class Period, defined
9 below as the period from April 1, 2016 through December 31, 2020.

10 WHEREAS, on June 1, 2020, Plaintiff filed a Class, Representative, and Individual
11 Complaint for Damages in the Superior Court of California, County of Riverside, Case Number
12 RIC2001904, entitled *Sakhoeuth "Kurt" Sao v. Automated Gate Services, Inc.* Plaintiff asserts
13 individual causes of action against Defendant for: National Original Discrimination in Violation
14 of California Government Code § 12940(a); Harassment in Violation of California Government
15 Code § 12940(j)(1); Failure to Investigate/Prevent Harassment and Discrimination in the
16 Workplace in Violation of California Government Code § 12940(k); Retaliation in Violation of
17 California Government Code § 12940(h); Wrongful Termination in Violation of Public Policy;
18 and Intentional Infliction of Emotional Distress. Plaintiff also asserts class and representative
19 PAGA claims for Failure to Pay Wages; Violation of California Labor Code §§ 226.7 and 512;
20 Violation of California Labor Code § 226.7; Violation of California Labor Code § 2802; Violation
21 of California Labor Code § 226(a); Violation of California Business and Professions Code §
22 17200, *et seq.*; and Violation of Labor Code § 2698, *et seq.* (the "Action").

23 WHEREAS, the Parties want to resolve and settle the dispute that has arisen between them,
24 as well as any other claims, asserted or not asserted, that either party may have against the other
25 arising out of Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 2802, and 2698, *et seq.*,
26 and facts or events alleged in connection with said claims, known or unknown, occurring up to
27 and including the date of execution of this Agreement.

28 Therefore, in consideration of the promises in this Agreement, the Parties agree as follows:

1 **DEFINITIONS**

2 The following definitions are applicable to this Agreement. Definitions contained
3 elsewhere in this Agreement shall also be effective:

4 1. "Agreement," "Settlement," or "Settlement Agreement" means this Joint
5 Stipulation of Class Action Settlement.

6 2. "Class" or "Class Member(s)" means all current and former non-exempt
7 employees of Defendant in the State of California at any time during the Class Period.

8 3. "Class Counsel" means Larry W. Lee, Howard L. Magee, and Mai Tulyathan of
9 Diversity Law Group, P.C.

10 4. "Class Counsel Fees and Costs" means attorneys' fees, costs, and expenses
11 approved by the Court for Class Counsel's litigation and resolution of the Action, and all costs
12 incurred and to be incurred by Class Counsel in the Action, including, but not limited to, costs
13 associated with documenting the Settlement, providing any notices required as part of the
14 Settlement or Court order, securing the Court's approval of the Settlement, administering the
15 Settlement, and obtaining entry of the Judgment terminating the Action. Class Counsel will
16 request attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount for One
17 Hundred Sixty-Two Thousand Five Hundred Dollars (\$162,500.00), i.e. the sum of Fifty-Four
18 Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$54,166.67), and litigation costs
19 not to exceed Fifteen Thousand Dollars (\$15,000.00), subject to the Court finally approving this
20 Settlement. Defendant has agreed not to oppose Class Counsel's request for Class Counsel Fees
21 and Costs. Any portion of the Class Counsel Award not awarded to Class Counsel shall be added
22 to the Net Settlement Amount.

23 5. "Class List" means information regarding all Class Members that Defendant will
24 diligently and in good faith compile from its records and provide to the Claims Administrator after
25 Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office
26 Excel and will include each Class Member's: full name; employee number (if applicable); most
27 recent mailing address; Social Security Number; the number of workweeks (full or partial) worked
28 by each Class Member during the Class Period.

1 6. “Class Period” means the period from April 1, 2016 through December 31, 2020.

2 7. “Class Representative” or “Plaintiff” means Plaintiff Sakhoeuth “Kurt” Sao.

3 8. “Class Representative Enhancement Payment” means the amount that the Court
4 authorizes to be paid from the Gross Settlement Amount to the named Plaintiff in exchange for
5 executing a general release and in recognition of his efforts and risks in assisting with the
6 prosecution of the Action on behalf of Class Members. Plaintiff will request and Defendant will
7 not oppose Plaintiff’s application to the Court for a Class Representative Enhancement Payment
8 of Five Thousand Dollars (\$5,000.00) from the Gross Settlement Amount for Plaintiff’s
9 willingness to serve and efforts undertaken as Class Representative.

10 9. “Counsel for Defendant” means Mark J. Jacobs and Christopher M. Ahearn of
11 Fisher & Phillips LLP.

12 10. “Court” means the Superior Court for the State of California, County of Riverside,
13 or any other court taking jurisdiction of the Action.

14 11. “Eligible Workweeks” means the total number of workweeks (full or partial) that
15 Class Members worked as a non-exempt employee in Defendant in California during the Class
16 Period.

17 12. “Effective Date” means if there are no timely objections by Class Members or any
18 such objections have been withdrawn prior to the Final Approval Hearing, the date the Court signs
19 an order granting final approval of the Settlement Agreement; if timely objections are submitted
20 by one or more Class Members which are not withdrawn prior to the Final Approval Hearing, the
21 Effective Date shall be the latter of the following: (1) when the period for filing any appeal, writ
22 or other appellate proceeding has lapsed; (2) when any appeal, writ, or other appellate proceeding
23 opposing the Settlement has been dismissed finally and conclusively with no right to pursue further
24 remedies or relief; or (3) when any appeal, writ, or other appellate proceeding has upheld the
25 Court’s final approval order and judgment with no right to pursue further remedies or relief. It is
26 the intention of the Parties that the Settlement shall not become effective until the Court’s final
27 approval order and entered judgment is completely final, and there is no further recourse by any
28 appellant or objector who seeks to contest the Settlement Agreement.

1 13. “Final Approval” means the Court order granting final approval of the Settlement
2 Agreement.

3 14. “Gross Settlement Amount” means the maximum settlement amount of One
4 Hundred Sixty-Two Thousand Five Hundred Dollars (\$162,500.00) to be paid by Defendant as a
5 result of this Settlement Agreement. The Gross Settlement Amount includes all Individual
6 Settlement Payments to Participating Class Members, the Class Representative Enhancement
7 Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, the PAGA
8 Payment (including payment to the LWDA), and Class Counsel Fees and Costs (except employer-
9 side employment taxes). In no event will Defendant be required to pay more than the Gross
10 Settlement Amount, except that Defendant shall pay the employer’s share of the payroll taxes
11 separately from and in addition to the Gross Settlement Amount. Any interest that accrues in the
12 escrow account created by the Settlement Administrator shall also be added to the Gross
13 Settlement Amount. The Gross Settlement Amount is non-reversionary, such that no portion of
14 the Gross Settlement Amount shall revert to Defendant. Defendant represents that there are no
15 more than 48 individuals that comprise the Class, and that the number of Eligible Workweeks
16 does not exceed 3,217.

17 15. “Individual Settlement Payment” means the amount payable from the Net
18 Settlement Amount to each Participating Class Member.

19 16. “Net Settlement Amount” means the balance of the Gross Settlement Amount
20 remaining after deduction of the approved Class Representative Enhancement Payment,
21 Settlement Administration Costs, the LWDA portion of the PAGA Payment, and Class Counsel
22 Fees and Costs. The entire Net Settlement Amount is the maximum amount that will be available
23 for distribution to Participating Class Members.

24 17. “Notice Packet” means the Notice of Class Action Settlement (“Class Notice”),
25 the Request for Exclusion Form and the Objection Form in a form substantially similar to the
26 attached “**Exhibit A**,” subject to Court approval, and incorporated by reference into this
27 Settlement Agreement.

28 18. “Objection Form” means the form to be submitted by a Class Member indicating

1 their objection to the Settlement. In order for the Objection Form to be deemed valid, the Class
2 Member must provide a written statement of the grounds for his or her objection, sign the
3 Objection Form, return the form by mail to the Settlement Administrator at the specified address
4 indicated in the Notice Packet, and the Objection Form must be postmarked on or before the
5 Response Deadline which will be indicated in the Notice Packet. The Class Member may include
6 with the Objection Form any copies of any evidence and supporting papers (including, without
7 limitation, all briefs, written evidence, and declarations) upon which the objection is based. The
8 Objection Form will be included in the Notice Packet to be sent to Class Members by the
9 Settlement Administrator. Class Members may also submit their objection in any other written
10 format in lieu of the Objection Form, as long as they provide their name and contact information,
11 the case name and number, provide a written statement of the grounds for their objection(s), mail
12 the objection to the Settlement Administrator at the specified address, and postmark the written
13 objection on or before the Response Deadline. Further, objecting Class Members may appear at
14 the Final Approval hearing, either in person or through counsel retained at his or her expense, to
15 have their objections heard, whether or not they submitted a prior written objection. The
16 Settlement Administrator will forward all valid and timely written objections received to the
17 Parties, and the Parties will be permitted to respond in writing to such objections at least seven (7)
18 calendar. Any Class Members who do not submit a written objection according to this Paragraph
19 or do not present an objection at the Final Approval hearing will be deemed to have waived any
20 objections and will be foreclosed from making any objection to the Settlement, including by
21 appealing the order granting Final Approval.

22 19. "PAGA Payment" means the portion of the Gross Settlement Amount that the
23 Parties have agreed will be allocated to resolve all claims, penalties, and remedies under the Private
24 Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*, "PAGA"). The amount of the
25 PAGA Payment is subject to Court approval pursuant to California Labor Code § 2699(l). The
26 Parties have agreed that Fifteen Thousand Dollars (\$15,000.00) of the Gross Settlement Amount
27 shall be allocated to the resolution of any Class Members' claims arising under PAGA. Pursuant
28 to the PAGA, seventy-five percent (75%), *i.e.* the sum of Eleven Thousand Two Hundred Fifty

1 Dollars (\$11,250.00), of the PAGA Payment shall be paid to the California Labor and Workforce
2 Development Agency ("LWDA"), and 25%, *i.e.* the sum of Three Thousand Seven Hundred Fifty
3 Dollars (\$3,750.00), of the PAGA Payment shall be part of the Net Settlement Amount to be
4 distributed to Participating Class Members. This settlement will be forwarded to the LWDA by
5 Class Counsel or the Settlement Administrator and any reallocation of settlement proceeds to
6 increase the PAGA payment will not constitute grounds by either party to void this Agreement, so
7 long as the Gross Settlement Amount remains the same.

8 20. "Parties" means Plaintiff, on behalf of himself and Participating Class Members,
9 and Defendant collectively.

10 21. "Participating Class Members" means all Class Members who do not opt out of the
11 settlement by submitting a valid and timely Request for Exclusion Form.

12 22. "Preliminary Approval" means the Court's order granting preliminary approval of
13 the Settlement.

14 23. "Released Claims" means all claims that were or could have been asserted based
15 on the allegations in the operative complaint, including Plaintiff's letter to the Labor Workforce
16 and Development Agency dated March 13, 2020, including the following the following claims:

17 a. Any and all claims for failure to pay regular, minimum, and overtime wages
18 pursuant to Labor Code §§ 201-204, 510, 558, and 1194, and California
19 local and state laws relating to underpayment of overtime wages as a result
20 of failure to include prevailing wages (and related provisions of the Wage
21 Orders of the California Industrial Welfare Commission), including claims
22 for penalties, costs, and attorneys' fees related thereto, that accrued during
23 the Class Period;

24 b. Any and all claims for meal and rest period violations pursuant to Labor
25 Code §§ 226.7 and 512 (and related provisions of the Wage Orders of the
26 California Industrial Welfare Commission), including claims for penalties,
27 costs, and attorneys' fees related thereto, that accrued during the Class
28 Period;

- 1 c. Any and all claims for unpaid business reimbursements pursuant to Labor
2 Code § 2802 (and related provisions of the Wage Orders of the California
3 Industrial Welfare Commission), including claims for penalties, costs, and
4 attorneys' fees related thereto, that accrued during the Class Period;
- 5 d. Any and all claims for inaccurate wage statements pursuant to Labor Code
6 § 226 (and related provisions of the Wage Orders of the California Industrial
7 Welfare Commission), including claims for penalties, costs, and attorneys'
8 fees related thereto, that accrued during the Class Period; and
- 9 e. Any and all claims for civil penalties under the PAGA predicated on the
10 failure to pay regular, minimum, and overtime wages, failure to provide
11 meal and rest breaks, failure to reimburse business expenses, and failure to
12 provide accurate wage statements pursuant to Labor Code §§ 201-204, 226,
13 226.7, 510, 512, 558, 1194, and 2802 (and related provisions of the Wage
14 Orders of the California Industrial Welfare Commission), including claims
15 for costs and attorneys' fees related thereto, that accrued during the Class
16 Period.

17 24. "Released Parties" means Defendant, as well as its predecessors, successors, and
18 all former, current, and future owners, divisions, its respective former, current and future directors,
19 officers, employees, agents, representatives, attorneys, fiduciaries, assigns, heirs, executors,
20 administrators, beneficiaries, insurers, trustees, and affiliates, and any person or entity which could
21 be held jointly liable with Defendant as to any Released Claims.

22 25. "Request for Exclusion Form" means the form to be submitted by a Class Member
23 indicating a request to be excluded from the Settlement. In order for the Request for Exclusion
24 Form to be deemed valid, Class Members must provide their name and contact information, sign
25 the Request for Exclusion Form, and return the Request for Exclusion Form by mail to the
26 Settlement Administrator at the specified address indicated on the form on or before the Response
27 Deadline. The date of the postmark will be the exclusive means of determining whether a Request
28 for Exclusion Form is timely. The Request for Exclusion Form will be included in the Notice

1 Packet to be sent to Class Members by the Settlement Administrator.

2 26. "Response Deadline" means forty-five (45) days after the Settlement Administrator
3 initially mails the Notice Packet to Class Members, and the last date on which Class Members may
4 submit Requests for Exclusion or written objections to the Settlement.

5 27. "Settlement Administrator" means Phoenix Settlement Administrators, or any other
6 third-party class action settlement administrator agreed to by the Parties and approved by the Court
7 for the purposes of administering this Settlement Agreement. The Parties each represent that they
8 do not have any financial interest in the Settlement Administrator or otherwise have a relationship
9 with the Settlement Administrator that could create a conflict of interest.

10 28. "Settlement Administration Costs" means the fees and expenses reasonably
11 incurred by the Settlement Administrator as a result of the procedures and processes expressly
12 required by this Agreement, including, but not limited to, printing the Class Notice and all forms,
13 conducting a National Change of Address ("NCOA") search, distributing (including with
14 appropriate postage), tracking, and mailing the Notice Packet, any searches to locate any Class
15 Members, tax reporting, distributing the Individual Settlement Payments, Class Representative
16 Enhancement Payment, Class Counsel Fees and Costs, and providing necessary certification of
17 completion of notice, reports and declarations in connection with the settlement, providing and
18 authenticating all exclusion forms and objection forms received to the Court, establishing and
19 administering a qualified settlement fund account and other responsibilities set forth in this
20 Settlement Agreement and as requested by the Parties. The Settlement Administration Costs are
21 currently estimated to be not more than Two Thousand Eight Hundred Forty-Five Dollars
22 (\$2,845.00). Any portion of the Settlement Administration Costs not used or approved by the Court
23 shall be added to the Net Settlement Amount.

24 **TERMS OF AGREEMENT**

25 29. Settlement Consideration. Defendant shall pay the sum of the Gross Settlement
26 Amount of One Hundred Sixty-Two Thousand Five Hundred Dollars (\$162,500.00) as specified
27 in this Agreement in full satisfaction of all claims arising from the Action, which shall be used to
28 pay: (1) Individual Settlement Payments; (2) Class Counsel Fees and Costs; (3) Class

1 Representative Enhancement Payment; (4) Settlement Administration Costs to the Settlement
2 Administrator; and (5) the PAGA Payment (including LWDA payment). Defendant agrees to pay
3 the employer-side employment taxes for the wage portion of the settlement in addition to the Gross
4 Settlement Amount. The Parties agree that this is a non-reversionary Settlement and that no
5 portion of the Gross Settlement Amount shall revert to Defendant. Under no circumstances shall
6 Defendant be required to pay more than the Gross Settlement Amount.

7 30. Funding of the Gross Settlement Amount. Within thirty (30) calendar days after the
8 Effective Date, Defendant shall make a one-time deposit of the Gross Settlement Amount and
9 employer-side taxes on the wage portion of the Individual Settlement Payments into a Qualified
10 Settlement Fund ("QSF") to be established by the Settlement Administrator, from which the
11 Settlement Administrator will have authority to distribute money in accordance with the terms of
12 this Settlement Agreement.

13 31. Class Counsel Fees and Costs. Defendant agrees not to oppose or impede any
14 application or motion by Class Counsel for attorneys' fees of up to one-third (1/3) of the Gross
15 Settlement Amount, i.e., the sum of Fifty-Four Thousand One Hundred Sixty-Six Dollars and
16 Sixty-Seven Cents (\$54,166.67), and costs in the amount of up to Fifteen Thousand Dollars
17 (\$15,000.00), which shall be paid from the Gross Settlement Amount. The Settlement
18 Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys'
19 fees, costs, and expenses. Any portion of the Class Counsel Fees and Costs not awarded to Class
20 Counsel shall be added to the Net Settlement Amount and shall be distributed to Class Members
21 as provided in this Agreement.

22 32. Class Representative Enhancement Payment. Defendant agrees not to oppose or
23 impede any application or motion by Plaintiff for a Class Representative Enhancement Payment
24 of up to Five Thousand Dollars (\$5,000.00) to Plaintiff. The Class Representative Enhancement
25 Payment shall be paid from the Gross Settlement Amount and shall be paid in addition to Plaintiff's
26 Individual Settlement Payment as a Participating Class Member. The Settlement Administrator
27 shall issue an IRS Form 1099 to Plaintiff reflecting the Class Representative Enhancement
28 Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on

1 his Class Representative Enhancement Payment and shall hold harmless Defendant and the
2 Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of
3 the Class Representative Enhancement Payment. Any portion of the Class Representative
4 Enhancement Payment not awarded to Plaintiff shall be added to the Net Settlement Amount and
5 shall be distributed to Class Members as provided in this Agreement.

6 33. Settlement Administration Costs. The Settlement Administrator shall be paid for
7 the reasonable costs of administration of the Settlement from the Gross Settlement Amount, not to
8 exceed Two Thousand Eight Hundred Forty-Five Dollars (\$2,845.00). These costs, which shall
9 be paid from the Gross Settlement Amount, shall include, *inter alia*, for printing the Class Notice,
10 the Request for Exclusion Forms, and the Objection Forms, distributing (including with
11 appropriate postage), tracking, and mailing the Notice Packet, performing any searches to locate
12 any Class Members and update addresses, calculating estimated amounts per Class Member, tax
13 reporting, distributing the Individual Settlement Payments, the issuing of 1099 IRS Forms,
14 establishing a Qualified Settlement Fund, administering and distributing the Class Representative
15 Enhancement Payment, Class Counsel Fees and Costs and payment to the LWDA for PAGA
16 penalties, and providing necessary certification of completion of notice, reports and declarations,
17 providing and authenticating all exclusion forms and objection forms received to the Court, and
18 other responsibilities as requested by the Parties. Any portion of the Settlement Administration
19 Costs not allowed shall be added to the Net Settlement Amount and shall be distributed to Class
20 Members as provided in this Agreement.

21 34. PAGA Payment. Subject to Court approval, the Parties agree that the amount of
22 Fifteen Thousand Dollars (\$15,000.00) of the Gross Settlement Amount shall be designated for
23 satisfaction of claims for civil penalties under the PAGA. The Settlement Administration shall pay
24 seventy-five percent (75%) of the PAGA payment, i.e. the sum of Eleven Thousand Two Hundred
25 Fifty Dollars (\$11,250.00), to the LWDA. The remaining twenty-five percent (25%), i.e., the sum
26 of Three Thousand Seven Hundred Fifty Dollars (\$3,750.00), shall be part of the Net Settlement
27 Amount to be distributed to Participating Class Members as per this Agreement.

28 35. Calculation of Individual Settlement Payments. The Net Settlement Amount shall

1 be used to satisfy Individual Settlement Payments to Participating Class Members from the
2 Settlement Class in accordance with the terms of this Agreement. The Settlement Administrator
3 will allocate the Individual Settlement Payments by first dividing the Net Settlement Amount by
4 the total number of Eligible Workweeks for all Participating Class Members during the Class
5 Period. That value will then be multiplied by the number of Eligible Workweeks worked by each
6 individual Participating Class Member worked during the Class Period to arrive at the Individual
7 Settlement Amount for each respective Participating Class Member. Participating Class
8 Members are entitled to 100% of the Net Settlement Amount. Defendant maintains no
9 reversionary right to any portion of the Net Settlement Amount. If there are any timely submitted
10 Requests for Exclusion, the Settlement Administrator shall proportionately increase the
11 Individual Settlement Payments for each Participating Class Member so that the amount actually
12 distributed to Participating Class Members equals 100% of the Net Settlement Amount.

13 36. Treatment of Individual Settlement Payments. The Individual Settlement
14 Payments shall be allocated 20% as W-2 wages and 80% as 1099 payments for penalties and
15 interest. The Individual Settlement Payments will be paid to Participating Settlement Class
16 Members subject to reduction for all employees' share of typical withholdings and taxes associated
17 with the wage-portion of the Individual Settlement Payments. The employer's share of taxes for the
18 wage portions of the Individual Settlement Payments shall be paid by Defendant separately and in
19 addition to Defendant's payment of the Gross Settlement Amount.

20 37. Administration of Taxes by the Settlement Administrator. The Settlement
21 Administrator will also report payments under the Settlement to all required taxing and other
22 authorities, taking and transmitting the appropriate employee's and employer's share of
23 withholdings and taxes with respect to the wage portions of the Individual Settlement Payments,
24 and issuing IRS W-2 and 1099 forms or other tax forms as may be required by law for all amounts
25 paid pursuant to this Agreement. The Settlement Administrator, in connection with the operation
26 and implementation of this Settlement Agreement (including, without limitation, expenses of tax
27 attorneys and/or accountants and mailing and distribution costs and expenses relating to filing or
28 failing to file the informational and other tax returns described in this Agreement), shall be treated

1 as, and considered to be, costs of administration of this Settlement and thus part of the Settlement
2 Administration Costs.

3 38. Tax Liability. Defendant makes no representation as to the tax treatment or legal
4 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not
5 relying on any statement, representation, or calculation by Defendant or by the Settlement
6 Administrator in this regard. Plaintiff and Participating Class Members understand and agree that
7 they will be solely responsible for the payment of any taxes and penalties (i.e., Social Security,
8 Medicare, federal and state income taxes, SDI, etc.) assessed on their respective payments
9 described herein and will defend, indemnify, and hold Defendant and the Released Parties free and
10 harmless from and against any claims, taxes, penalties, and/or assessments resulting from
11 treatment of such payments as wages or non-taxable damages.

12 39. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
13 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
14 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
15 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
16 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
17 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
18 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
19 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
20 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
21 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
22 EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL
23 FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
24 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
25 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
26 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
27 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
28 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE

1 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
2 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
3 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
4 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
5 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
6 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
7 AGREEMENT.

8 40. Calculation of Gross Settlement Amount. The Gross Settlement Amount was
9 calculated with, and is premised on a maximum of 48 Class Members eligible to participate in the
10 Settlement, and a maximum of 3,217 total workweeks worked by such Class Members during the
11 Class Period.

12 41. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
13 Participating Class Members under this Agreement, the Enhancement Payment made to Plaintiff,
14 as well as any other payments made pursuant to this Agreement, shall not be utilized to calculate
15 any additional benefits under any benefit plans to which Plaintiff or any Class Members may be
16 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
17 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plans. Rather,
18 it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts
19 to which any Class Members may be entitled under any benefit plans.

20 42. Settlement Administration Process. The Parties agree to cooperate in the
21 administration of the Settlement and to make all reasonable efforts to control and minimize the
22 costs and expenses incurred in the administration of the Settlement. The Settlement Administrator
23 shall provide the following services:

- 24 a. Establish and maintain a Qualified Settlement Fund account;
- 25 b. Calculate the amount of Individual Settlement Payment that each Class
26 Member is eligible to receive;
- 27 c. Prior to mailing the Notice Packet, the Settlement Administrator will verify
28 the last known address for each Class Member through a generally utilized, national address update

1 database;

2 d. Printing and mailing the Class Notice and all forms;

3 e. Establishing and maintaining a toll free informational telephone support
4 line to assist Class Members who have questions regarding the Notice Packet;

5 f. Conducting additional address searches for mailed Notice Packets that are
6 returned as undeliverable, and to the extent new and more current addresses are found, the
7 Settlement Administrator will also reprint and re-mail Notice Packets accordingly;

8 g. Establishing a toll-free number to respond to inquiries regarding the
9 Settlement;

10 h. Calculating Participating Class Members' settlement share, fielding
11 inquiries from Class Members, and administration of any Requests for Exclusion received. This
12 service will include settlement proceed calculations, printing and issuance of checks, and
13 preparation of W-2 and 1099 Forms. Basic accounting for and payment of all payroll tax
14 deductions to be withheld and the deductions will also be included as part of this service;

15 i. Mailing reminder postcards to any Class Members whose settlement check
16 has not been negotiated within 60 days after the date of mailing; and

17 j. Providing declarations, providing any forms submitted by Class Members,
18 and/or other information to the Court as requested.

19 43. Delivery of the Class List and Data. Within fifteen (15) calendar days of
20 Preliminary Approval, Defendant shall provide the Class List and Data to the Settlement
21 Administrator.

22 44. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the
23 Class List and Data from Defendant, the Settlement Administrator shall mail a Notice Packet to
24 all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
25 addresses identified in the Class List. The Notice Packet shall be provided in both English and
26 Spanish.

27 45. Confirmation of Contact Information in the Class List. Prior to mailing, the
28 Settlement Administrator shall perform a search based on the National Change of Address

1 Database for information to update and correct for any known or identifiable address changes.

2 46. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
3 Packet will provide: (1) information regarding the nature of the Action; (2) a summary of the
4 Settlement's principal terms and where to find further information regarding the Settlement and
5 any documents; (3) the Settlement Class definition; (4) each Class Member's estimated Individual
6 Settlement Payment and the formula for calculating Individual Settlement Payments, if they do
7 not request to be excluded; (5) the dates that comprise the Class Period; (6) instructions on how to
8 submit valid Requests for Exclusion forms, or Objection Forms or written objections; (7) the
9 deadlines by which the Class Member must submit the Request for Exclusion Forms or written
10 objections to the Settlement; (8) the date for the final approval hearing; (9) the claims to be
11 released; and (10) the address of the courthouse to which the case is assigned and the court's
12 website at which the case file can be viewed on-line. The Notice Packet will also inform Class
13 Members that, in order to receive the Individual Settlement Payment, they do not need to do
14 anything except keep the Settlement Administrator apprised of their current mailing addresses.

15 47. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement
16 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly via
17 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
18 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding
19 address is provided, the Settlement Administrator shall promptly attempt to determine the correct
20 address using a skip-trace, or other search using the name, address and/or Social Security Number
21 of the Class Member involved, and shall then perform a re-mailing. Those Class Members who
22 receive a re-mailed Notice Packet shall have their Response Deadline extended by up to fifteen
23 (15) days from the original Response Deadline.

24 48. Request for Exclusion Procedures. Any Class Member may opt-out from the
25 Settlement by submitting the Request for Exclusion Form contained in the Notice Packet. In order
26 for the Request for Exclusion Form to be deemed valid, Class Members must provide their name
27 and contact information, sign the Request for Exclusion Form, and return the Request for
28 Exclusion Form by mail to the Settlement Administrator at the specified address indicated on the

1 form on or before the Response Deadline. The date of the postmark shall be the exclusive means
2 to determine whether a Request for Exclusion Form is timely. By submitting such a Request for
3 Exclusion Form, a Class Member shall be deemed to have exercised his or her option to opt out of
4 the Action and not be bound by this Agreement. Accordingly, a Class Member that submits a valid
5 and timely Request for Exclusion Form will not be entitled to any payments under this Settlement
6 and will not be bound by the terms of the Settlement. Any Class Member who fails to submit a
7 valid and timely Request for Exclusion Form on or before the Response Deadline shall be deemed
8 a Participating Class Member, and will be bound by all terms of the Settlement to the fullest
9 possible extent, if the Settlement is granted final approval by the Court. Upon request, the
10 Settlement Administrator shall provide counsel for the Parties with a list of Class Members who
11 have timely submitted a Request for Exclusion Form. No Party will encourage any Class Member
12 to opt out of the Settlement.

13 49. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
14 Member who does not opt-out of the Settlement by submitting a valid and timely Request for
15 Exclusion Form shall be bound by all terms of the Settlement to the fullest possible extent,
16 including those pertaining to the Released Claims, as well as any Judgment that may be entered
17 by the Court.

18 50. Objection Procedures. Any Class Member who does not opt-out of this Settlement
19 shall be entitled to object to the Settlement. To object to the Settlement, a Class Member may
20 return by mail the Objection Form included in the Notice Packet to the Settlement Administrator
21 by the Response Deadline. In order for the Objection Form to be deemed valid, the Class Member
22 must provide a written statement of the grounds for his or her objection, sign the Objection Form,
23 return the form by mail to the Settlement Administrator at the specified address indicated in the
24 Notice Packet, and the Objection Form must be postmarked on or before the Response Deadline
25 which will be indicated in the Notice Packet. The Class Member may include with the Objection
26 Form any copies of any evidence and supporting papers (including, without limitation, all briefs,
27 written evidence, and declarations) upon which the objection is based. Class Members may also
28 submit their objection in any other written format in lieu of the Objection Form, as long as they

1 provide their name and contact information, the case name and number, provide a written statement
2 of the grounds for their objection(s), mail the objection to the Settlement Administrator at the
3 specified address, and postmark the written objection on or before the Response Deadline. Further,
4 objecting Class Members may appear at the Final Approval hearing, either in person or through
5 counsel retained at his or her expense, to have their objections heard, whether or not they submitted
6 a prior written objection. The Settlement Administrator will forward all valid and timely written
7 objections received to the Parties, and the Parties will be permitted to respond in writing to such
8 objections at least seven (7) calendar days prior to the Final Approval hearing or within the time
9 period set by the Court. Any Class Members who do not submit a written objection according to
10 this Paragraph or do not present an objection at the Final Approval hearing will be deemed to have
11 waived any objections and will be foreclosed from making any objection to the Settlement,
12 including by appealing the order granting Final Approval. At no time shall any of the Parties or
13 their counsel seek to solicit or otherwise encourage Class Members to object to the Settlement or
14 appeal from the Order and Judgment. Class Counsel shall not represent any Class Members with
15 respect to any such objections to this Settlement. Any Class Member who submits a valid Request
16 for Exclusion Form shall not be allowed to object to this Settlement.

17 51. Defendant's Right to Rescind. If more than thirty percent (30%) of the Class
18 Members opt out of the settlement by submitting valid and timely Request for Exclusion Forms,
19 Defendant has the unilateral right in its sole discretion to rescind the Settlement Agreement. The
20 Parties agree that they will not encourage any Class Member to object to the Settlement or to opt
21 out. If Defendant exercises its option to rescind, Defendant shall: (a) provide written notice to
22 Class Counsel at least ten (10) business days prior to the final approval hearing, and (b) pay all
23 Settlement Administration Costs incurred by the Settlement Administrator up to the date of
24 Defendant's notice to rescind. In the event the Settlement is terminated, the Parties shall proceed
25 in all respects as if this Agreement had not been executed.

26 52. Settlement Administrator's Reports of Information. The Settlement Administrator
27 shall provide Counsel for Defendant and Class Counsel a weekly report which certifies the number
28 of Class Members who have submitted valid Request for Exclusion Forms. Additionally, the

1 Settlement Administrator will provide to counsel for both Parties any updated reports regarding
2 the administration of the Settlement as needed or requested. The Settlement Administrator shall
3 also forward to Parties' counsel any Objection Forms or written objections received immediately
4 upon receipt. Further, if requested by Parties' counsel, the Settlement Administrator shall forward
5 any Request for Exclusion Forms to the Parties' counsel so that they can determine whether the
6 form is valid and timely.

7 53. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar
8 days of Defendant funding the Gross Settlement Amount, the Settlement Administrator shall issue
9 payments to (1) Participating Class Members; (2) the Labor and Workforce Development Agency;
10 (3) Plaintiff; and (4) Class Counsel. The Settlement Administrator shall also issue a payment to
11 itself for services performed in connection with the Settlement.

12 54. Settlement Distribution Checks To Class Members. Any envelope transmitting a
13 check for payment of Individual Settlement Payments to Class Members shall bear the notation,
14 "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED." If (i) any of the Class
15 Members are current employees of Defendant, (ii) the check mailed to those employees is returned
16 to the Settlement Administrator as being undeliverable, and (iii) the Settlement Administrator is
17 unable to locate a valid mailing address through a reasonable search, the Settlement Administrator
18 shall arrange with Defendant's counsel to have those settlement checks delivered to the Class
19 Members at their place of employment. The Settlement Administrator will mail a reminder
20 postcard to any Class Members whose settlement checks have not been negotiated within 60 days
21 after the date of mailing.

22 55. Uncashed Individual Settlement Payments. Any checks issued by the Settlement
23 Administrator to Class Members shall be negotiable for not less than one hundred and eighty (180)
24 days from the date of their issuance. This is a non-reversionary settlement. All Individual
25 Settlement Payments to Class Members that remain un-cashed within one hundred eighty (180)
26 days of the mailing of Individual Settlement Payments by the Settlement Administrator shall be
27 paid out to the following *cy pres* recipient: Legal Aid At Work.

28 56. Certification of Completion. Upon completion of administration of the Settlement,

1 the Settlement Administrator shall provide a written declaration under oath to certify such
2 completion to the Court and counsel for all Parties.

3 57. Administration Costs if Settlement Fails or is Delayed. If an objection to the
4 Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if
5 the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall be
6 borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

7 58. No Prior Assignments. The Parties and their counsel represent, covenant, and
8 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
9 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
10 action, cause of action or right herein released and discharged.

11 59. Release of Claims by Participating Class Members. Upon funding of the Gross
12 Settlement Amount, for and in consideration of the mutual promises, terms, and conditions by
13 and between the Participating Class Members and Defendant set forth herein, the sufficiency of
14 which consideration is expressly acknowledged, the Participating Class Members do hereby
15 fully, finally and forever release, settle, relinquish, and discharge the Released Parties from any
16 and all Released Claims. Nothing in this Agreement shall be construed to require Participating
17 Class Members to waive or release rights which may not be waived or released as a matter of
18 applicable law. This release is final and binding on all Participating Class Members.

19 60. Nullification of Settlement. In the event that the Settlement does not become final
20 for any reason, then this Agreement, and any documents generated to bring it into effect, shall be
21 null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
22 likewise be treated as void from the beginning.

23 61. Disputes Regarding Individual Settlement Payments. In the event that Class
24 Members have a dispute as to the data provided by the Defendant, Class Members will have the
25 opportunity to provide documentation and/or an explanation. If there is a dispute, the Settlement
26 Administrator will consult with the Parties to determine whether an adjustment is warranted. The
27 Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual
28 Settlement Payments under the terms of this Agreement, and that determination shall be binding.

1 62. Disputes Regarding Administration of Settlement. Any disputes not resolved by the
2 Settlement Administrator concerning the administration of the Settlement will be resolved by the
3 Court under the laws of the State of California. Prior to any such involvement of the Court, counsel
4 for the Parties will confer in good faith to resolve the disputes without the necessity of involving
5 the Court.

6 63. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to
7 request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order:
8 (i) approving of the proposed Settlement, and (ii) setting a date for a Final Approval/Settlement
9 Fairness Hearing. The Preliminary Approval Order shall provide for the Notice Packet to be sent
10 to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing,
11 Plaintiff shall submit this Agreement, which sets forth the terms of this Settlement, and will include
12 the proposed Notice Packet, attached to this Agreement as **Exhibit A**. If the Court declines to
13 approve the Settlement or approves it conditional on modifications to the settlement terms, the
14 Parties shall work in good faith to modify the settlement terms to obtain approval, provided that
15 the material terms of the Settlement are not affected.

16 64. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit
17 Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's
18 permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the
19 Final Approval of the Settlement along with the amounts properly payable for: (i) Individual
20 Settlement Payments; (ii) the PAGA (including LWDA) Payment; (ii) the Class Counsel Fees and
21 Costs; (iii) the Class Representative Enhancement Payment; and (iv) Settlement Administration
22 Costs. Class Counsel will be responsible for drafting all documents necessary to obtain final
23 approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs
24 application to be heard at the Final Approval Hearing.

25 65. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
26 Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent with
27 the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
28 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms

1 of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as
2 may be appropriate under court rules or as set forth in this Agreement.

3 66. Exhibits Incorporated by Reference. The terms of this Agreement include the terms
4 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
5 herein. Any Exhibits to this Agreement are an integral part of the Settlement.

6 67. Confidentiality Preceding Preliminary Approval. The Parties and their counsel
7 agree that they will not issue any press releases, initiate any contact with the press, respond to any
8 press inquiry, or have any communication with the press about the fact, amount or terms of the
9 Settlement, prior to the entry of the Final Approval Order and Judgment.

10 68. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety
11 of the Parties' Settlement terms with respect to the settlement of the class and representative
12 PAGA claims for violation of Cal. Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194,
13 2802, and 2698, *et seq.*, and Cal. Business and Professions Code § 17200, *et seq.*, as pled in the
14 Action.

15 69. Amendment or Modification. This Agreement may be amended or modified only
16 by a written instrument signed by the Parties or their successors-in-interest.

17 70. Authorization to Enter Into Agreement. Counsel for all Parties warrant and
18 represent they are expressly authorized by the Parties whom they represent to negotiate this
19 Agreement and to take all appropriate actions required or permitted to be taken by the Parties
20 pursuant to this Agreement to effectuate its terms and to execute any other documents required to
21 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
22 other and use their best and good-faith efforts to effect the implementation of the Settlement. If
23 the Parties are unable to reach agreement on the form or content of any document needed to
24 implement the Settlement, or on any supplemental provisions that may become necessary to
25 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
26 such disagreement.

27 71. Binding on Successors and Assigns. This Agreement shall be binding upon, and
28 inure to the benefit of, the successors, heirs, or assigns of the Parties hereto, as previously defined.

1 72. California Law Governs. All terms of this Agreement and Exhibits hereto shall be
2 governed by and interpreted according to the laws of the State of California.

3 73. Execution and Counterparts. This Agreement is subject only to the execution of all
4 Parties. However, the Agreement may be executed in one or more counterparts. All executed
5 counterparts and each of them, including facsimile, electronic, pdf, DocuSign, and scanned copies
6 of the signature page, shall be deemed to be one and the same instrument provided that counsel for
7 the Parties shall exchange among themselves original signed counterparts.

8 74. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
9 this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
10 Settlement after arm's-length negotiations, mediation, and in the context of adversarial litigation,
11 taking into account all relevant factors, present and potential. The Parties further acknowledge that
12 they are each represented by competent counsel and that they have had an opportunity to consult
13 with their counsel regarding the fairness and reasonableness of this Agreement.

14 75. Invalidity of Any Provision. Before declaring any provision of this Agreement
15 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent possible
16 consistent with applicable precedents so as to define all provisions of this Agreement valid and
17 enforceable. Any invalid, illegal, or unenforceable provision determined by the Court shall in no
18 way affect any other provision if Defendant and Class Counsel, on behalf of the Parties and the
19 Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable
20 provision had never been included in this Agreement.

21 76. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
22 that Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's Award below the
23 amount Class Counsel requests, and either Party may appeal any order that materially alters the
24 Agreement's terms.

25 77. Class Action Certification. The Parties are agreeing to class certification for
26 settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an
27 admission of any kind by Defendant, including without limitation, that certification of a class for
28 trial or any other purpose is appropriate or proper or that Plaintiff or any Class Member can

1 establish any of the requisite elements for class treatment of any of the claims in this Action. If,
2 for any reason, the Settlement is not finally approved, this Agreement will be void and the Parties
3 will be restored to their respective positions in the lawsuit as if they had not entered into this
4 Agreement. The Parties further agree that this Settlement Agreement, or any documents or orders
5 issued related to this Settlement, will not be admissible, other than according to the Settlement's
6 terms, in this or any other proceeding as evidence that either: (i) a class action should be certified,
7 or (ii) Defendant is liable to Plaintiff or any Class Member.

8 78. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
9 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
10 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it
11 has violated any federal, state, or local law; violated any regulations or guidelines promulgated
12 pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached
13 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
14 engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor
15 any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as
16 an admission or concession by Defendant of any such violations or failures to comply with any
17 applicable law, regulation, or legal requirement. Except as necessary in a proceeding to enforce
18 the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or
19 received as evidence in any action or proceeding to establish any liability or admission of any
20 nature on the part of Defendant, or to establish the existence of any condition constituting a
21 violation of, or a non-compliance with, federal, state, local or other applicable law.

22 79. Captions. The captions and section numbers in this Agreement are inserted for the
23 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
24 provisions of this Agreement.

25 80. Waiver. No waiver of any condition or covenant contained in this Agreement or
26 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or
27 constitute a further waiver by such party of the same or any other condition, covenant, right or
28 remedy.

1 81. Enforcement Actions. In the event that one or more of the Parties institutes any
2 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
3 Settlement, or to declare rights and/or obligations under this Settlement, the prevailing Party or
4 Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys'
5 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

6 82. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
7 and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly
8 against one Party than another merely by virtue of the fact that it may have been prepared by
9 counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations
10 between the Parties, all Parties have contributed to the preparation of this Agreement.

11 83. Representation by Counsel. The Parties acknowledge that they have been
12 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
13 and that this Agreement has been executed with the consent and advice of counsel. Further,
14 Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

15 84. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in
16 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
17 this Agreement.

18 85. Binding Agreement. The Parties warrant that they understand and have full
19 authority to enter into this Agreement, and further intend that this Agreement shall be fully
20 enforceable and binding on all Parties, and agree that it shall be admissible and subject to
21 disclosure in any proceeding to enforce its terms.

22 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
23 Joint Stipulation of Class Action Settlement and Release between Plaintiff and Defendant as of
24 the date(s) set forth below:

25 **READ CAREFULLY BEFORE SIGNING**

1 PLAINTIFF SAKHOEUTH "KURT" SAO

2 Dated: 6.23.2021

3 SS
Sakhoeuth "Kurt" Sao

4 DEFENDANT AUTOMATED GATE
5 SERVICES, INC.

6 Dated: 6-30-2021

7 [Signature]
Name of Authorized Signatory

8 Kyle Thompson, President

9 APPROVED AS TO FORM

10 DIVERSITY LAW GROUP, P.C.

11 Dated: 6/25/21

12 [Signature]
Howard L. Magee

13 Larry W. Lee

14 Mai Tulyathan

15 Attorneys for Plaintiff, the Class, and
Aggrieved Employees

16 FISHER & PHILLIPS LLP

17 Dated: June 28, 2021

18 Mark Jacobs
Mark Jacobs

19 Attorneys for Defendant Automated Gate
20 Services, Inc.

EXHIBIT C

Sakhoeuth “Kurt” Sao v. Automated Gate Services, Inc.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
(CASE NO. RIC2001904)

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

IF YOU ARE A CURRENT OR FORMER CALIFORNIA HOURLY EMPLOYEE OF AUTOMATED GATE SERVICES, INC. (“AUTOMATED GATE SERVICES” OR “DEFENDANT”) AND WERE EMPLOYED AT ANY TIME DURING THE PERIOD OF APRIL 1, 2016 THROUGH DECEMBER 31, 2021, YOU MAY BE ELIGIBLE TO RECEIVE MONEY AS PART OF A CLASS ACTION SETTLEMENT.

The Riverside County Superior Court (“Court”) authorized this Notice to be sent by Phoenix Settlement Administrators (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.

AUTOMATED GATE SERVICES CANNOT AND WILL NOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING IN THIS SETTLEMENT.

«BarcodeString»
SIMID «SIMID»

ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
APPROXIMATELY
\$«MERGED_EstSettAmnt_CALC»
THROUGH THIS CLASS ACTION
SETTLEMENT**

- A former employee, Sakhoeuth “Kurt” Sao (“Named Plaintiff”), has sued Defendant on behalf of himself and all other similarly situated employees.
- The parties to the lawsuit have reached a tentative settlement as to the class and representative Private Attorneys General Act claims for violation of Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1194, and 2802, and Business and Professions Code section 17200, *et seq.* (referred to as “Class and PAGA Claims” in this Notice), and the Court has preliminarily approved it.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
You Can DO NOTHING	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will lose any rights to sue Automated Gate Services separately for the same Class and PAGA Claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.

You Can ASK TO BE EXCLUDED FROM THE SETTLEMENT (Deadline: _____, 2021)	If you ask to be excluded from the settlement, you will get no payment from the settlement, but you will keep any rights to sue Automated Gate Services separately for the same Class and PAGA Claims made in this lawsuit. Important: You cannot ask to be excluded <u>and</u> still get a settlement payment.
You Can OBJECT TO THE SETTLEMENT (Deadline: _____, 2021)	If you do not like the settlement, you can send a written objection to the Settlement Administrator by the deadline to have your objection heard by the Court. If your objection is overruled by the Court, you will still be bound by the terms of the settlement and will receive a settlement payment. Important: If you object to the settlement, you cannot also ask to be excluded.

THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. The Court has determined only that there is sufficient evidence to suggest that the Settlement is fair, adequate, and reasonable. The Court still has to make a final determination to grant approval of the Settlement. Payments will be made if the Court finally approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read This Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What is this Lawsuit About?

In the lawsuit, the Named Plaintiff alleges on behalf of himself and other employees of Automated Gate Services that Automated Gate Services failed to properly pay all overtime wages owed, failed to provide off-duty meal and rest breaks, failed to reimburse business-related expenses, failed to pay all wages upon separation from employment, and failed to provide accurate itemized wage statements in violation of California Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1194, and 2802, and Business and Professions Code section 17200, *et seq.* Specifically, Named Plaintiff alleges that Automated Gate Services did not correctly calculate the overtime rate of pay when prevailing wage pay and other non-discretionary remuneration were paid, and as such owe additional overtime pay to employees. Named Plaintiff also alleges that Automated Gate Services routinely denied employees the right to take off-duty meal and rest breaks, but deducted time from employee timesheets for meal breaks not taken. Further, Named Plaintiff alleges that he was required to purchase tools to perform his job at Automated Gate Services but was not compensated for such costs. As a result of the foregoing, Named Plaintiff alleges that the wage statements he received were inaccurate because they did not identify the correct information required by the California Labor Code.

Automated Gate Services denies the allegations in the lawsuit and denies it has engaged in any wrongdoing. Automated Gate Services asserts that it complied with all legal requirements, but is resolving this action in order to avoid the risk and costs of further legal proceedings.

3. What is a Class Action?

In a class action, one or more persons, called a class representative (in this case, Sakhoeth “Kurt” Sao), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The Riverside County Superior Court is in charge of the case. The lawsuit is known as *Sakhoeth “Kurt” Sao v. Automated Gate Services, Inc.*, Case No. RIC2001904.

4. Why is there a Settlement?

The Court did not decide in favor of Named Plaintiff or Automated Gate Services. Named Plaintiff thinks he could have won at trial. Automated Gate Services thinks that Named Plaintiff would not have won anything. But there was no trial. Instead, both parties agreed to a settlement. That way, they avoid the risks and cost of litigation and trial, and the individuals potentially affected will get compensation. The class representative and the attorneys think the settlement is best for class members.

The Court has not yet decided whether to approve the Settlement. The Court has determined only that there is sufficient evidence to suggest that the Settlement is fair, adequate, and reasonable. The Court still has to make a final determination at the final approval hearing whether to approve the Settlement.

5. How Do I Know If I Am Part of the Settlement?

The Court has decided that any current or former non-exempt (hourly) employee of Automated Gate Services in the State of California at any time from April 1, 2016 to December 31, 2020, (the “Covered Period”), is a class member. If you received this Notice, you are a class member.

6. What Does the Settlement Provide?

The proposed settlement provides for a cash payment by Automated Gate Services in the amount of \$162,500.00 to fully and finally resolve the Class and PAGA Claims alleged in the lawsuit (referred to as the “Gross Settlement Amount”). The total amount to be distributed to class members who can be located, and who do not exclude themselves from the settlement, will be the Gross Settlement Amount minus the following: (a) settlement administration costs not to exceed \$2,845.00; (b) class representative service award to Named Plaintiff not to exceed \$5,000.00 for his work and efforts in prosecuting this cases, and for undertaking the risks of costs (in the event the outcome was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$54,166.67; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$15,000.00; and (e) payment of \$11,250.00 to the Labor and Workforce Development Agency. The total amount remaining to be distributed to class members after deduction of the following payments, fees, and costs is referred to as the Net Settlement Amount. **Class Counsel’s attorneys’ fees and costs and Named Plaintiff’s class representative service award remain subject to Court approval.**

No portion of the Net Settlement Amount will be returned to Automated Gate Services under any circumstances.

7. How Much Will My Payment Be?

Your estimated share of the settlement is shown above and is based on the number of workweeks you worked for Automated Gate Services as a non-exempt/hourly employee during the Covered Period, as compared to the total number of workweeks worked by all class members in that same period.

Based upon Automated Gate Services' records, the number of workweeks you work from April 1, 2016 to December 31, 2020 is determined to be ***. If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of wage statements, see below (Question 9).

8. How and When Do I Receive a Payment?

To qualify for payment, **you need not do anything**. The Settlement Administrator will mail you a check within approximately thirty (30) to forty-five (45) calendar days after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

9. What If I Believe the Information is Inaccurate?

If you believe the number of workweeks you worked during the Covered Period is inaccurate, you may dispute it by sending a letter to Phoenix Settlement Administrators [ADMINISTRATOR'S ADDRESS] no later than _____, 2021. Be sure to include your name, address, telephone number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

10. What Am I Giving Up to Receive a Settlement Payment?

Unless you request to be excluded from the settlement, you remain a part of the settlement class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Automated Gate Services or the other Released Parties for the Class and PAGA Claims that were or could have been asserted in the lawsuit. Specifically, you will be giving up or "releasing" the claims summarized below, as fully defined within the Parties' Settlement Agreement ("Released Claims"):

- Any and all claims for failure to pay regular, minimum, and overtime wages pursuant to Labor Code §§ 201-204, 510, 558, and 1194, and California local and state laws relating to underpayment of overtime wages as a result of failure to include prevailing wages (and related provisions of the Wage Orders of the California Industrial Welfare Commission), including claims for penalties, costs, and attorneys' fees related thereto, that accrued from April 1, 2016, through December 31, 2020;
- Any and all claims for meal and rest period violations pursuant to Labor Code §§ 226.7 and 512 (and related provisions of the Wage Orders of the California Industrial Welfare Commission), including claims for penalties, costs, and attorneys' fees related thereto, that accrued from April 1, 2016, through December 31, 2020;
- Any and all claims for unpaid business reimbursements pursuant to Labor Code § 2802 (and related provisions of the Wage Orders of the California Industrial Welfare Commission), including claims for penalties, costs, and attorneys' fees related thereto, that accrued from April 1, 2016, through December 31, 2020;
- Any and all claims for inaccurate wage statements pursuant to Labor Code § 226 (and related provisions of the Wage Orders of the California Industrial Welfare Commission), including claims for penalties, costs, and attorneys' fees related thereto, that accrued from April 1, 2016, through December 31, 2020; and
- Any and all claims for civil penalties under the PAGA predicated on the failure to pay regular, minimum, and overtime wages, failure to provide meal and rest breaks, failure to reimburse business expenses, and

failure to provide accurate wage statements pursuant to Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, and 2802 (and related provisions of the Wage Orders of the California Industrial Welfare Commission), including claims for costs and attorneys' fees related thereto, that accrued from April 1, 2016, through December 31, 2020.

The term "Released Parties" means Automated Gate Services as well as its predecessors, successors, and all former, current, and future owners, divisions, its respective former, current and future directors, officers, employees, agents, representatives, attorneys, fiduciaries, assigns, heirs, executors, administrators, beneficiaries, insurers, trustees, and affiliates, and any person or entity which could be held jointly liable with Automated Gate Services as to any Released Claims.

11. How Do I Exclude Myself from the Settlement?

To exclude yourself from the settlement (also referred to as "opt-out"), you must complete and mail the Request for Exclusion Form attached to this Notice to the Settlement Administrator at the address indicated below.

Be sure to include your name and contact information, and include your signature on the Request for Exclusion Form. You must mail your exclusion letter postmarked no later than [REDACTED], 2021, to the Settlement Administrator at *****.

If you submit a timely and valid Request for Exclusion Form, you will no longer be a member of the class and you will not receive any money from the settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens in this lawsuit. You will keep any rights to sue (or continue to sue) Automated Gate Services in the future for the same Class and PAGA Claims made in this lawsuit, at your own expense.

12. How Do I Tell the Court That I Don't Believe That the Settlement is Fair?

As a class member, you can object to the settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the settlement. If you want to let the Court know the reasons why you object to the settlement, follow the procedures set out below in this section.

If you decide to object to the proposed settlement, you may do so in writing to the Settlement Administrator by completing the Objection Form attached to this Notice. You must provide your name and contact information, provide a written statement of the grounds in which you base your objection, and include your signature on the Objection Form. You may include any copies of evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) on which you base your objection, if any. You may also submit a written objection in any other format other than the Objection Form, as long as you provide your name and contact information, the case name and number of this lawsuit *Sakhoeuth "Kurt" Sao v. Automated Gate Services, Inc.*, Case No. RIC2001904, provide a written statement of the grounds in which you base your objection, and include your signature. You must mail the Objection Form or written objection postmarked no later than [REDACTED], 2021, to the Settlement Administrator at *****.

You may appear at the final approval hearing for the settlement to present your objection(s) to the Court, either in person or through an attorney at your own expense, regardless of whether you submitted a prior written objection. (See Questions 14 and 16.)

13. What is the Difference between Objecting and Excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the class. Excluding yourself, on the other hand, is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement if it is approved by the Court.

14. Do I Have a Lawyer in this Case?

The Court decided that the law firm of Diversity Law Group, which represents the Named Plaintiff, is also qualified to represent you and all class members. You will not be charged for these lawyers. These law firms are referred to as "Class Counsel." If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How Will the Attorneys for the Class and the Class Representative Be Paid?

The attorneys for the Named Plaintiff and the class will be paid from the Gross Settlement Amount. Class Counsel will ask for up to \$54,166.67 in attorneys' fees and for actual litigation costs incurred up to a maximum of \$15,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see section 16 below for details as to when this hearing will take place). Class members (like you) do not have to pay the fees and costs of Class Counsel. **If you want to be represented by your own lawyer, you may hire one at your own expense.**

If approved by the Court, a service payment for the Named Plaintiff of an amount up to \$5,000.00 will be paid from the Gross Settlement Amount for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

16. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable Sunshine S. Sykes on [REDACTED], 2021, at [REDACTED] a.m., in Department 6 of the **Superior Court of California for the County of Riverside, located at 4050 Main Street, Riverside, California 92501**, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will final judgment, and all class members who have not requested exclusion will be deemed to have waived the Released Claims set forth above.

17. How Do I Receive More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement titled "Joint Stipulation of Class Action Settlement" for the case *Sakhoeuth "Kurt" Sao v. Automated Gate Services, Inc.*, Case No. RIC2001904. You can get a copy of the Settlement Agreement by contacting Class Counsel. You can also view the Settlement Agreement by visiting the Clerk of the Superior Court of California for the County of Riverside, located at 4050 Main Street, Riverside, California 92501, or visiting the Court's website at

<https://www.riverside.courts.ca.gov/OnlineServices/SearchCourtRecords/public-access.php> to view the case file online.

18. What is the Contact Information for Class Counsel?

The addresses for Class Counsel are as follows:

DIVERSITY LAW GROUP, P.C.

Larry W. Lee
Howard L. Magee
Mai Tulyathan
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Fax: (213) 488-6554

WHAT IF I HAVE QUESTIONS?

If you have any questions about the settlement, you may contact the Settlement Administrator:

Sakhoeuth "Kurt" Sao v. Automated Gate Services, Inc.

c/o

Address

City, CA, Zip

Toll-Free Phone Number: [insert]

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

PLEASE DO NOT CONTACT AUTOMATED GATE SERVICES, ITS MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

EXHIBIT D

REQUEST FOR EXCLUSION FORM
(Sao v. Automated Gate Services, Inc.; Case No. RIC2001904)

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION
SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT, DO NOT
FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE
SETTLEMENT, AND DO NOT WANT TO RECEIVE A SETTLEMENT PAYMENT,
YOU MUST COMPLETE, DATE AND SIGN THIS
FORM AND MAIL IT BACK TO THE ADDRESS BELOW,
POSTMARKED NO LATER THAN ****[INSERT 45 days after mailing]**, 2021:****

Sao v. Automated Gate Services, Inc. Settlement Administration
c/o Phoenix Settlement Administrators
PO Box 7208
Orange, CA 92863

I have received notice of the proposed settlement in this lawsuit, and I wish to be excluded from the class and I have decided ***not*** to participate in the proposed settlement. I understand this means that I will not be bound by the settlement and will not receive any payment from the settlement, but I will retain whatever rights I may have, if any, to pursue a claim against Automated Gate Services, Inc. with respect to the claims raised in the lawsuit referenced above.

Your Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number, Including Area Code: _____

Date: _____

(signature)

EXHIBIT E

OBJECTION FORM

(Sao v. Automated Gate Services, Inc.; Case No. RIC2001904)

AS EXPLAINED IN MORE DETAIL IN THE NOTICE THAT CAME WITH THIS FORM, YOU HAVE THE RIGHT TO OBJECT TO THE PROPOSED CLASS ACTION SETTLEMENT DESCRIBED IN THE NOTICE.

If you choose, you may object to the proposed Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from the Settlement, and if the Court grants final approval to the Settlement, you will get your settlement payment and the release of claims will apply to you.

If you wish to object to the Settlement, you must complete this Objection Form and state the basis for your objection, or you may write your objection in any other written format you choose. Send the completed Objection Form or other written statement, along with any other documents you may have that support your objection, if any, by mailing it to the address below, postmarked no later than ****[INSERT 45 days after mailing]**, 2021**. Alternatively, you may appear and be heard at the Final Approval Hearing regardless of whether you submit an Objection Form or other written objection.

Sao v. Automated Gate Services, Inc. Settlement Administration
c/o Phoenix Settlement Administrators
PO Box 7208
Orange, CA 92863

Your Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number, Including Area Code: _____

Date: _____

 (signature)

Reasons Why You Object (you may attach additional pages if necessary): _____
